EIGHTY-SECOND REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1992, through December 31, 1992

William W. Redman, Jr., Chairman

Sarah Lindsay Tate, Commissioner

Julius A. Wright, Commissioner

Robert O. Wells, Commissioner

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

North Carolina Utilities Commission
Office of the Chief Clerk
Mrs. Geneva S. Thigpen
Post Office Box 29510
Raleigh, North Carolina 27626-0510

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

LETTER OF TRANSMITTAL

December 31, 1992

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, 1992, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1992, and ending December 31, 1992.

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

Julius A. Wright, Commissioner

Robert O. Wells, Commissioner

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

Geneva S. Thigpen, Chief Clerk

CONTENTS

ORDERS AND DECISIONS PRINTED

1992 ANNUAL REPORT OF ORDERS AND DECISIONS
of the
North Carolina Utilities Commission

Table of Orders and Decisions Printed

NOTE: For General Orders, see Index on page 568

DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: The American National Standards Institute (ANSI) has updated its 1990 Edition of the National Electrical Safety Code, said update being ANSI C2.1993. The Commission is of the opinion that, unless significant cause is shown otherwise, the 1993 Edition of the National Electrical Safety Code should be adopted as the safety rules of this Commission for electric and communications utilities under its jurisdiction.

By Order issued October 20, 1992, in Docket No. M-100, Sub 89, the Commission published proposed revisions to its Rules R8-26 and R9-1, and specified that unless protests or requests for hearing were received within 30 days after the date of said Order, the Commission would determine the matter without public hearing. No comments were received.

IT IS, THEREFORE, ORDERED as follows:

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

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

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

Rule R8-26. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2, 1993, 1993 Edition, are hereby adopted by reference as the electric safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission.

Rule R9-1. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2. 1993, 1993 Edition, are hereby adopted by reference as the communication safety rules of this Commission and shall apply to all telephone and telegraph utilities which operate in North Carolina under the jurisdiction of the Commission.

DOCKET NO. E-100, SUB 62

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement G.S. 62-100 through G.S. 62-107 Which Provides a Uniform Procedure in the Commission for the Siting of Electric Transmission Lines	ORDER ADOPTING NEW RULE R8-62

BY THE COMMISSION: On September 20, 1991, the Commission issued an Order entitled Notice of New Legislation and Rulemaking Proceeding. This Order gave notice that on June 3, 1991, the General Assembly of North Carolina enacted legislation specifically authorizing the Commission to issue a certificate for the construction of a transmission line designed with a capacity of at least 161 KV. (Chapter 189 of the 1991 Session Laws, which is codified as Article 5A of G.S. Chapter 62, or G.S. 62-100 through 62-107.)

G.S. 62-107 provided that the Commission may adopt rules to carry out the purposes of the legislation. Consequently, the Commission concluded in the Order that it should institute a rulemaking proceeding to adopt rules to implement and administer G.S. 62-100 et. seq. All "public utilities" as defined by G.S. 62-100(6) and other interested persons were invited to file comments and a proposed rule or rules addressing the manner in which the new legislation should be administered by the Commission. The Order also invited comments and proposed rules from the Public Staff, the Attorney General, and other agencies of the State of North Carolina. The Order set up a procedure, including time schedules, governing the rulemaking.

The official file in this docket discloses that comments, proposed rules, and other responses were filed by the Public Staff, North Carolina ElectriCities, North Carolina Electric Membership Corporation, the Attorney General, Carolina Power & Light Company, Duke Power Company, Nantahala Power and Light Company, North Carolina Power, North Carolina Department of Cultural Resources, Carolina Utility Customers Association, Inc., and the North Carolina League of Municipalities.

The Commission notes that the parties met on many occasions to attempt to reach a consensus on the proposed rules.

On April 20, 1992, CP&L, Duke, Nantahala, and North Carolina Power submitted a proposed Rule R8-62. The filing stated that the submittal "substantially incorporates comments by all parties to this proceeding, however, there are parties that differ with this version and may require additional time in which to comment or set forth their respective positions. On April 22, 1992, the Commission issued an Order allowing the parties in this docket to and including May 8, 1992, in which to review and comment on the proposed Rule R8-62 which was submitted by the electric utilities on April 20, 1992. The Public Staff, NCEMC, and the North Carolina League of Municipalities filed comments on the resubmitted draft Rule.

On May 8, 1992, the Attorney General filed Motion for Oral Argument on three significant points of difference between the version of the rules as proposed by CP&L, Duke, Nantahala, and N.C. Power and the version proposed by the Attorney General. By Order of June 8, 1992, the Commission scheduled oral argument on the Attorney General's Motion for July 15, 1992. The argument was held as scheduled, with the Attorney General and other parties participating therein.

By Order of July 17, 1992, the Commission granted the Public Staff leave to and including August 17, 1992, in which to make a supplemental filing in this docket proposing a new rule. The Public Staff made its supplemental filing on August 17, 1992, with a draft of proposed changes to Rule R8-62(g) and (k). No objections were filed to the Public Staff proposals. Therefore, these proposals are incorporated into the proposed Rule R8-62.

Upon consideration of all of the filings in this docket, and upon further consideration of the new legislation which was enacted by the 1991 General Assembly, now codified as G.S. Chapter 62, Article 5A, the Commission is of the opinion that new Rule R8-62 attached to this Order should be adopted as the rules of the Commission for the implementation and administering of the electric transmission line certification legislation. These Rules essentially incorporate the recommendations and proposals that were submitted and agreed upon by all of the parties in response to the Commission's Order of April 20, 1992. The Commission notes the following two matters about which there was some disagreement between Duke, CP&L, North Carolina Power and Nantahala, on the one hand, and the Public Staff and the Attorney General on the other. First, the Commission is of the opinion that the Public Staff's proposal to require the annual submission of certain information contained in FERC Rule 1 should be allowed; this proposal is incorporated in Rule R8-62(p)(1). The Commission is further of the opinion that the proposal of the Attorney General to require limited notice to affected landowners in cases of initial clearing pursuant to G.S. 62-101(e) should be denied. In so deciding, the Commission notes that G.S. 62-101(e) does not require notice for an initial clearing; further, this provision for initial clearing contemplates "circumstances" requiring "immediate action", which the applicant for a certificate may proceed "at its own risk" prior to receiving a certificate. Consequently, the Commission concludes that the statute does not call for notice in these circumstances.

IT IS, THEREFORE, ORDERED as follows:

1. That new Rule R8-62, attached hereto as Appendix A, is hereby adopted as a rule of the Commission, to become effective on and after the date of issuance of this Order.

2. That the Chief Clerk shall mail a copy of this Order to all parties of record in this docket, including Duke Power Company, Carolina Power & Light Company, Nantahala Power and Light Company, and North Carolina Power.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of December 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

NEW RULE R8 - 62. CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF ELECTRIC TRANSMISSION LINES IN NORTH CAROLINA.

(a) Each public utility or person, prior to commencing construction of a new transmission line for which a certificate is required pursuant to G.S. 62-101, shall first obtain a certificate of environmental compatibility and public convenience and necessity from the Commission. The requirement for such certificate may be satisfied by an applicable certificate granted by the Commission under G.S. 62-110 and Commission Rule R8-61.

(b) The procedures for the filing of an application for a certificate shall be as specified in Commission Rule R1-5.

(c) The filing of an application for a certificate shall include the following:

(1) The reasons the transmission line is needed including when it is needed for the purpose described;

(2) A description of the proposed location of the transmission line including a U.S. Geological Survey map showing the proposed route and alternative routes evaluated in relation to appropriate geographic reference points;

(3) A description of the proposed transmission line including:

a. The facilities including structure type and their average height range (as determined by preliminary engineering), the right of way corridor including its width, the capacity and voltage level of the lines; and operation and maintenance considerations.

b. A showing of the projected cost of the line.

(4) An environmental report setting forth:

a. The environmental impact of the proposed action including, as appropriate, its effect on natural resources, cultural resources, land use, and aesthetics;

b. Any proposed mitigating measures that may minimize the environmental impact; and

c. Alternative routes for the proposed lines;

(5) A listing of residential, commercial, industrial and institutional development; other man-made features; natural features which influenced route selection and how they were considered in the selection process; and

(6) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the transmission line and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.

(d) The applicant shall file a written summary with the Commission explaining any proposed deviation from the approved certificate, unless the deviation is insignificant. The Commission will, within thirty (30) days, determine and notify the applicant if the deviation(s) will require the Company to file an application for an amended certificate. If the Commission determines that an amended certificate is necessary, the applicant shall, giving consideration to the circumstances that created the deviation, file the following:

(1) The reasons the amendment is needed;

(2) A brief description of the proposed amendment;

(3) An amended environmental report, or addendum to the report filed with the initial application, containing the following information:

a. A U.S. Geological Survey Map showing the amended route in relation to all routes reviewed by the Commission in the initial application proceeding;

b. The right of way width and structures (structure type, approximate average height range and approximate locations as determined by preliminary engineering) along the amended route;

c. Revised project cost based on the proposed amended route;

d. A description of any changes in environmental impacts (either additional or reduced) of the proposed amended route, including, as appropriate, its effect on natural and cultural resources, land use and aesthetics; and

e. Any proposed mitigation measures specifically proposed to reduce environmental impacts of the amended segment of the line.

(4) Notice for amending a certificate must be given as provided in Rule R8-62(e).

(e) Within 10 days after the filing of the application or application for amendment, the applicant shall serve a copy of the application on the parties listed in G.S. 62-102(b) in the manner provided in G.S. 1A-1, Rule 4. The copy of the application served on each party shall be

accompanied by a notice specifying the date on which the application was filed and giving information on procedural steps to take and time deadlines to follow for intervention.

(f) At the time of filing, the applicant shall file a summary of the application to be used to fulfill the notice requirements of this certificate. The summary shall contain at a minimum the following:

(1) A summary of the proposed action;

(2) A description of the location of the proposed transmission line written in readable style and the location of the nearest business office to the proposed line where detailed maps (U.S. Geological Survey Map, or equal) may be examined. Said maps to also be available for review in the Commission's Office of the Chief Clerk;

(3) The date on which the application was filed; and

(4) The date by which persons with substantial interest in the certification proceeding must intervene.

The Commission shall, within 3 business days after the date of the filing, notify the applicant of its approval or of any required changes or additions to the summary.

(g) Within 10 days after the filing of the application, the applicant shall give public notice to persons residing in each county and municipality in which the proposed transmission line is to be located by publishing the approved summary of the application in newspapers of general circulation in the affected cities and counties so as to substantially inform those persons of the filing of the application. This notice shall thereafter be published in those newspapers a minimum of three additional times before the time for parties to intervene has expired. The summary shall also be sent to the North Carolina State Clearinghouse.

If the Commission orders public hearings on the application, the applicant shall send a revised summary to the North Carolina State Clearinghouse that states when and where the hearing will be held. In addition, the applicant shall similarly revise the newspaper notice so that all published notices following the first shall describe the schedule of public hearings.

(h) After the initial public notice and for the duration of the proceeding, the applicant shall make a copy of the application available for public review at its office(s) in proximity to the proposed transmission line.

(i) Persons desiring to intervene and having a substantial interest in this proceeding in accordance with G.S. 62-103(b) shall file a petition with the Commission to intervene setting forth interest and basis for intervention no later than 100 days after the date of the filing of the application. A county or municipality shall comply with

the requirements of G.S. 62-106 with respect to filing with the Commission and serving on the applicant the provisions of an ordinance that may affect the construction, operation or maintenance of the proposed transmission line. Local ordinances brought forward by municipalities or counties shall be presumed to be in the public interest; however, the Commission may find that the greater public interest requires preemption of the local ordinance.

(j) Testimony and exhibits by expert witnesses shall be filed pursuant to Commission Rule R1-24(g).

(k) The applicant may request in writing, as a part of the application, that the Commission waive the notice and hearing requirements. A completed application and the waiver request shall be prefiled with the Public Staff's Electric Division at least twenty (20) days before the application is filed to allow for investigation of the request. At the same time the applicant shall fhle a letter of intent to file for a waiver with the Commission. When the application is subsequently filed, it shall be accompanied by a written request for the waiver and a statement that the request has been prefiled as required by this Rule. The applicant shall identify and describe any conditions of the proposed transmission line which meets the waiver requirements set forth in G.S. 62-101(d)(1). The Commission shall rule on this waiver within 30 days after the date of the filing. A request to waive notice and hearing requirements will automatically waive the notice requirements of G.S. 62-102(b) and (c). If the Commission denies the request for a waiver, the applicant shall serve notice within 10 days, as prescribed in Rule R8-62(e), from the date the Commission serves notice of its decision.

(l) Pursuant to G.S. 62-101(d)(2), the applicant may request that the Commission waive the notice and hearing requirements because the urgency of providing electric service requires the immediate construction of the transmission line. In making this decision the Commission shall determine whether failure to build the line could result in unreliable or insufficient electrical supply to the public. The Commission shall rule on this request within 10 days of the application. If the Commission concurs, it shall waive the notice and hearing requirements but shall give notice to those parties listed in G.S. 62-102(b) and (c) before issuing a certificate or approving an amendment.

(m) The procedures for seeking exemption pursuant to G.S. 62-101(c)(3) or (5) from the requirement of obtaining a certificate shall be as follows:

(1) A public utility or person is not required to obtain a certificate before beginning to construct a transmission line referred to in either G.S. 62-101(c)(3) or (5) if the Federal Energy Regulatory Commission (FERC) or the Rural Electrification Administration (REA), as appropriate, has conducted a proceeding on the line that is substantially equivalent to the proceeding required by Article 5A of G. S. Chapter 62.

(2) A public utility or person shall be exempt from the requirement of a public hearing to obtain a certificate before beginning to construct a transmission line referred to in either G.S. 62-101(c)(3) or (5), if the FERC or the REA, as appropriate, has conducted a proceeding on the line that is substantially equivalent to the proceeding required by Article 5A of G. S. Chapter 62.

(3) To apply for the exemption under section (1) above, the public utility or person shall file the following information with the Commission:

a. the location and transcript of each public hearing;

b. the notices of hearing and a description of how and to whom the notices were given;

c. a statement that the hearings were conducted in conformity with the FERC or REA laws, as appropriate, and a general description of what the applicable law requires; and

d. the final order of the FERC or the REA authorizing the construction of the line.

(4) To apply for the exemption under section (2) above, the public utility or person shall file the information required by sections (3)a., b., and c. above.

(5) The Commission shall within five (5) days of receipt of the application distribute copies of it to the Public Staff and any other party that has previously requested it. In addition the Commission shall promptly supply copies to any other parties who subsequently request them.

(6) Within thirty (30) days from receipt of the application, the Commission shall enter an order granting the applicable exemption if it finds that the FERC or the REA has conducted a proceeding on the line that is substantially equivalent to the hearing required by the Commission's certification procedure under Article 5A of G. S. Chapter 62, and with respect to the exemption provided under section (1) above, that the FERC or the REA has issued a final order authorizing construction of the line.

(n) When justified by the public convenience and necessity and a showing that circumstances require immediate action, the Commission may permit an applicant for a certificate to proceed with initial clearing, excavation, and construction before receiving the certificate required by G.S. 62-101. In so proceeding, however, the applicant acts at its own risk, and by granting such permission, the Commission does not commit to ultimately grant a certificate for the transmission line.

(o) If, after proper notice of the application has been given, no significant protests are filed with the Commission the applicant may

request the Commission in writing, or the Commission on its own motion, may cancel the hearing and decide the case on the filed record.

(p) Plans for the construction of transmission lines in North Carolina (161 kV and above) shall be incorporated in filings made pursuant to Commission Rule R8-60. In addition, each public utility or person covered by this rule shall provide the following information on an annual basis no later than May 1:

(1) For existing lines, the information required on FERC Form 1, pages 422, 423, 424, and 425, except that the information reported on pages 422 and 423 may be reported every five years.

(2) For lines under construction, the following:

a. Commission docket number;

b. location of end point(s);

c. length;

d. range of right-of-way width;

e. range of tower heights;

f. number of circuits;

g. operating voltage;

h. design capacity;

i. date construction started; and

j. projected in-service date (if more than 6 month delay from last report, explain).

(3) For all other proposed lines, as the information becomes available, the following:

a. county location of end point(s);

b. approximate length;

c. typical right-of-way width for proposed type of line;

d. typical tower height for proposed type of line;

e. number of circuits;

f. operating voltage;

g. design capacity;

h. estimated date for starting construction (if more than 6 month delay from last report, explain); and

i. estimated in-service date (if more than 6 month delay from last report, explain).

DOCKET NO. G-100, SUB 57

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement G. S. 62-158 Which Authorizes the Commission to Order a Natural Gas Local Distribution Company to Create a Special Natural Gas Expansion Fund	)	ORDER ADOPTING COMMISSION RULES R6-81 TO R6-88

BY THE COMMISSION: On July 8, 1991, the General Assembly of North Carolina adopted Chapter 598 of the 1991 Session Laws. Section 2 of the legislation enacted G.S. 62-158, which authorizes the Commission to order that a natural gas local distribution company create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas of the company's franchised territory that otherwise would not be feasible. G.S. 62-158(d) provides that the Commission

> after hearing, may adopt rules to implement this section, including rules for the establishment of expansion funds, for the use of such funds, for the remittance to the expansion fund or to customers of supplier and transporter refunds and expansion surcharges or other funds that were sources of the expansion fund, and for appropriate accounting, reporting and ratemaking treatment.

The legislation was effective upon ratification.

By Notice of New Legislation and Rulemaking Proceeding issued on August 21, 1991, the Commission instituted a rulemaking proceeding in this docket for the purpose of adopting rules to implement G.S. 62-158. The Commission provided for notice, for intervention of interested parties, and for the filing of comments and proposed rules by the parties.

Comments were subsequently filed by the following parties on November 4 and 5, 1991: North Carolina Natural Gas Corporation (NCNG), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), North Carolina Gas Service, a Division of Pennsylvania and Southern Gas Company (N.C. Gas), the Public Staff, the Attorney General, the Carolina Utility Customers Association, Inc. (CUCA), and McDowell County.

On November 14, 1991, Public Service filed a motion to the effect that all parties had agreed to defer filing reply comments pending a settlement conference designed to simplify the issues. The Commission issued an Order on November 19, 1991, providing for the parties to confer among themselves and report their results.

Thereafter, parties (not all parties participated in all of the settlement conferences) undertook several conferences designed to reach agreement on rules to implement G.S. 62-158 and to identify issues that could not be settled. Reports on the progress of the settlement conferences were filed with the Commission on December 5, 1991, and February 18, 1992. As part of these conferences, the parties sought letter rulings on certain issues from both the Attorney General and the Internal Revenue Service.

While the settlement conferences were underway, various motions were filed dealing with the handling of supplier refunds received by the LDCs pending implementation of G.S. 62-158. G.S. 62-158(b)(1) provides that refunds received by an LDC from its suppliers of natural gas and transportation services pursuant to orders of the FERC may be used as a source of funding for the LDC's expansion fund. On February 20, 1992, CUCA filed a motion asking that supplier refunds received by an LDC be refunded to the LDC's customers. On February 24, 1992, the Public Staff filed a motion asking that the LDCs be ordered to hold supplier refunds until the Commission determines whether they should be used for expansion funds. Following receipt of comments and arguments, the Commission issued an Order on March 12, 1992, providing that an LDC may hold final supplier refunds that it proposes for inclusion in an expansion fund pending further order of the Commission, that such final supplier refunds shall be placed in a separate bank account at prevailing interest rates, that supplier refunds held by an LDC subject to an ongoing appeal shall be invested in short-term U.S. Treasury securities, and that the LDCs file appropriate reports. The Order provided that it dealt only with the interim handling of supplier refunds pending further orders and that it was entered without prejudice to the present rulemaking proceeding.

Meanwhile, the parties' settlement conferences resulted in much progress. On March 9, 1992, the Public Staff filed its revised proposed rules for implementing G.S. 62-158. The LDCs jointly filed their marked-up version of the proposed rules and a statement of outstanding issues between the LDCs and the Public Staff on March 11, 1992. Comments on the proposed rules were subsequently filed by the Attorney General on March 16 and 20, 1992, by Carolina Power & Light Company (CP&L) on March 20, 1992, and by CUCA on March 9 and 25, 1992.

The Commission held a hearing in the nature of an oral argument on March 23, 1992, for the purpose of allowing all parties to present their positions as to the matters in dispute in this rulemaking proceeding. No party requested an evidentiary hearing. The oral argument was held as scheduled, and arguments were presented by the four LDCs, the Public Staff, the Attorney General, CUCA, and CP&L. The following issues were argued.

Rule R6-81(b)(5) as proposed by the LDCs defines the term "unserved areas" as counties, cities, or towns of which a high percentage is unserved. The Public Staff wished to add to this definition the following sentence: "Expansions solely for the purpose of serving subdivisions and individual customers or groups of customers are not included within the purview of these rules." The LDCs asserted that expansion funds should not be used for infill projects, but they argued that the definition should remain sufficiently flexible for the Commission to consider projects on their individual merits. The Commission agrees with the LDCs that G.S. 62-158 was not intended for purely infill projects. However, the Commission believes that the sentence proposed by the Public Staff is too restrictive and might call into question some projects that are within the intended scope of the statute. For example, NCNG pointed out in comments that it would design projects to extend a pipeline "toward groups of customers or particular industrial customers in order to lower the negative Net Present Value of the particular project." The Commission believes that the sentence proposed by the Public Staff should not be a part of the definition.

Other parties also commented on this definition. CUCA proposed that it be rewritten in order to limit "unserved areas" to counties in which there is no

natural gas service at all and municipalities of more than 5,000 population located more than ten miles from an existing natural gas transmission or distribution line. CP&L also felt that the definition should be limited to counties and municipalities with no natural gas facilities. The Attorney General expressed concern about the vagueness of the phrase "high percentage is unserved." The Commission believes that the definition proposed by CUCA is too restrictive. It would exclude small towns and it would exclude counties where a gas line passes through the edge of the county but serves few customers. The Commission acknowledges that the phrase "unserved areas" is a difficult one to define. As with our decision above, we believe it better to maintain flexibility at this stage of implementing G.S. 62-158.

CUCA also objected to the definition of the term "project" in Rule R6-81(b)(4) as proposed. CUCA would limit the definition to exclude distribution mains and services. The Commission finds this definition too restrictive. Once again, the Commission must be able to judge individual projects on the basis of whether they come within the intent of G.S. 62-158.

Two provisions of the rules as proposed deal with the handling of supplier refunds pending a Commission order as to their disposition. The Commission issued an Order on March 12, 1992, dealing with this subject. That Order went into great detail as to the manner in which supplier refunds should be handled by the LDCs. It dealt with refunds that are final as well as refunds that are still subject to appeal. It dealt with refunds that an LDC proposes to include in an expansion fund as well as refunds that an LDC proposes to return to its customers. Although the Order provided that it was an interim measure, the Commission now concludes that it should be continued in effect. The Commission believes that the handling of supplier refunds is best dealt with by order, rather than rule, in order to allow the Commission to better adapt to future circumstances on an individual basis. The Commission therefore concludes that Rule R6-83(b) as proposed and the last sentence of Rule R6-83(d)(3) as proposed should both be deleted and that the provisions of the Commission's March 12, 1992 Order should be continued in effect pending further order of the Commission. Parties may propose changes in those provisions as they see fit.

Rule R6-83(c)(2) as proposed provides that the Commission may approve a surcharge "by separate line item on bills" as a source of expansion funding. The LDCs proposed that the Commission not require such a surcharge to be set forth as a separate line item on bills. The Commission agrees with the Public Staff that a surcharge, if approved, should be stated separately on bills. The surcharge is not money being paid to the LDC for the customer's natural gas service. As a matter of fairness, the customer is entitled to know the identity and purpose of the charge. Such a surcharge is analogous to the charge on telephone bills for 911 service and for dual party relay service, both of which are separately stated. Finally, the Commission notes that the IRS, in concluding that surcharges are not taxable income to the LDC, stated as a part of its letter ruling that the surcharges would be separately stated on the bills. The Commission cannot say that this was immaterial to the IRS ruling, and the Commission does not want to jeopardize that ruling.

Several provisions of the rules as proposed by the Public Staff provide for surcharges, supplier refunds, and disbursements to be tracked by customer class or rate schedule. The rules also provide for the balance of a fund, upon dissolution, to be refunded to the rate classes that contributed it. The LDCs

would delete these provisions as burdensome and unnecessary. The Commission believes that it is appropriate to track the collection of surcharges by customer classes, as provided by Rule R6-83(d)(2), and to refund monies upon dissolution of a fund by rate classes, as provided by Rule R6-83(g). However, the Commission does not agree with the other provisions proposed by the Public Staff. For example, the Public Staff would have an LDC attribute a distribution by rate schedule to supplier refunds deposited in an expansion fund. Further, the Public Staff proposes that the Commission designate the source, by rate schedule, of monies disbursed from a fund, and the Public Staff proposes that disbursements be reported by rate schedule for each plant account of approved projects. The Commission does not believe that such provisions are necessary in order to achieve the goal of returning monies left in a fund upon dissolution to the customer classes that contributed them in some reasonable way. It is almost impossible to make any refund exact. There are always problems of tracking individual customers, turnover of customers, and variations in usage. The best that can reasonably be expected is that the fund, upon dissolution, be returned to the customer classes in proportion to the surcharges paid by each class. Any further refinements are probably not justified by the effort that would be required to effect them. Therefore, the Commission retains Rule R6-83(d)(2) and R6-83(g) as proposed by the Public Staff but deletes other references to customer classes and rate schedules. Unless otherwise ordered by the Commission and regardless of funding sources in a particular case, refunds upon either the dissolution of a Fund or upon a buy back shall be made by customer class in the proportion in which surcharges were paid by each class. One refinement may be worth pursuing. Rule R6-83(c)(2) provides that to the extent an industrial customer negotiates a rate lower than the tariff rate, the discount will be applied first to the expansion fund surcharge. This means that individual industrial customers who negotiate rates will pay less, or nothing, in surcharges. If this is not accounted for upon dissolution, such customers will receive refunds based upon surcharges paid by the industrial class as a whole. The Commission asks the parties to file comments on the practicality of tracking such negotiations by individual industrial customers so that surcharges negotiated away might be accounted for when a fund is dissolved. Such comments shall be filed along with the reporting forms ordered hereinafter.

Rule R6-84(a)(3) as proposed requires the LDCs to provide a net present value analysis calculated in a generally accepted manner for each project proposed for funding. The LDCs proposed two refinements of this rule. One would provide that the analysis shall not, without the consent of the LDC, include any margin for projected sales or transportation of more than 50 dts per day unless the customer has committed in writing to use that amount of natural gas. The second would provide that the analysis shall reflect only the income tax benefits to be realized by the LDC. The Public Staff agreed with the second provision, and the Commission concludes that it should be added to the rule. The Public Staff did not agree with the first provision, and the Commission concludes that it should not be a part of the rule. There might well be projected margin that should reasonably be included in the analysis even though no written commitment exists.

Rule R6-87(d) as proposed deals with the "buy back" of a project by an LDC. The Public Staff proposed that the Commission determine whether to allow a buy back based on certain criteria, including determination of whether the project has become economically feasible and the facilities used and useful. The LDCs would strike this criterion and would add a provision to the effect that any buy

back proposed by an LDC "shall be allowed." The Public Staff opposed "automatic buy backs." The Commission agrees with the Public Staff that buy backs should not be "automatic," but should instead be decided on the criteria proposed. This is consistent with G.S. 62-158(c) which provides for a buy back "if at any time a project is determined by the Commission to have become economically feasible." As a matter of organization, the Commission believes that the provision dealing with buy backs should be set forth as a separate rule.

Rule R6-83(f) as proposed allows the LDCs to propose modifications with respect to projects previously approved and with respect to funding previously approved. It was unclear at oral argument whether the LDCs and the Public Staff disagreed as to the appropriate provisions for notice and hearing when such proposals are made. The Public Staff subsequently filed revised language. The Commission believes that customers are entitled to notice whenever any material change is proposed and that the Commission should have discretion to set such proposals for hearing on a case-by-case basis. The Commission has rewritten this provision to so provide. The Commission has also reorganized the provision to separate proposals dealing with funding from proposals dealing with approved projects.

Rule R6-84(e) deals with the situation in which an LDC has not begun construction on an approved project within a year of Commission approval. The Public Staff proposed that the Commission "shall" require the LDC to show cause. The LDCs would provide that the Commission "may" require a show cause proceeding. The Commission agrees with the LDCs that it should retain its discretion.

By its written comments and oral argument, CUCA presented a number of additional objections to the proposed rules. The Commission agrees with CUCA on one of its arguments. It argued that Rule R6-82 should set forth the standard to be used in determining whether to create an expansion fund. "CUCA believes that, at an absolute minimum, the Commission must determine that the creation of an expansion fund is 'in the public interest'. . . " The Commission agrees and has written this standard into the Rule.

The Commission disagrees with CUCA's other points. For example, CUCA asserted that the proposed rules "anticipate an on-going expansion fund. . . rather than an expansion fund which assembles and expends funds on a project-by-project basis." CUCA objected that such a "semi-permanent" fund exacerbates the inherent inequity of G.S. 62-158. Suffice it to say that the Commission has considered the argument and that the Commission considers the proposed rules to present a reasonable implementation of G.S. 62-158. CUCA proposed that any interested party be allowed to propose changes in a project or funding pursuant to proposed Rule R6-83(f). The LDCs responded that they will be committing their own funds to approved projects and that they should not have to defend projects on a regular basis. The Commission agrees with the LDCs.

Finally, the Commission notes that CP&L proposed to exclude electric utilities who use natural gas from any approved surcharge and to refund to such electric utilities their pro rata share of any supplier refunds even though the balance is committed to an expansion fund. CP&L argued that this will prevent the electric utilities from subsidizing the expansion of natural gas utilities. The LDCs warned that such an exclusion would "open the door" to others and should not be allowed. The Commission agrees.

The Commission has considered all issues and arguments presented by all parties, whether specifically addressed herein or not. The Commission appreciates the participation and efforts of all parties.

The Commission, on its own initiative, has made minor revisions and editorial changes throughout the proposed rules, which need not be recounted in detail here.

The Commission finds good cause to adopt rules implementing G.S. 62-158 as attached hereto as Appendix A.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rules R6-81 through R6-88, attached hereto as Appendix A, should be, and the same hereby are, adopted for the purpose of implementing G.S. 62-158 effective as of the date of this Order, and

2. That the parties shall confer among themselves for the purpose of formulating reporting forms consistent with the Rules adopted herein and shall report to the Commission within 30 days of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of April 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

ARTICLE 12
NATURAL GAS EXPANSION FUNDS

RULE R6-81. General.

(a) Purpose. The purpose of these rules is to implement G.S. 62-158 and G.S. 62-2(9) by providing for the establishment, funding, operation and administration of natural gas expansion funds to promote the public welfare throughout the State. Any such fund is to be used by the franchised natural gas local distribution company for which it is approved for the construction of facilities in its franchised territory to extend natural gas service to areas of the State where natural gas service is not available.

(b) Definitions.

(1) Economically infeasible: The Project has a negative net present value.

(2) LDC: Natural gas local distribution company.

(3) Net present value: The present value of expected future net cash inflows over the useful life of a Project minus the present value of net cash outflows.

(4) Project: The scope of the construction of facilities to extend service into unserved areas.

(5) Unserved areas: Counties, cities or towns of which a high percentage is unserved.

RULE R6-82. Establishment of Expansion Funds.

(a) Upon petition by an LDC, the Commission may, after a hearing, order the establishment of a special Natural Gas Expansion Fund (Fund) to be used by the petitioning LDC to construct facilities into unserved areas in that LDC's franchised territory that otherwise would be economically infeasible.

(b) Any petition for the establishment of a Fund shall include a showing that there are unserved areas in the LDC's franchised territory and that expansion of natural gas facilities to such areas is economically infeasible. In its petition for the establishment of a Fund, an LDC shall request the Commission to authorize appropriate funding and show the following:

(1) If approval for the application of supplier refunds to the Fund is sought, the amount of the refunds the LDC has received or which it expects to receive and when it expects to receive them, to the extent then known or reasonably capable of estimation.

(2) If an expansion surcharge is requested, the amount which the LDC estimates the requested surcharge will generate over periods of one year and three years.

(c) The Commission shall order the petitioning LDC to publish a notice of the petition and the request for funding in a form approved by the Commission. If an expansion surcharge or application of supplier refunds is requested, the Commission shall require the petitioning LDC to mail an approved notice to each of its customers.

(d) In determining the establishment of a Fund and the sources and magnitude of the initial funding, the Commission will consider the LDC's showing that expanding to serve unserved areas is economically infeasible and such other factors as the Commission deems reasonable and consistent with the intent of G.S. 62-158 and G.S. 62-2(9). Before ordering the establishment of a Fund, the Commission must find that it is in the public interest to do so. Upon the establishment of a Fund, the Commission shall provide for appropriate notice of its decision.

RULE R6-83. Structure and Administration of Expansion Funds.

(a) Upon the establishment of a Fund for a petitioning LDC, a special fund in an interest-bearing account shall be created in the office of the State Treasurer to be funded as provided in G.S. 62-158. Any interest or other income derived from the Fund shall be credited to the Fund.

(b) After public notice and hearing as provided in Rule R6-82, the Commission may, for an LDC for which a Fund is being or has been established,

(1) order that refunds from the LDC's suppliers of natural gas and transportation services be placed in the Fund;

(2) approve an expansion surcharge in accordance with G.S. 62-158(b) to be charged, by separate line item on bills, to all customers purchasing natural gas or transportation service throughout that LDC's franchised territory for service rendered after approval, such surcharge to remain in effect until further order of the Commission, and order the LDC to deposit proceeds collected from such surcharge in the Fund; or

(3) approve other sources of funding proposed by the LDC in its petition.

(c) Monies received from approved sources of funding shall be remitted to the Commission, as follows:

(1) Refunds ordered to be placed in the LDC's Fund shall be remitted plus interest to the Commission within ten (10) days of the Commission's order or upon receipt of such refunds.

(2) Expansion surcharges billed shall be recorded on the books of the LDC in a separate accounts-payable account by customer class prior to their transfer to the Commission. The balance in this account shall be remitted to the Commission by the 20th day of the month following the month in which the surcharges are billed. If surcharges billed are uncollected, such uncollected amount shall be treated as natural gas bad debt losses for ratemaking purposes. To the extent the LDC negotiates a price lower than the tariff rate, any discount will be applied first to the expansion fund surcharge. The amount of the surcharge forfeited due to negotiations shall not be recoverable from the LDC nor shall it be considered a "negotiated loss" for the purpose of the LDC's deferred account.

(3) Other sources of funding shall be remitted as ordered by the Commission when such sources are approved and when the funds become available to the LDC.

(d) The refunds ordered to be placed in an LDC's Fund, surcharges collected by each LDC pursuant to G.S. 62-158, and any other approved funding shall be deposited in the Fund established for that LDC.

(e) The LDC may, at any time, based upon changes in circumstances, request changes in the nature or magnitude of the funding previously approved. If the Commission finds that the request involves a material change in funding, the Commission shall provide for appropriate notice and shall afford an opportunity for review and comment by interested parties. The Commission shall set the request for hearing if it deems it appropriate.

(f) Upon petition for the dissolution of a Fund, the Commission shall consider the status of service in the affected LDC's territory, the feasibility of further expansion and other relevant factors consistent with the intent of G.S. 62-158 and G.S. 62-2(9). Upon dissolution, the affected LDC shall file a final accounting for the Fund. Any monies remaining in the Fund at the time of dissolution shall be refunded to the rate classes that contributed them pursuant to Commission order.

RULE R6-84. Approval of Expansion Projects.

(a) Each LDC that has an established Fund shall, on at least an annual basis, file a request for approval of any Project(s) which previously have not been approved and which it proposes to undertake within the next year and for which it proposes to use expansion funds. The request shall include an analysis of each proposed Project. For each proposed Project, the LDC's analysis shall contain the following:

(1) A precise geographic description, a map, a detailed description of the physical facilities, including their projected operating parameters, and the arrangements that have been or are proposed to be made to obtain right-of-ways;

(2) The date when construction is proposed to begin and end, specific construction budgets and a timetable for disbursements from the Fund; and

(3) A net present value analysis calculated in a generally accepted manner. The net present value calculation shall reflect only the income tax benefits to be realized by the LDC.

(b) The request shall also include a prioritizing of the proposed Projects by the LDC to the extent practicable based upon the degree of feasibility; the existence of an active demand and previous requests for service; the extent of contributions from local governments, potential end users, or others; benefits to the LDC's transmission or distribution system; the improvement in the feasibility of subsequent extensions into relatively densely populated counties or towns resulting from an initial Project, if applicable; and any other relevant factors.

(c) The Commission shall provide for notice of each request for approval filed under this Rule and shall afford an opportunity for review and comment by interested parties. The Commission shall set the request for hearing if it deems it appropriate.

(d) The Commission shall enter an order approving or denying funding on a project-specific basis. The order shall include a finding of the negative net present value of each Project approved, which shall be the maximum amount to be disbursed from the Fund for that Project. In determining the Projects to be approved for each annual period, the Commission shall consider the balance in the Fund at the time of the approval, the relative merit of each Project based on customer need, the degree of economic feasibility, and such other factors as the

Commission deems pertinent and consistent with the intent of G.S. 62-158 and G.S. 62-2(9). To the extent the Commission's order approving a Project is based on different assumptions, including design, projected load or amount or sources of funding, than those used by the LDC in its request for approval, the LDC shall have the right not to proceed with the Project or to invest its funds in the same, and no use may be made of expansion funds on such Project absent further order of the Commission.

(e) The LDC may, at any time, based upon changes in circumstances, propose modifications with respect to Projects previously approved by the Commission. If the Commission finds such a proposal to constitute a material change in an approved Project, the Commission shall provide for appropriate notice and shall afford an opportunity for review and comment by interested parties. The Commission shall set the proposal for hearing if it deems it appropriate.

(f) If construction on an approved Project has not begun within one year of the order granting approval, the Commission may require the LDC to show cause why the balance in its Fund allocated to such Project should not be allocated to other approved Projects or otherwise disposed of as ordered by the Commission.

RULE R6-85. Disbursements.

(a) Monies from a Fund shall be disbursed to the LDC for which the Fund was established only as ordered by the Commission. All disbursements shall be used only for the specific Projects for which they were approved. The LDC shall not be required to commence or continue construction of any Project if it appears that the funds available in its Fund will be inadequate to complete construction.

(b) Progress Payments Disbursements shall be in the form of reimbursements for actual amounts paid by the LDC. The LDC shall submit a Request for Reimbursement for each approved Project not more often than once a month. Such Requests shall specify the work performed and materials and equipment delivered to the Project during the period covered by the request for reimbursement and be accompanied by the Project Status Report and the Summary of Construction Cost Reimbursement Report described in Rule R6-87. Requests shall also contain a certification that the amounts sought by the LDC have been paid for work completed on and materials provided to the Project. If the request for disbursement complies with these rules and the Commission's order approving the Project for which reimbursement is sought, the request for disbursement shall not be subject to any further proceedings or orders and shall be paid within fifteen (15) days of receipt. If the request raises issues of material fact as to whether such a disbursement is appropriate, the Commission may set the matter for hearing or otherwise resolve any issues as to the appropriateness of the disbursement. The maximum amount of each reimbursement shall be 75% of total expenditures during the period covered by the request. Cumulative reimbursements for the Project shall not exceed the approved negative net present value.

(c) Final Accounting - Within three years from the date of the Commission's order approving a Project, a final accounting shall be filed showing the actual expenditures to date, disbursements to date, the negative net present value determined by the Commission for the Project, and the balance of funds requested to be disbursed, if any. This information shall be provided in the formats approved by the Commission. Unless the Commission specifically orders otherwise, disbursements for a Project will not be approved after the date the final accounting is approved by the Commission. If the total amount of the approved negative net present value has not been disbursed by the time the final accounting is approved, the Commission shall, upon motion of the LDC and notice to all parties, approve a further disbursement up to the lesser of the approved negative net present value or the actual expenditures to date.

RULE R6-86. Buy Back.

In determining whether or not a buy back of a Project shall be allowed or required, the Commission shall consider: (1) whether the Project in question has become economically feasible and the facilities used and useful as required by G.S. 62-133(b)(1); (2) the impact on the LDC's customers; (3) whether the LDC has or can obtain on reasonable terms the necessary funds; and (4) any other factors relevant to a determination of whether the buy back is in the public interest. No buy back shall be approved unless the records required to be kept by these rules are provided. No buy back will be required unless the LDC has, or can obtain on reasonable terms, funds for remittance on a project financing basis.

RULE R6-87. Reporting.

(a) A Surcharge Deposit Report shall be filed by an LDC with an approved surcharge on a monthly basis concurrent with each deposit into the Fund. This report shall include, by rate schedule, the information required by the Commission in the format approved by the Commission.

(b) Whenever an LDC with an established Fund seeks to deposit funds from sources other than surcharges, it shall file a Request to Deposit Funds from Other Sources. This report shall contain a description of the source of the funds, the total dollar amount, and the docket number at the Federal Energy Regulatory Commission, if any.

(c) The Commission shall determine the status of each LDC's Fund on a monthly basis and prepare a monthly Expansion Fund Financial Statement for each LDC with an established Fund.

(d) Each LDC with an established Fund shall file reports with each Request for Reimbursement or at least quarterly. These reports shall be filed in the formats approved by the Commission, and these reports are as follows :

(1) A Summary of Construction Cost Reimbursements and

(2) A separate Project Status Report for each Project containing three separate sections: (a) Budget Versus Actual Cost Data, (b) Construction Cost Summary, and (c) Current Reimbursement Requested.

(e) A comprehensive annual report on all activity in the Fund for the fiscal year ending November 30 shall be filed by each LDC with an established Fund by February 1 of each year and the report shall be in the format approved by the Commission.

RULE R6-88. Accounting and Ratemaking.

(a) The gas plant accounts shall not include monies disbursed from a Fund. Plant constructed from these monies shall be shown as a reduction to gross plant constructed when assembling cost data in work orders for posting to the plant ledger of accounts. Disbursements from a Fund shall be credited to the accounts charged with the cost of such construction.

(b) Monies disbursed from a Fund shall be credited first against transmission main costs, secondly against distribution main costs, and finally to other plant.

(c) No depreciation expense on the portion of the plant cost financed by disbursements from the Fund shall be included in the LDC's cost of service.

(d) Any remittance of monies in order to buy back facilities constructed with monies disbursed from a Fund shall be considered by the Commission only in the context of a general rate case. Any amounts remitted shall be included in rate base in such general rate case. The Commission shall order that any such remittance of monies either be deposited in the LDC's Fund or be refunded to the customer rate classes that contributed the monies, and the Commission may order interest in a reasonable amount to be determined by the Commission.

DOCKET NO. G-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement G.S. 63-133.4	)	ORDER ADOPTING
Which Authorizes Gas Cost Adjustment Proceedings for	)	COMMISSION RULE
Natural Gas Local Distribution Companies	)	R1-17(k)

BY THE COMMISSION: On July 8, 1991, the General Assembly of North Carolina enacted Chapter 598 of the 1991 Sessions Laws. Sections 7 and 8 of the legislation repealed G. S. 62-133(f) and added a new statute, G.S. 62-133.4, which authorizes gas cost adjustment proceedings for natural gas local distribution companies. The new statute authorizes rate changes to track changes in the cost of natural gas supply and transportation and provides for annual hearings to compare and true-up costs recovered from each natural gas local

distribution company's customers with the company's prudently incurred costs. The new statute provides that the costs subject to such proceedings "shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system."

On August 21, 1991, the Commission instituted the present rulemaking proceeding in order to adopt rules to implement G.S. 62-133.4. The Commission recognized as parties the State's four local distribution companies (LDCs)--North Carolina Natural Gas Corporation, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and North Carolina Gas Service, a Division of Pennsylvania and Southern Gas Company--and also the Public Staff and the Attorney General. The Commission further provided for interventions of other interested persons and the filing of comments and reply comments.

The Carolina Utility Customers Association, Inc. (CUCA) petitioned to intervene, and that intervention was allowed by Order of September 5, 1991.

The Commission received comments from the parties on or about September 23-24, 1991, and received reply comments on or about October 8-15, 1991.

On October 23, 1991, the Commission issued an Order providing for the scheduling of a settlement conference including all parties for the purpose of settlement and simplification of the differences revealed by the comments. The Commission provided for the parties to report their results and to state any issues that remain in dispute.

The settlement conference was held on November 14, 1991. Thereafter, on November 19, 1991, a Report of Settlement Conference was filed with the Commission. The parties were able to resolve many of their differences and to identify the eight issues that remained in dispute. A proposed rule, subject to change upon resolution of the issues in dispute, was provided along with the report. The parties agreed that no evidentiary hearing was necessary and that the docket should proceed by affording all parties an opportunity to file further written comments and to argue their positions before the Commission.

By Order of November 21, 1991, the Commission provided for the filing of further comments and the scheduling of oral argument. Further comments were filed by the parties on December 10, 1991. CUCA filed a Motion asking that certain items be judicially noticed and, without objection, that Motion has been allowed. Oral argument was held as scheduled on December 17, 1991.

On the basis of the proceedings herein, the Report of Settlement Conference, the written comments, and the oral argument, the Commission finds good cause to adopt the various agreements of the parties and to resolve the eight issues remaining in dispute as follows:

1- Should recovery of additional pipeline capacity and storage costs be subject to the gas cost adjustment procedures?

The LDCs advocate the recovery of such capacity and storage costs and state that such recovery is consistent with the policy of the state which encourages the LDCs to add new customers and to acquire new gas supplies for those new customers. The LDCs point out that the inclusion of additional capacity and

storage costs will permit them to reduce their cost of gas by purchasing gas incrementally as needed and will permit them to negotiate the best possible deal for new gas supplies. Further, the LDCs assert that such inclusion will not cause them to earn "excess" returns because the added margins generated by the added capacity will be needed to offset new investment in gas plant incurred to serve new customers.

The position of the Public Staff, Attorney General and CUCA is that the recovery of additional pipeline capacity and storage costs should not be subject to the gas cost adjustment procedures. In support of their position, they state that it would allow the LDCs to increase rates outside a general rate case to recover the costs of increased pipeline capacity and storage services without considering attendant changes in other components of the cost of service equation. Further, unlike the purchase of additional commodity gas supplies, or a price change in the existing services, the purchase of added capacity or storage will increase the throughput capability of the LDC resulting in additional margins. Also, they state that if an LDC has a significant amount of new plant investment, it should seek to include these costs in rates through a general rate case.

The Commission has carefully considered the comments of the parties and the oral argument relating to this issue. The Commission recognizes that the purchase of added capacity or storage will increase the throughput capability of the LDCs allowing the sale and transportation of additional volumes thereby resulting in additional margins. However, the Commission is not persuaded that this will automatically result in "excess" returns due to increased expenses and the new investment in plant to be incurred to serve new customers. The Commission is concerned about the flexibility needed by the LDCs in negotiating the purchase of additional gas supplies and purchasing gas incrementally as needed. However, at the same time, the Commission is mindful that the LDCs proposal may create a mismatch of revenues to expenses in the rate structure. In an attempt to balance the interests of the LDCs and the ratepayers, the Commission concludes that the LDCs should be allowed to recover 50% of those costs incurred for additional capacity and storage added subsequent to a general rate case proceeding. In allowing 50% of such costs to be included in the rates charged by the LDCs, the Commission further concludes that in addition to the filing of information and data required pursuant to Section (k)(6)(c) of Rule R1-17, each LDC shall file information relating to, among other things, the maximum allowable amount of volumes to be sold and/or transported pursuant to the capacity or storage addition, the volumes actually sold and/or transported pursuant to the capacity or storage addition, whether or not such capacity or storage addition was necessary to supply customers in previously unserved areas or areas to which service has or will be extended with expansion funds pursuant to G.S. 62-158, and total cost on a per dekatherm basis of such additional capacity and storage. The Commission reserves the right to reexamine this issue in light of future developments and the information to be reported by the LDCs.

In the most recent general rate cases for the State's three largest LDCs, the Commission allowed the recovery of costs incurred for additional capacity and storage on a provisional basis pending implementation of G.S. 62-133.4. The Commission further provided that any monies so collected associated with additional pipeline capacity and storage shall be placed in a deferred account pending further Order of the Commission. Consistent with the conclusion herein regarding the recovery of such costs, the Commission shall require that the LDCs

file with the Commission a plan for refunding 50% of the costs of additional capacity and storage added subsequent to its most recent general rate case proceeding for which recovery was provided on a provisional basis.

2- How should changes in demand and storage costs be allocated to the various customer classes?

The position of the Public Staff and Attorney General is that such changes be allocated on an equal cents-per-dekatherm basis. In support of its position, the Public Staff states that this method has been consistently utilized in past purchased gas adjustment proceedings and in the gas cost formulas recently approved in the LDCs' most recent general rate cases and is easy to administer. The Public Staff further states that if fixed cost changes are allocated differently to each customer class on the basis of a cost-of-service study, as proposed by CUCA, then frequent cost-of-service studies will have to be conducted and litigated by the parties. Also, the Public Staff points out that under the current arrangement, fixed costs per customer class are determined in a rate case, and any subsequent changes in the fixed costs of gas are flowed through to all customers on an equal per-dekatherm basis. This preserves the dollar difference between rates that was deemed proper in the rate case design.

CUCA's position is that changes in demand and storage costs should be allocated to various customer classes on the basis of a cost-of-service study. In support of its position, CUCA states that since all parties to a general rate case agree that a cost-of-service study assigns differing amounts of fixed gas costs to different customer classes, the assignment of changes in such costs should reflect this fundamental fact. Further, CUCA states that the use of a equal per-dekatherm basis in allocating changes in fixed gas costs alters the "proportion" of fixed gas costs paid by each rate class.

The Commission is of the opinion that absolute accuracy of the assignment of fixed cost changes between rate cases is not feasible because it may involve frequent litigation over cost-of-service studies outside rate cases and it ignores rate design factors (like value of service) other than cost of service. Further, the Commission is not persuaded that a significant departure from the current practice of allocating changes in demand and storage costs on a volumetric basis is warranted at this time. Accordingly, the Commission concludes that changes in demand and storage costs should be allocated to the various customer classes on a volumetric basis.

3- Should transportation rates be subject to change under the gas cost adjustment procedures?

The LDCs, Public Staff and Attorney General support the proposed change in transportation rates under the gas cost adjustment procedures and state that the Commission has consistently approved full margin transportation rates and that this practice should continue.

CUCA, on the other hand, states that transportation rate changes based upon fixed gas cost fluctuations are contrary to sound cost-of-service principles and should not be changed under the gas cost adjustment procedures.

The Commission continues to support the concept of full margin transportation rates and concludes that transportation rates should be subject to change under the gas cost adjustment procedures.

4- Will the prudence of gas purchasing practices be determined in annual hearings under the gas cost adjustment procedures?

All parties agree that the prudence of gas purchasing practices should be determined in the annual hearings. However, the Public Staff comments that because the annual hearings are not expected to be lengthy or involved, it would like for the Commission to recognize the right of any party to move for an extension of time and/or separate hearing on prudence issues. Further, the Attorney General believes that the statute contemplates that prudence issues may also be raised and litigated in proceedings other than the G.S. 62-133.4(c) hearing.

The Commission agrees with the parties herein that the prudence of gas purchasing practices should be determined in annual hearings under the gas cost adjustment procedures. G.S. 62-133.4(c) specifically provides for an annual hearing to "compare the utility's prudently incurred costs with costs recovered from all of the utility's customers that it served during the test period." The Commission recognizes the right of any party to move for either an extension of time or a separate hearing on prudence issues. However, any such motion will have to be decided on a case-by-case basis in the proceeding in which it is presented. It is not necessary to address such motions in the context of the present generic rulemaking proceeding. Neither is it appropriate to address the Attorney General's opinion that prudence issues may be raised in proceedings other than the annual hearings provided by G.S. 62-133.4(c). That matter is also appropriate for determination on a case-by-case basis.

5- Once the prudence of gas purchase costs has been determined in a hearing, whether that hearing be an annual review under the gas cost adjustment rule, a complaint proceeding or a general rate case, may prudence with respect to those gas costs be addressed in a future proceeding?

All of the parties agree that once the issue of prudence has been determined in a hearing, prudence with respect to those gas costs may not be addressed in a future proceeding.

The Public Staff, however, states that the prudence of future costs for a gas service should be open to challenge in a future proceeding, even if costs incurred in the past for that service were approved in the prior proceedings, where a change in circumstance or new information shows that the service is no longer prudent. In this situation, the past costs for this service that were approved in the annual gas cost adjustment hearing or other proceeding would not be subject to challenge.

In its original comments herein, the Public Staff recommended the following standard of prudence: whether management decisions were made in a reasonable manner and at an appropriate time on the basis of what was reasonably known or reasonably should have been known at that time? In their reply comments, the LDCs agreed that it is appropriate that they act in a timely and reasonable manner and that they be judged on the basis of what was reasonably known or

reasonably should have been known at the time a decision was made. The Commission agrees. Given this standard, and in the absence of fraud or misrepresentation, it would seem inappropriate to challenge future costs of a decision that has already been found prudent simply because circumstances change after the decision was made. However, once again, the Commission finds it unnecessary to decide such issues in the present rulemaking proceeding. The prudence standard will evolve as specific issues arise in future proceedings.

6- Should the LDCs in their annual filings be required to include information and data showing weather-normalized throughput volumes?

None of the parties to this proceeding objected to the filing of this data and, accordingly, the Commission concludes that the LDCs should be required to include in their annual filings information and data showing weather-normalized throughput volumes.

7- Should changes in rates resulting from changes in company use and unaccounted for volumes be passed on to all customers or sales customers only?

The LDCs, Public Staff and Attorney General state that company use and unaccounted for volumes are used to make deliveries to all customers, not just sales customers, and should therefore be charged to all customers.

The position of CUCA is that unaccounted for volumes are not a cost of transporting customer-owned gas and, therefore, their costs should be recovered exclusively from sales customers.

The Commission agrees with the LDCs, Public Staff and Attorney General that company use and unaccounted for volumes are used to make deliveries to all customers and concludes that changes in rates resulting from changes in such volumes should be passed on to all customers.

8- In what manner should underrecoveries or overrecoveries of commodity gas costs and fixed gas costs be recouped from or refunded to customers?

The LDCs, Public Staff and Attorney General advocate continuing the practice of increments and decrements being approved on a flat per dekatherm basis. The LDCs further state that it would be virtually impossible to determine which customers "over-paid" or "under-paid" during any specific period of time. Also, the Commission has never required such an exact matching of gas costs.

CUCA states that applying increments or decrements on a per dekatherm basis is unfair in light of fluctuations in actual customer volumes, plant closings, customer movements, etc., and therefore recommends that the Commission require the use of a direct refund process for industrial customers.

The Commission recognizes the inherent disadvantages of spreading underrecoveries and overrecoveries on a volumetric basis due to changes in usage in future periods and customer movement; however, the Commission is not persuaded that a departure from this practice is warranted due to the administrative

difficulties involved in a direct refund mechanism. Accordingly, the Commission concludes that the practice of increments and decrements being implemented on a flat per dekatherm basis should be continued.

The Commission has reworded the proposed rule submitted by the parties consistent with the above decisions. Commission Rule R1-17(k) is attached hereto as Appendix A, and the Commission finds good cause to adopt Commission Rule R1-17(k) for the purpose of implementing G.S. 62-133.4. Commission Rule R1-17(k) shall be effective as of the date of this Order.

During the settlement conference, the parties agreed to cooperate in preparing a reporting form acceptable to all parties and consistent with the Rule adopted by the Commission. The Commission finds good cause to order the parties to report within 30 days from the date of this Order on their progress in formulating an acceptable reporting form. This form shall include the reporting required in connection with the discussion of issue 1 herein.

The Commission previously authorized provisional tariffs implementing G.S. 62-133.4 in the context of the most recent general rate cases of the State's three largest LDCs. Provisional tariffs were approved for Piedmont by Order Granting Partial Rate Increase of July 22, 1991, in Docket No. G-9, Sub 309; for Public Service by Order Granting Partial Rate Increase of November 1, 1991, in Docket No. G-5, Sub 280; and for NCNG by Order Granting Partial Rate Increase dated December 6, 1991, in Docket No. G-21, Sub 293. These tariffs were made subject to modification upon adoption of a rule in the present docket. In the most recent general rate case of North Carolina Gas Service, Docket No. G-3, Sub 167, the Commission continued fixed gas cost true-up provisions previously approved pursuant to G.S. 62-133(f). All of these tariffs are now superseded by the provisions of G.S. 62-133.4 and Commission Rule R1-17(k), and the utilities must file new tariffs consistent with the present Order. Further, any company which has collected monies on a provisional basis, pursuant to authorization in its most recent general rate case proceeding, associated with additional pipeline capacity and storage for which recovery was provided for on a provisional basis shall file with the Commission a plan for refunding 50% of the amounts so recovered.

Commission Rule R1-17(k) also supersedes the provisions of Commission Rule R1-17(g), which implemented G.S. 62-133(f), now repealed. The Commission therefore finds good cause to repeal Commission Rule R1-17(g) effective as of the date of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R1-17(g) should be, and the same hereby is, repealed effective as of the date of this Order;

2. That Commission Rule R1-17(k), attached hereto as Appendix A, should be, and the same hereby is, adopted as a rule of the Commission for the purpose of implementing G.S. 62-133.4 effective as of the date of this Order;

3. That North Carolina Gas Service, a Division of Pennsylvania and Southern Gas Company, North Carolina Natural Gas Corporation, Piedmont Natural Gas Company, Inc., and Public Service Company of North Carolina, Inc., shall file

with the Commission within 15 days from the date of this Order tariffs implementing the changes set forth in Commission Rule R1-17(k) attached hereto;

4. That within 15 days from the date of this Order, any local distribution company which has collected monies on a provisional basis, pursuant to authorization in its most recent general rate case proceeding, associated with additional pipeline capacity and storage for which recovery was provided for on a provisional basis shall file with the Commission a plan for refunding 50% of the amounts so recovered; and

5. That the parties shall confer among themselves for the purpose of formulating a reporting form consistent with Commission Rule R1-17(k) and shall report to the Commission within 30 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R1-17

(k) Procedure for Rate Adjustments Under G.S. 62-133.4.

(1) Purpose. The purpose of this Section (k) of Rule R1-17 is to set forth the procedures by which local distribution companies can file to adjust their rates pursuant to G.S. 62-133.4. The intent of these rules is to permit LDCs to recover their prudently incurred gas costs (excluding 50% of the costs of interstate pipeline capacity and/or storage added after the most recent general rate case) applicable to North Carolina operations.

(2) Definitions. As used in this Section (k) of Rule R1-17, the following definitions shall apply:

(a) "LDC" shall mean local distribution company.

(b) "Gas Costs" shall mean the total delivered cost of gas paid or to be paid to Suppliers, including but not limited to all commodity/gas charges, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, reservation fees, 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 similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply; provided, however, Gas Costs shall not include 50% of the costs of interstate pipeline capacity and storage that are added after the LDC's most recent general rate case, for purposes of this rule.

(c) "Suppliers" shall mean any person or entity, including affiliates of the LDC who locates, produces, purchases, sells, stores and/or

transports natural gas or its equivalent for or on behalf of an LDC. Suppliers may include, but not be limited to, interstate pipeline transmission companies, producers, brokers, marketers, associations, intrastate pipeline transmission companies, joint ventures, providers of Liquified Natural Gas, Liquified Petroleum Gas, Synthetic Natural Gas and other hydrocarbons used as feed stock, other LDCs and end-users.

(d) "Benchmark Commodity Gas Costs" shall mean an LDC's estimate of the City Gate Delivered Gas Costs for long-term gas supplies, excluding Demand Charges and Storage Charges as approved in the LDC's last general rate case or gas cost adjustment proceeding. The Benchmark Commodity Gas Costs may be amended from time to time as provided in Section (k)(3)(a).

(e) "City Gate Delivered Gas Costs" shall mean the total delivered Gas Costs to an LDC at its city gate.

(f) "Commodity and Other Charges" shall mean all Gas Costs other than Demand Charges and Storage Charges and any other gas costs determined by the Commission to be properly recoverable from sales customers.

(g) "Demand Charges and Storage Charges" shall mean all Gas Costs which are not based on the volume of gas actually purchased or transported by an LDC and any other gas costs determined by the Commission to be properly recoverable from customers, including company use and unaccounted for costs.

(3) Rate Adjustments Under these Procedures.

(a) Sales Rates. In the event an LDC anticipates a change in its City Gate Delivered Gas Costs, the LDC may apply and file revised tariffs in order to increase or decrease its rates to its customers as hereinafter provided. The Commission may issue an order allowing the rate change to become effective simultaneously with the effective date of the change or at any other time ordered by the Commission. If the Commission has not issued an order within 120 days after the application, the LDC may place the requested rate adjustment into effect. Any rate adjustment under this Section (k)(3)(a) is subject to review under Section (k)(6).

(i) Demand Charges and Storage Charges. Whenever an LDC anticipates a change in the Demand Charges and Storage Charges, the LDC may (as hereinabove provided) change its rates to customers under all rate schedules by an amount computed as follows:

[(Total Anticipated Demand Charges and Storage Charges* - Prior Demand Charges and Storage Charges) + Gross Receipts Taxes] X NC Portion** = Increase (Decrease) Per Unit

Sales & Transportation Volumes**

* Excluding 50% of the costs of added capacity or storage.
**Established by the Commission in the last general rate case.

(ii) **Commodity and Other Charges.** Whenever the LDC's estimate of its Benchmark Commodity Gas Costs changes, an LDC 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:

[Volumes of gas purchased* (excluding Company Use and Unaccounted For) X (New Benchmark Commodity Gas Costs - Old Benchmark Commodity Gas Costs) + Gross Receipts Taxes] X NC Portion* = Increase (Decrease) Per Unit

Volumes of gas purchased for System Supply* (excluding Company Use and Unaccounted For)* X NC Portion*

*Established by the Commission in the last general rate case

(b) **Transportation Rate.** Firm and/or interruptible transportation rates 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 exclusive of any decrements or increments. Commodity deferred account increments or decrements shall not apply to transportation rates unless the Commission specifically directs otherwise. Demand and storage increments or decrements shall apply to transportation rates.

(c) **Other Changes in Purchased Gas Costs.** The intent of these procedures is to permit an LDC to recover its actual prudently incurred Gas Costs, excluding 50% of the costs of added capacity or storage. If any other Gas Costs are incurred, they will be handled as in Section (3)(a)(i) if they are similar to Demand Charges and Storage Charges, or as in Section (3)(a)(ii) if they are similar to Commodity and Other Charges.

(4) **True-up of Gas Costs.**

(a) **Demand Charges and Storage Charges.** On a monthly basis, each LDC shall determine the difference between (a) Demand Charges and Storage Charges billed to its customers in accordance with the Commission-approved allocation of such costs to the LDC's various rate schedules and (b) the LDC's actual Demand Charges and

Storage Charges. This difference shall be recorded in the LDC's deferred account for demand and storage charges. Increments and decrements for Demand Charges and Storage Charges flow to all sales and transportation rate schedules. Where applicable, the percentage allocation to North Carolina shall be the percentage established in the last general rate case.

(b) **Commodity and Other Charges.** On a monthly basis, each LDC shall determine with respect to gas sold (including company use and unaccounted for) during the month the per unit difference between (a) the Benchmark Commodity Gas Costs most recently approved and (b) the actual Commodity and Other Charges. The product of the actual volumes multiplied by the per unit difference shall be recorded in the LDC's deferred account for commodity and other charges. Increments and decrements for Commodity and Other Charges flow to all sales rate schedules.

(c) **Company Use and Unaccounted For.** Each LDC will true-up Gas Costs associated with company use and unaccounted for volumes annually. This shall be done by comparing the actual North Carolina company use and unaccounted for volumes during the true-up period with the rate case approved North Carolina company use and unaccounted volumes used to establish rates during the twelve month true-up period. Where there is more than one approved company use and unaccounted for volumes during the true-up period, the average monthly level will be used. The resulting volumes will be multiplied by the average of the Benchmark Commodity Gas Costs at the end of each month of the true-up period, and the resulting amount will be recorded in the deferred account.

(d) **Supplier Refunds and Direct Bills.** In the event an LDC receives supplier refunds or direct bills with respect to gas previously purchased, the amount of such supplier refunds or direct bills will be recorded in the appropriate deferred account, unless directed otherwise by the Commission.

(5) **Other.**

(a) Gas Costs changes not tracked concurrently shall be recorded in each LDC's appropriate deferred account, except for 50% of the costs of added capacity and storage.

(b) The Commodity and Other Charges portion of gas inventories shall be recorded at actual cost and the difference in that cost and the cost last approved under Section (k)(3)(a)(ii) shall be recorded in the deferred account when the gas is withdrawn from inventory.

(c) Each LDC shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of the computations under these procedures, including all supporting workpapers, journal entries, etc., within 45 days after the end of each monthly reporting period. All such computations shall be deemed to be in compliance with these procedures unless within 60 days

of such filing the Commission or the Public Staff notifies the LDC 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 the LDC to provide the additional information.

(d) Periodically, an LDC may file to adjust its rates to refund or collect balances in these deferred accounts through decrements or increments to current rates. In filing for an increment or decrement, the LDC shall state the amount in the deferred account, the time period during which the increment or decrement is expected to be in effect, the rate classes to which the increment or decrement is to apply, and the level of volumes estimated to be delivered to those classes. Any such increments or decrements shall be made on a flat per dekatherm basis for all affected rate classes, unless otherwise ordered by the Commission.

(e) Notwithstanding the provisions of this Rule, an LDC may offset negotiated losses in any manner authorized by the Commission.

(6) Annual Review.

(a) Annual Test Periods and Filing Dates. Each LDC shall submit to the Commission the information and data required in Section (k)(6)(c) for an historical 12-month test period. This information shall be filed by North Carolina Natural Gas Corporation on or before February 1 of each year based on a test period ended November 30. This information shall be filed by North Carolina Gas Service, Division of Pennsylvania & Southern Gas Company on or before July 1 of each year based on a test period ended April 30. This information shall be filed by Piedmont Natural Gas Company, Inc., on or before August 1 of each year based on a test period ended May 31. This information shall be filed by Public Service Company of North Carolina, Inc., on or before June 1 of each year based on a test period ended March 31.

(b) Public Hearings. The Commission shall schedule an annual public hearing pursuant to G.S. 62-133.4(c) in order to compare each LDC's prudently incurred Gas Costs with Gas Costs recovered from all its customers that it served during the test period. The public hearing for North Carolina Natural Gas Corporation shall be on the first Tuesday of April. The public hearing for North Carolina Gas Service, Division of Pennsylvania & Southern Gas Company shall be on the first Tuesday of September. The public hearing for Piedmont Natural Gas Company, Inc., shall be on the first Tuesday of October. The public hearing for Public Service Company of North Carolina, Inc., shall be on the second Tuesday of August. The Commission, on its own motion or the motion of

any interested party, may change the date for the public hearing and/or consolidate the hearing required by this section with any other docket(s) pending before the Commission with respect to the affected LDC.

(c) Information Required in Annual Filings. Each LDC shall file information and data showing the LDC's actual gas costs, volumes of purchased gas, weather-normalized sales volumes, sales volumes, negotiated sales volumes and transportation volumes and such other information as may be directed by the Commission. All such information and data shall be accompanied by workpapers and direct testimony and exhibits of witnesses supporting the information.

(d) Notice of Hearings. Each LDC shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.4 and setting forth the time and place of the hearing.

(e) Petitions to Intervene. Persons having an interest in any hearing held under the provisions of this Section (k) may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

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

(g) Filing of Rebuttal Testimony. An LDC may file rebuttal testimony and exhibits within 10 days of the actual receipt of the testimony of the party to whom the rebuttal testimony is addressed.

DOCKET NO. G-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement G.S. 62-133.4	)	FINAL ORDER
Which Authorizes Gas Cost Adjustment Proceedings	)	ADOPTING COMMISSION
for Natural Gas Local Distribution Companies	)	RULE R1-17(k)

BY THE COMMISSION: On February 17, 1992, the Commission issued its Order Adopting Commission Rule R1-17(k) in this docket. By that Order, the Commission

discussed eight issues that were in dispute among the parties and, having decided those disputes, adopted a Rule implementing G.S. 62-133.4.

On February 20, 1992, Piedmont Natural Gas Company, Inc. (Piedmont), filed a Motion for Clarification and Request for Stay or, in the Alternative, Request for Rehearing. The first issue in dispute considered by the Commission was, "Should recovery of additional pipeline capacity and storage costs be subject to the gas cost adjustment procedures?" The Commission concluded that the LDCs should be allowed to recover 50% of such costs incurred for additional capacity and storage added subsequent to a general rate case. By its Motion, Piedmont alleged certain problems with the Commission's decision and asked for clarification and amendment of Commission Rule R1-17(k).

On February 27, 1992, the Commission issued an Order Staying Effective Date in this docket.

The Public Staff filed a Response to Motion for Clarification on March 5, 1992. The Public Staff asked for two changes to the Rule but otherwise urged denial of Piedmont's Motion.

Piedmont filed a Reply on March 10, 1992.

North Carolina Natural Gas Corporation (NCNG) and Public Service Company of North Carolina, Inc. (Public Service) filed Comments supporting Piedmont on March 11, 1992.

Carolina Utility Customers Association, Inc. (CUCA) filed a Response to Piedmont's Motion on March 12, 1992.

On March 17, 1992, the Commission issued an Order scheduling an oral argument in this docket on March 23, 1992. The Commission directed all parties participating in the oral argument to first address Piedmont's Motion for Clarification and the issues of interpretation, intent, and implementation raised thereby. In addition, the Commission provided that the parties may reiterate their original positions and arguments as to the first issue in dispute as noted above. The Order of March 23, 1992, further provided that the Commission reserves the right to reexamine such issue following the oral argument.

The matter came on for hearing as scheduled and the parties offered oral arguments.

Throughout these proceedings, the LDCs have taken the position that they should be permitted to recover pursuant to G.S. 62-133.4, 100% of any additional costs associated with additional pipeline capacity and storage. The Public Staff, Attorney General and CUCA have taken the position that the LDCs should not be permitted to recover any of these additional costs added subsequent to a general rate case proceeding.

In its February 17, 1992 Order, the Commission, after considering the comments of the parties and the oral argument relating to this issue, concluded that the LDCs should be allowed to recover 50% of those costs incurred for additional capacity and storage added subsequent to a general rate case proceeding. The Commission further concluded that each LDC should file additional information regarding capacity or storage additions and to what extent

any such capacity or storage addition was necessary to supply customers in previously unserved areas or areas to which service has or will be extended with expansion funds pursuant to G.S. 62-158. The Commission further provided that it reserved the right to reexamine this issue in light of future developments and the information reported by the LDCs.

In its Motion, Piedmont seeks that Rule R1-17(k) as previously adopted be clarified such that, among other things, the demand charges and storage charges true-up shall exclude the demand charges and storage charges billed on sales generated by unrecovered additional capacity(50% of the additional capacity excluded from the gas cost recovery mechanism.) In support of such request, it was argued that the LDCs should not be required to refund through the true-up mechanism fixed gas cost charges it recovers through capacity it pays for but has not been permitted to include in its rates.

The Public Staff, in its Response filed on March 5, 1992, opposed Piedmont's Motion as it relates to this issue and pointed out several practical problems in identifying the recovery of charges billed on sales generated by unrecovered additional capacity.

The Commission notes that G.S. 62-133.4 was a part of Chapter 598 of the 1991 Session Laws which was enacted to encourage and facilitate expansion of natural gas service throughout unserved areas in North Carolina. As stated earlier, the LDCs have advocated the recovery of 100% of additional capacity and storage costs and argued that such recovery is consistent with the policy of the state which encourages the LDCs to add new customers and to acquire new gas supplies for those new customers.

After carefully considering the arguments of the parties in this docket, the filings made in this docket and the record as a whole, the Commission deems it appropriate to reconsider the issue of the recovery of additional capacity and storage costs. Upon reconsideration, the Commission concludes that it is appropriate to allow recovery by the LDCs pursuant to G.S. 62-133.4 of 100% of their prudently incurred costs for additional capacity and storage added subsequent to a general rate case proceeding. In so concluding, the Commission is persuaded that such recovery is more consistent with the intent of Chapter 598 of the 1991 Session Laws and will not serve to discourage the LDCs from obtaining needed additional volumes of gas to facilitate the expansion of natural gas service in North Carolina. Furthermore, the Commission is of the opinion that its conclusion herein will serve to increase the flexibility needed by the LDCs in negotiating the purchase of additional gas supplies and purchasing gas incrementally as needed. Also, as stated in our earlier Order, the Commission is not persuaded that the recovery of additional capacity and storage costs will automatically result in excess returns due to increased expenses and the new investment in plant to be incurred to serve new customers. However, the Commission will carefully monitor the impact of this decision and, should it determine that further action is required, such action will be undertaken in a manner which the Commission considers to be appropriate.

Consistent with the conclusions reached herein, the Commission concludes that Piedmont's Motion for Clarification is moot since that Motion relates to the version of Rule R1-17(k) previously adopted. That version of the Rule was stayed and is now being reworded. .

The Commission has reworded Rule R1-17(k) consistent with the conclusions reached herein. Commission Rule R1-17(k) is attached hereto as Appendix A and is adopted for the purpose of implementing G.S.62-133.4 effective as of the date of this Order.

As was discussed in the Commission's February 17, 1992 Order, the Commission had previously allowed the recovery of costs incurred for additional capacity and storage on a provisional basis pending implementation of G.S. 62-133.4. In view of the treatment afforded herein with respect to the recovery of additional capacity and storage costs, any monies so collected on a provisional basis which were placed in a deferred account may be retained by the LDCs and no refund shall be required.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R1-17(k), as modified herein and attached hereto as Appendix A, should be, and the same hereby is, adopted as a rule of the Commission for the purpose of implementing G.S. 62-133.4 effective as of the date of this Order;

2. That North Carolina Gas Service, a Division of Pennsylvania and Southern Gas Company, North Carolina Natural Gas Corporation, Piedmont Natural Gas Company, Inc., and Public Service Company of North Carolina, Inc., shall file with the Commission within 15 days from the date of this Order tariffs implementing the changes set forth in Commission Rule R1-17(k) attached hereto;

3. That the parties shall confer among themselves for the purpose of formulating a reporting form consistent with Commission Rule R1-17(k) and shall report to the Commission within 30 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of April 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R1-17

(k) **Procedure for Rate Adjustments Under G.S. 62-133.4.**

(1) **Purpose.** The purpose of this Section (k) of Rule R1-17 is to set forth the procedures by which local distribution companies can file to adjust their rates pursuant to G.S. 62-133.4. The intent of these rules is to permit LDCs to recover 100% of their prudently incurred gas costs applicable to North Carolina operations.

(2) **Definitions.** As used in this Section (k) of Rule R1-17, the following definitions shall apply:

(a) "LDC" shall mean local distribution company.

(b) **"Gas Costs"** shall mean the total delivered cost of gas paid or to be paid to Suppliers, including but not limited to all

commodity/gas charges, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, reservation fees, 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 similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply.

(c) "Suppliers" shall mean any person or entity, including affiliates of the LDC who locates, produces, purchases, sells, stores and/or transports natural gas or its equivalent for or on behalf of an LDC. Suppliers may include, but not be limited to, interstate pipeline transmission companies, producers, brokers, marketers, associations, intrastate pipeline transmission companies, joint ventures, providers of Liquified Natural Gas, Liquified Petroleum Gas, Synthetic Natural Gas and other hydrocarbons used as feed stock, other LDCs and end-users.

(d) "Benchmark Commodity Gas Costs" shall mean an LDC's estimate of the City Gate Delivered Gas Costs for long-term gas supplies, excluding Demand Charges and Storage Charges as approved in the LDC's last general rate case or gas cost adjustment proceeding. The Benchmark Commodity Gas Costs may be amended from time to time as provided in Section (k)(3)(a).

(e) "City Gate Delivered Gas Costs" shall mean the total delivered Gas Costs to an LDC at its city gate.

(f) "Commodity and Other Charges" shall mean all Gas Costs other than Demand Charges and Storage Charges and any other gas costs determined by the Commission to be properly recoverable from sales customers.

(g) "Demand Charges and Storage Charges" shall mean all Gas Costs which are not based on the volume of gas actually purchased or transported by an LDC and any other gas costs determined by the Commission to be properly recoverable from customers, including company use and unaccounted for costs.

(3) Rate Adjustments Under these Procedures.

(a) Sales Rates. In the event an LDC anticipates a change in its City Gate Delivered Gas Costs, the LDC may apply and file revised tariffs in order to increase or decrease its rates to its customers as hereinafter provided. The Commission may issue an order allowing the rate change to become effective simultaneously with the effective date of the change or at any other time ordered by the Commission. If the Commission has not issued an order within 120 days after the application, the LDC may place the requested rate

adjustment into effect. Any rate adjustment under this Section (k)(3)(a) is subject to review under Section (k)(6).

(i) **Demand Charges and Storage Charges.** Whenever an LDC anticipates a change in the Demand Charges and Storage Charges, the LDC may (as hereinabove provided) change its rates to customers under all rate schedules by an amount computed as follows:

$$\frac{\text{[(Total Anticipated Demand Charges and Storage Charges - Prior Demand Charges and Storage Charges) + Gross Receipts Taxes] X NC Portion*}}{\text{Sales \& Transportation Volumes*}} = \text{Increase (Decrease) Per Unit}$$

* Established by the Commission in the last general rate case.

(ii) **Commodity and Other Charges.** Whenever the LDC's estimate of its Benchmark Commodity Gas Costs changes, an LDC 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:

$$\frac{\text{[Volumes of gas purchased* (excluding Company Use and Unaccounted For) X (New Benchmark Commodity Gas Costs - Old Benchmark Commodity Gas Costs) + Gross Receipts Taxes] X NC Portion*}}{\text{Volumes of gas purchased for System Supply* (excluding Company Use and Unaccounted For)* X NC Portion*}} = \text{Increase (Decrease) Per Unit}$$

*Established by the Commission in the last general rate case

(b) **Transportation Rate.** Firm and/or interruptible transportation rates 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 exclusive of any decrements or increments. Commodity deferred account increments or decrements shall not apply to transportation rates unless the Commission specifically directs otherwise. Demand and storage increments or decrements shall apply to transportation rates.

(c) **Other Changes in Purchased Gas Costs.** The intent of these procedures is to permit an LDC to recover its actual prudently incurred Gas Costs. If any other Gas Costs are incurred, they will be handled as in Section (3)(a)(i) if

they are similar to Demand Charges and Storage Charges, or as in Section (3)(a)(ii) if they are similar to Commodity and Other Charges.

(4) **True-up of Gas Costs.**

(a) **Demand Charges and Storage Charges.** On a monthly basis, each LDC shall determine the difference between (a) Demand Charges and Storage Charges billed to its customers in accordance with the Commission-approved allocation of such costs to the LDC's various rate schedules and (b) the LDC's actual Demand Charges and Storage Charges. This difference shall be recorded in the LDC's deferred account for demand and storage charges. Increments and decrements for Demand Charges and Storage Charges flow to all sales and transportation rate schedules. Where applicable, the percentage allocation to North Carolina shall be the percentage established in the last general rate case. For purposes of this true-up, company use and unaccounted for costs will be excluded since they are subject to a true-up under Section (4)(c).

(b) **Commodity and Other Charges.** On a monthly basis, each LDC shall determine with respect to gas sold (including company use and unaccounted for) during the month the per unit difference between (a) the Benchmark Commodity Gas Costs most recently approved and (b) the actual Commodity and Other Charges. The product of the actual volumes multiplied by the per unit difference shall be recorded in the LDC's deferred account for commodity and other charges. Increments and decrements for Commodity and Other Charges flow to all sales rate schedules.

(c) **Company Use and Unaccounted For.** Each LDC will true-up Gas Costs associated with company use and unaccounted for volumes annually. This shall be done by comparing the actual North Carolina company use and unaccounted for volumes during the true-up period with the rate case approved North Carolina company use and unaccounted volumes used to establish rates during the twelve month true-up period. Where there is more than one approved company use and unaccounted for volumes during the true-up period, the average monthly level will be used. The resulting volumes will be multiplied by the average of the Benchmark Commodity Gas Costs at the end of each month of the true-up period, and the resulting amount will be recorded in the deferred account.

(d) **Supplier Refunds and Direct Bills.** In the event an LDC receives supplier refunds or direct bills with respect to gas previously purchased, the amount of such supplier refunds or direct bills will be recorded in the appropriate deferred account, unless directed otherwise by the Commission.

(5) Other.

(a) Gas Costs changes not tracked concurrently shall be recorded in each LDC's appropriate deferred account.

(b) The Commodity and Other Charges portion of gas inventories shall be recorded at actual cost and the difference in that cost and the cost last approved under Section (k)(3)(a)(ii) shall be recorded in the deferred account when the gas is withdrawn from inventory.

(c) Each LDC shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of the computations under these procedures, including all supporting workpapers, journal entries, etc., within 45 days after the end of each monthly reporting period. All such computations shall be deemed to be in compliance with these procedures unless within 60 days of such filing the Commission or the Public Staff notifies the LDC 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 the LDC to provide the additional information.

(d) Periodically, an LDC may file to adjust its rates to refund or collect balances in these deferred accounts through decrements or increments to current rates. In filing for an increment or decrement, the LDC shall state the amount in the deferred account, the time period during which the increment or decrement is expected to be in effect, the rate classes to which the increment or decrement is to apply, and the level of volumes estimated to be delivered to those classes. Any such increments or decrements shall be made on a flat per dekatherm basis for all affected rate classes, unless otherwise ordered by the Commission.

(e) Notwithstanding the provisions of this Rule, an LDC may offset negotiated losses in any manner authorized by the Commission.

(6) Annual Review.

(a) Annual Test Periods and Filing Dates. Each LDC shall submit to the Commission the information and data required in Section (k)(6)(c) for an historical 12-month test period. This information shall be filed by North Carolina Natural Gas Corporation on or before February 1 of each year based on a test period ended November 30. This information shall be filed by North Carolina Gas Service, Division of Pennsylvania & Southern Gas Company on or before July 1 of each year based on a test period ended April 30. This information shall be filed by Piedmont Natural Gas Company,

Inc., on or before August 1 of each year based on a test period ended May 31. This information shall be filed by Public Service Company of North Carolina, Inc., on or before June 1 of each year based on a test period ended March 31.

(b) Public Hearings. The Commission shall schedule an annual public hearing pursuant to G.S. 62-133.4(c) in order to compare each LDC's prudently incurred Gas Costs with Gas Costs recovered from all its customers that it served during the test period. The public hearing for North Carolina Natural Gas Corporation shall be on the first Tuesday of April. The public hearing for North Carolina Gas Service, Division of Pennsylvania & Southern Gas Company shall be on the first Tuesday of September. The public hearing for Piedmont Natural Gas Company, Inc., shall be on the first Tuesday of October. The public hearing for Public Service Company of North Carolina, Inc., shall be on the second Tuesday of August. The Commission, on its own motion or the motion of any interested party, may change the date for the public hearing and/or consolidate the hearing required by this section with any other docket(s) pending before the Commission with respect to the affected LDC.

(c) Information Required in Annual Filings. Each LDC shall file information and data showing the LDC's actual gas costs, volumes of purchased gas, weather-normalized sales volumes, sales volumes, negotiated sales volumes and transportation volumes and such other information as may be directed by the Commission. All such information and data shall be accompanied by workpapers and direct testimony and exhibits of witnesses supporting the information.

(d) Notice of Hearings. Each LDC shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.4 and setting forth the time and place of the hearing.

(e) Petitions to Intervene. Persons having an interest in any hearing held under the provisions of this Section (k) may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(f) Filing of Testimony and Exhibits by the Public Staff and Intervenors. The Public Staff and other intervenors shall file direct testimony and exhibits of witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it

shall be accompanied by any direct testimony and exhibits of witnesses the intervenor intends to offer at the hearing.

(g) Filing of Rebuttal Testimony. An LDC may file rebuttal testimony and exhibits within 10 days of the actual receipt of the testimony of the party to whom the rebuttal testimony is addressed.

DOCKET NO. G-100, SUB 62

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision of NCUC Rule R6-80-Depreciation Studies	)	ORDER REVISING NCUC RULE R6-80

BY THE COMMISSION: On July 22, 1992, the Commission issued an Order proposing to revise NCUC Rule R6-80 regarding depreciation studies by natural gas utilities subject to the Commission's regulation. The Order was served on the North Carolina local distribution companies, the Public Staff, the Attorney General and the parties in each of the natural gas companies' last general rate cases.

The Order provided that unless substantial protests were received by Friday, August 21, 1992, NCUC Rule R6-80 shall be revised as set forth therein.

No protests have been received and the Commission is of the opinion that the revision of NCUC Rule R6-80 should be finalized and the docket closed.

IT IS, THEREFORE, ORDERED as follows:

1. That NCUC Rule R6-80 is hereby revised to read as follows:

   Each natural gas utility shall make a depreciation study at least once every five years. All such studies, including any proposed changes in depreciation rates, shall be submitted to the Commission for approval.

2. That this docket is closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of October 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. T-100, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Determination of the Exemption or Regulation of Dry Fertilizer and Dry Fertilizer Materials, Lumber, Rough or Dressed, Flooring, Weatherboarding, Sheathing, Tile, and Brick	)	ORDER AMENDING RULES R2-37 AND R2-52

BY THE COMMISSION: On February 20, 1991, the Commission issued an Order instituting a rulemaking proceeding to determine the exemption or regulation of certain commodities duplicated in Commission Rules R2-37 and R2-52(a).

Commission Rule R2-37 sets forth as regulated commodities Group 8, dry fertilizer and dry fertilizer materials, including ordinary commercial fertilizer, fish scrap, lime, manure, and related soil fertilization materials in truckloads; Group 9, forest products, which includes logs, poles, pilings, pulpwood, crossties, slabs, fence posts, and other raw products of the forests, but not including finished or processed products derived from such ray products or any commodities described as building materials; and also Group 10, building materials, which includes lumber, rough or dressed, flooring, weatherbroading, sheathing, roofing, cut stone, slats, tile, brick, cement, and cinder blocks, and other building materials usually transported in flatbed trucks.

Subsections (1), (2), and (3) of Commission Rule R2-52(a) exempt from regulation clay, concrete or shale products, in truckloads, viz: brick, building blocks, tile or pipe; dry fertilizer and dry fertilizer materials, in truckloads; and lumber of lumber products, native wood, in truckloads, viz: lumber, rough or dressed, ceiling, flooring, sheathing or weatherboarding, wood chips and wood shavings.

The Commission's Order of February 20, 1991, provided that parties desiring to file comments should do so on or before March 15, 1991, and reply comments not later than April 5, 1991.

On July 30, 1991, the Commission issued an Order of notice of proposed rule revisions. The Order provided that unless significant protests and comments were received by August 21, 1991, the revisions would be adopted.

A large number of comments and protests were filed by private lumber and brick shippers, motor carriers, associations, and economic development commissions.

Upon consideration of all the comments and a review of the Commission Rules and Regulations, the Commission is of the opinion that Rule R2-37 and Rule R2-52(a) should be revised as set forth herein.

Revisions in Commission Rule R2-37

This Rule regulates dry fertilizer and dry fertilizer materials in commodity group 8. This group includes ordinary commercial fertilizer, fish scrap, lime, manure, and related soil fertilization materials in truckloads. These

commodities were subsequently exempted in Commission Rule R2-52(a)(2). Therefore, because of the latter exempt status, Group 8, dry fertilizer and dry fertilizer materials, should be deleted from designation as a regulated commodity.

Group 9 regulates forest products. This group includes logs, poles, pilings, pulpwood, crossties, slabs, fence posts, and other raw products of the forest. It does not include finished or processed products derived from such raw products nor does it include commodities described in Group 10. G.S. 62-260(a)(14) exempts the transportation of raw products of the forest, including firewood, logs, crossties, stave bolts, pulpwood, and rough lumber, but not including manufactured products therefrom. Because of the statutory exemption, Group 9 should be deleted from designation as a regulated commodity, and those commodities in Group 9 not expressly exempted by statute will be included in Group 10, building materials.

Group 10, which regulates building materials, currently includes lumber, rough or dressed, flooring, weatherboarding, sheathing, roofing, cut stone, slats, tile, brick, cement, and cinder blocks, and other building materials usually transported in flatbed trucks. This group does not include materials hauled in dump trucks as described in Group 14. This group should exclude rough lumber which is exempted by G.S. 62-260(a)(14) and also flooring, weatherboarding, sheathing, tile, brick, and cement and cinder blocks which are exempted in Rule R2-52(a), subsections (1) and (3). Therefore, Group 10, building materials, should be rewritten so it will read: This group includes roofing, cut stone, slats, poles, pilings, slabs, fence posts, manufactured products derived from raw forest products, and other building materials usually transported in flatbed trucks. This group does not include materials hauled in dump trucks as described in Group 14.

Revisions in Commission Rule R2-52(a)

This Rule exempts the transportation of certain commodities from regulation. Subsection (3) exempts lumber or lumber products, native wood, in truckloads, viz: lumber, rough or dressed, ceiling, flooring, sheathing, or weatherboarding, wood chips and wood shavings. G.S. 62-260(a)(14) exempts raw products of the forest, many of which are named in subsection (3). Therefore, subsection (3) should be rewritten to conform with the statutory exemption as follows: lumber or lumber products, native wood, and other raw products of the forest, in truckloads, viz: lumber, rough or dressed, ceiling, flooring, sheathing or weatherboarding, wood chips and wood shavings, firewood, logs, crossties, stave bolts, and pulpwood, but not including manufactured products therefrom.

The Commission will review on a case by case basis each certificate and permit of those motor carriers holding authority to transport commodities in Group 8 and Group 9. A determination will be made to either cancel the certificate of permit or delete the exempt commodity group and amend the certificate of permit when additional regulated authority is held by the motor carrier.

IT IS, THEREFORE, ORDERED:

(1) That Commission Rules R2-37 and R2-52(a) are hereby amended as set forth in Appendix A attached hereto to become effective 30 days from the date of this Order.

(2) That a copy of this Order shall be published in the Commission's Truck Calendar of Hearings, and copies shall be mailed to all parties of record in this docket and all motor carriers holding general commodities, dry fertilizer and dry fertilizer materials, forest products, and building materials authority issued by this Commission.

(3) That certificates or permits issued to all motor carriers holding authority to transport Group 8, dry fertilizer and dry fertilizer materials, and Group 9, forest products will be canceled unless these motor carriers also hold additional regulated authority from this Commission, in which case the certificates or permits will only be amended to delete the exempt commodities.

(4) That all motor carriers whose certificates or permits are canceled as set forth in ordering paragraph (3) above are required to obtain exemption certificates from the Division of Motor Vehicles, Motor Carrier Regulatory Unit, Enforcement Section. These motor carriers must also comply with the Division of Motor Vehicle's rules and regulations and licensing requirements for motor carriers of exempt commodities.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of January 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Appendix A

Revisions in Commission Rule R-37

Delete Group 8, dry fertilizer and dry fertilizer materials.

Delete Group 9, forest products.

Rewrite Group 10, building materials, which now reads:

> This group includes, lumber, rough or dressed, flooring, weatherboarding, sheathing, roofing, cut stone, slats, tile, brick, cement, and cinder blocks, and other building materials usually transported in flatbed trucks. This group does not include materials hauled in dump trucks as described in Group 14.

so it will read: This group includes, roofing, cut stone, slats, poles, pilings, slabs, fence posts, manufactured products derived from ray forest products, and other building materials usually transported in flatbed trucks. This group does not include materials hauled in dump trucks as described in Group 14.

Revisions in Commission Rule R2-52(a)

Rewrite (3) which now reads: Lumber or lumber products, native wood, in truckloads, viz: lumber, rough or dressed, ceiling, flooring, sheathing or weatherboarding, wood chips and wood shavings.

so it will read: lumber or lumber products, native wood, and other raw products of the forest, in truckloads, viz: lumber rough or dressed, ceiling, flooring, sheathing or weatherboarding, wood chips and wood shavings, firewood, logs, crossties, stave bolts, and pulpwood, but not including manufactured products therefrom.

DOCKET NO. T-100, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revisions of Rules for Ratemaking and Tariff Filing Procedures for General Commodities Carriers in Less-Than-Truck-Load Lots	ORDER AMENDING RULES R2-16 AND R4-3

BY THE COMMISSION: On April 19, 1991, the Commission issued an Order instituting an investigation into the tariffs and ratemaking procedures of regulated intrastate motor carriers of general commodities in less-than-truck-load lots (LTL carriers).

The Order was issued in response to the Public Staff Petition in which it noted they have received inquiries and comments from LTL carriers and shippers indicating widespread dissatisfaction with the present tariff and ratemaking procedures. LTL carriers are concerned about inadequate returns resulting from discounting practices, and shippers are concerned about the continued existence of a viable general commodities trucking industry jeopardized by the current practices.

The Order was mailed to all general commodities motor carriers holding authority from the Commission and provided that comments to the questions in Appendix A attached to the Order regarding tariffs and ratemaking should be filed by May 17, 1991, and reply comments not later than June 7, 1991. The deadline for filing reply comments was extended to July 8, 1991.

On September 5, 1991, the Commission issued an Order instituting a rulemaking proceeding and set forth proposed rule revisions submitted by the Southern Motor Carriers Rate Conference (SMCRC) as Appendix A attached thereto. The Order was mailed to all parties of record in this docket and all motor carriers holding general commodities authority from the Commission. The Order provided that comments should be filed by October 4, 1991, and reply comments not later than October 25, 1991.

Comments were filed by A. V. Dedmon Trucking, Inc.; North Carolina Trucking Association, Inc.; Estes Express Lines; Standard Trucking Company; Wilson

Trucking Corporation; American Messenger Services, Inc.; Dixie Trucking Company, Inc.; West Brothers Transfer & Storage, Hauling & Storage Division, Inc.; Fredrickson Motor Express Corporation; Greenwood Motor Lines, Inc.; American Furniture Manufacturers Association; Overnite Transportation Company; Southeastern Freight Lines; Public Staff-North Carolina Utilities Commission; Southern Motor Carriers Rate Conference, Inc; United Parcel Service, Inc.; Star Express, Inc.; and Bestway Express, Inc. Reply comments were filed by American Greetings Corporation; North Carolina Trucking Association, Inc.; Wicker Services, Inc.; Motor Carrier Traffic Association; Murrow's Transfer, Inc.; Southern Motor Carriers Rate Conference; United States Department of Transportation; Dixie Trucking Company, Inc.; Public Staff - North Carolina Utilities Commission; Fredrickson Motor Express Corporation; Roadway Package System, Inc.; American Furniture Manufacturers Association; National Small Shippers Traffic Conference, Inc.; and Health and Personal Care Distribution Conference, Inc. Proposed rule revisions were submitted by the Public Staff and the North Carolina Trucking Association, Inc. (NCTA).

The Public Staff, in its proposed rule revisions, asserted that any proposed rate or charge by a motor carrier should be at least equal to that specific carrier's cost of providing the service. Several parties objected to this proposal and indicated that requiring every rate change to be cost justified would be so burdensome that price changes would either slow to a crawl or carriers would have to employ additional staff to satisfy the additional justification requirements.

In its comments, the NCTA states the proposed amendment to allow less-than-statutory notice only if the tariff is accompanied by a certification that the changes are "...to meet existing competition and no change will result in a rate level which is lower than 80 percent of the current class level maintained by the agent for general application" should be reworded because, as proposed, it might prevent a carrier from being able to meet the rate of a competing carrier. According to the NCTA, it is essential for every carrier to have the unrestrained right to meet existing competition.

In addition, several specialized carriers providing pickup and delivery services of small packages restricted to both weight and size filed comments which sought to exclude them from the proposed rule revisions herein. Such carriers assert that their operations are more similar to that of the U.S. Postal Service and do not handle traffic similar to that of the LTL carriers involved in this proceeding.

The pertinent issues as outlined by the Public Staff are standardized tariffs and filing procedures, full disclosure of tariff application, compensatory rates, and the proposed moratorium on discounts.

Standardized Tariff Format

The Commission agrees with the Public Staff's alternative rule change proposal that all general commodities LTL tariffs should be published in a joint agency or rate association tariff or in the format of such tariffs. Although the SMCRC proposal would require participation in a joint agency or rate association tariff, the Commission, like the Public Staff, does not believe that good cause exists to support an absolute participation requirement. The standardized tariff format adopted by this Order will, however, encourage participation by carriers

in joint agency or rate association tariffs. A standardized tariff format will make tariff information more readily available and more useful to both carriers and shippers and will lead to more efficient regulation. Participation in a joint tariff will also allow carriers to employ the Southern Motor Carriers Continuing Traffic Study Program in justifying rates and establishing North Carolina jurisdictional costs and revenues.

Full Disclosure

Like the Public Staff, the Commission believes that all tariffs are public records and that devices such as codes, trigger tariffs, and write-in tariffs, which have the effect of concealing matters which should be made part of the record (the parties, the rates, the cargo) are contrary to the public interest and should be prohibited. Tariffs which show account numbers without identifying the actual shippers defeat the purpose of having public tariffs and may even discourage competition.

Cost Justification and Competition

The proposed revision to Rule R4-3 advocated by the SMCRC would allow LTL rates to be published on less-than-statutory notice provided the carrier certifies that the changes are to meet existing competition and will not result in a rate level which is lower than 80 percent of the current general class rate level. Otherwise, the tariff will have to be accompanied by justification showing that it will not result in charges below the carrier's cost. If such justification is insufficient, the Commission may initiate an investigation.

The Public Staff proposes to amend Rules R2-16 and R4-3 to require carriers proposing new rates to demonstrate that they are compensatory; i.e., that the rates cover the cost of the service, including a reasonable return.

The Public Staff notes that several commentators have contested the need for and practicality of cost justification for rates. Commentators have also claimed an absolute right to meet any rates filed by a competitor. According to the Public Staff, these commentators have lost sight of the fact that this docket originated in large part because of complaints from carriers that unconstrained competition was seriously threatening the viability of the industry in North Carolina. The Public Staff also points out that all of the carriers affected by this docket are regulated public utilities and that regulated utilities do not have an unconstrained right to compete. According to the Public Staff, the rates to be charged by utilities in North Carolina must, by law, be reasonable. Rates which are not compensatory cannot be reasonable. Therefore, cost justification is basic to the regulation of these utilities. If the carriers cannot provide such justification individually, the Public Staff suggests that they seriously consider affiliation with a joint tariff.

Rather than adopt the compensatory rate criterion as an explicit part of Rules R2-16 and R4-3 at this time as recommended by the Public Staff for short-notice tariff filings, the Commission will take the matter of cost justification under advisement for future review. As proposed by NCTA, the Commission will allow LTL tariff filings for general commodities to become effective on less than 30 days' notice upon certification that the proposed tariff is either published to be no lower than the rate of existing competition or that no proposed rate will be lower than 80% of the appropriate current class

rate level maintained in joint agency or rate association tariffs. Where a carrier or agent cannot make the certification set forth above, proposed tariff revisions may only be made on 30 days' notice and cost justification must be demonstrated. The Commission will monitor these revised procedures for a period of one year to determine their effectiveness and at the end of that time will entertain requests, if any there by, for further amendments to the rules in question, including proposals related to cost justification for all tariff changes as suggested by the Public Staff.

Moratorium on Discounts

The Public Staff does not believe that either a temporary or permanent prohibition of discounts is in the public interest. The Commission believes that the rule changes adopted by this Order will be sufficient to protest both carriers and shippers from any potential ill effects of unlimited competition. Therefore, a moratorium on discounts is not required at this time and the proposed revision to Rule R4-4(a) is denied.

Final Conclusion

Upon consideration of all the comments and reply comments and a review of the Commission Rules and Regulations, the Commission is of the opinion that Rules R2-16 and R4-3 should be amended as set forth in Appendix A attached to this Order subject to the implementation guidelines set forth below.

IT IS, THEREFORE, ORDERED as follows:

(1) That Commission Rules R2-16 and R4-3 are hereby amended as set forth in Appendix A attached hereto become effective 30 days from the date of this Order unless significant protests are filed.

(2) That within 90 days from the date these rule revisions become effective all motor carriers holding intrastate authority from this Commission to transport general commodities in less-than-truckload lots must be in compliance with the revised tariff format and full disclosure requirements. All other rule revisions shall be complied with as of the effective date specified in decretal paragraph (1) above.

(3) That at the end of one year from the date these rule revisions become effective, the Commission will entertain proposals, if any there by, to review the tariffs and ratemaking procedures of motor carriers affected by these rule revisions and, if necessary, reconsider proposals relating to cost justification of all changes in rates and charges by the carriers involved herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of January 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Rule R2-16. Rates and charges.

(a) Every common carrier by motor vehicle shall file with the Commission, publish and keep open for public inspection and strictly observe all tariffs showing all rates, charges, and classifications for the transportation of property or passengers in intrastate commerce between all points within the area authorized to be served and all rates, charges, and classifications to points served by other carriers where through routes and joint rates and charges are authorized (G.S. 62-138).

(b) Except as provided by paragraph (c) below, every common carrier by motor vehicle holding a certificate from the Commission to transport general commodities shall publish its tariff showing rates, charges, and classifications for transportation of property in less-than-truckload quantities in intrastate commerce in a joint agency tariff or tariffs of a rate association acting pursuant to a ratemaking agreement approved pursuant to G.S.62-152.1.

(c) Any common carrier by motor vehicle holding a certificate from the Commission to transport general commodities, which elects not to publish its tariff showing rates, charges, and classifications for transportation of property in less-than-truckload quantities in intrastate commerce in a joint agency tariff or tariffs of a rate association acting pursuant to a rate-making agreement approved pursuant to G.S. 62-152.1, shall publish its tariff in the same format as joint agency or rate association tariffs (in book or pamphlet form only) and shall publish no more than one tariff for less-than-truckload intrastate general commodities transportation.

(d) A common carrier by motor vehicle publishing an independent tariff as provided in paragraph (c) above may not participate in any other tariff for less-than-truckload intrastate general commodities transportation other than governing publications such as the National Motor Freight Classification and mileage guides.

(e) Every contract carrier shall establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in intrastate commerce, and shall file with the Commission, publish and keep open for public inspection such schedules of rates and charges. To encourage the establishment and maintenance of reasonably charges for transportation service without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices, said schedule of rates

and charges shall not be less than the rates and charges approved or prescribed by the Commission for common carriers performing similar service except with the approval of the Commission pursuant to G.S. 62-147.

(f) Every contract carrier shall file with the Commission a true copy of each individual contract between it and a shipper or passenger.

Rule R4-3. Filing and posting.

(a) Except as provided by paragraph (d) of this rule and Rule R4-4(b), all tariffs and supplements shall be filed with the Commission at least 30 days before the date upon which they are to become effective.

(Paragraph (b) unchanged)

(c) All filings of tariffs or supplements, or changes to tariffs and supplements, showing rates, charges, and classifications for transportation of general commodities in less-than-truckload quantities in intrastate commerce, other than filings on less than statutory notice pursuant to paragraph (d) below, shall include sufficient evidence of intrastate cost and revenue to establish that the proposed rate or charge is at least equal to the carrier's total actual current cost of providing the service.

(d) Subject to the provision of paragraph (c) tariffs and supplements, or changes to tariffs and supplements, showing rates, charges, and classifications for transportation of general commodities in less-than-truckload quantities in intrastate commerce may become effective upon less than 30 days' notice provided that the agent or carrier filing the tariff or supplement certifies:

(1) That the proposed tariff or supplement is published to be no lower than the rate of existing competition, specifying the competing carrier, competing carrier's tariff number, competing carrier's tariff item number, and competing carrier's existing rate or charge, or to establish rates from or to a new facility at a level no lower than the existing level for like traffic, or

(2) That no rate or charge established by the proposed tariff or supplement will be lower than eighty percent (80%) of the appropriate current class rate level maintained in joint agency or rate association tariffs for general application.

If the carrier or agent is unable to provide the required certification, the tariff or supplement must be published on not less than 30 days' notice to the public and must be accompanied by sufficient justification to establish that the proposed rate or

discount will not result in charges which are below the carrier's cost of performing the service. If it is determined that the justification provided is insufficient on its face to establish the lawfulness of the proposed rate or discount, the Commission may enter upon an investigation pursuant to the requirements of G.S. 62-134.

(e) Every tariff or supplement showing rates, charges, and classifications for transportation of general commodities in less-than-truckload quantities in intrastate commerce must disclose the full application of every rate or discount in the tariff without reference to any other publication or device except governing publications such as the National Motor Freight classification and mileage guides. All rates and discounts published to apply only to specific account numbers must identify the entities represented by the account numbers.

(f) The provisions set forth in paragraph (d) shall not apply to specialized parcel or package delivery services operating pursuant to authority issued by this Commission under restrictions as to the size and weight of the packages handled.

DOCKET NO. T-100, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revisions of Rules for Ratemaking and Tariff Filing Procedures for General Commodities Carriers in Less-Than-Truck- Load Lots	)	FINAL ORDER AMENDING RULES R2-16 AND R4-3

BY THE COMMISSION: On January 24, 1992, the Commission issued an Order amending Rules R2-16 and R4-3 pertaining to the ratemaking and tariff filing procedures of general commodities carriers in less-than-truckload lots. The Order further provided that such rule revisions were to be effective 30 days from the date of such Order unless significant protests were filed.

This rulemaking proceeding was in response to inquiries and comments from LTL carriers and shippers indicating widespread dissatisfaction with the present tariff and ratemaking procedures. LTL carriers were concerned about inadequate returns resulting from discounting practices, and shippers were concerned about the continued existence of a viable general commodities trucking industry jeopardized by the current practices.

Comments and reply comments were filed by interested parties in this docket and the rules were subsequently revised as noted above.

Letters in opposition to and request for reconsideration of the rule revisions were timely filed by John R. Hinton, Danny P. Evans and Edward W. Erickson. Initial comments or reply comments were not filed by these individuals. The letters generally relate to the requirement of cost

justification data on proposed rates below those filed to meet existing competition or below eighty percent (80%) of the current class rate level.

The Commission has considered the above mentioned letters as well as the entire record in this docket and is not persuaded that the Commission's amendments to Rules R2-16 and R4-3 should be disturbed or reconsidered. However, as noted in its Order, the Commission will monitor these revised procedures for a period of one year to determine their effectiveness and at the end of that time will entertain proposals, if any there be, to review the tariff and ratemaking procedures of motor carriers affected by these rule revisions and, if necessary, reconsider proposals relating to cost justification of all changes in rates and charges by the carriers involved herein.

IT IS, THEREFORE, ORDERED that Commission Rules R2-16 and R4-3 as amended by Order dated January 24, 1992, to become effective February 23, 1992, shall remain in full force and effect unless otherwise ordered by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of March 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of the Manner in Which Extended Area Service is Implemented in North Carolina	)	ORDER PROMULGATING AMENDMENTS TO RULE R9-7

BY THE COMMISSION: By Order dated October 28, 1987, the Commission adopted Rule R9-7 setting forth general rules, practices and procedures for application to requests for EAS. Because of contested issues which continued to arise concerning particular matters such as the impact of geographical boundaries on EAS requests, the value and appropriate use of toll calling studies, cost studies and toll loss, matrix rating plans, and mixed polling results, the Commission issued Order Initiating Investigation and Requesting Comments on September 27, 1991.

Following is a summary of the Comments and Reply Comments filed by the parties to each question:

1. Geographical Boundaries

SHOULD RULE R9-7(c)(3) BE AMENDED TO RECOGNIZE GEOGRAPHICAL LOCATION AND/OR BOUNDARIES AS A FACTOR TO BE CONSIDERED IN DETERMINING WHETHER TO PROCEED WITH A PARTICULAR REQUEST FOR EAS?

The Public Staff believed that EAS arrangements should not be limited geographically as long as a significant community of interest and support for EAS can be demonstrated. The Public Staff stated that telephone exchange boundaries were established many years ago to provide flat-rate local calling for communities of interest which existed at that time with little regard for geographical locations, especially county lines. Over the years, communities of interest have evolved where none previously existed due to population expansions, improvements to transportation systems, and other economic and demographic changes. The Public Staff further stated that EAS requests have not been limited by geographical location in years past and to impose geographical limitations now would be unreasonably discriminatory.

ALLTEL as well as Central also believed that one of the chief considerations should be public interest, not geographical boundaries.

Carolina believed that geographical factors such as distance between exchanges, whether exchanges have contiguous or non-contiguous boundaries, and whether exchanges are located in the same county or in non-adjoining counties should be recognized in evaluating the feasibility of EAS.

Concord suggested EAS across county boundaries should first be tested and if found in the public interest, to institute a regional calling plan. GTE suggested an amendment which would address situations where exchanges located between two non-contiguous exchanges be included in the EAS study within the context of a regional extended area calling plan. GTE opposed fragmenting exchanges.

Southern Bell suggested that geographical boundaries are appropriate criteria in determining whether to proceed with EAS based on a determination whether the proposal is an intracounty proposal, intercounty, or regional proposal. Southern Bell further proposed that when EAS is proposed between an exchange, a portion of which is located in a different but adjoining county from the rest of the exchange, and another exchange located in the adjoining county, at least 20% of the total exchange access lines of the "spill-over" exchange must be located in the adjoining county for the proposal to constitute an intracounty proposal.

AT&T suggested that all factors concerning an application for EAS, including geographical location and/or boundaries, be considered. AT&T also suggested that the Commission's rules should take into account the possible impact on IXCs and should provide for notice to all affected IXCs any time an EAS request involves interLATA traffic.

North State, Southern Bell, MCI and ATC all believed that EAS areas should be contiguous.

2. Toll Calling Studies

2.a. SHOULD RULE R9-7(c)(1) BE AMENDED TO REQUIRE CONSIDERATION OF THE RESULTS OF TOLL CALLING STUDIES IN ALL CASES TO DETERMINE WHETHER THE REQUEST FOR EAS IS SUPPORTED BY A SIGNIFICANT COMMUNITY OF INTEREST SUFFICIENT TO JUSTIFY FURTHER CONSIDERATION.

The Public Staff believed that the Commission should judge the merits of an EAS proposal by the effort, time, and resources expended by the public in meeting the requirements to initiate an EAS request in accordance with this section. The Public Staff stated there have been cases in which toll calling studies indicated a minimal community of interest but EAS was approved by vote of the subscribers. Using these studies as a threshold test now would be unreasonably discriminatory. The Public Staff further listed what it considered several shortcomings of toll calling studies, among them: they include only MTS calls, not WATS, private line and FX, or optional toll calling plans; they do not reflect the deterrent effect of toll charges on the subscribers' use of the toll network; they do not reflect stimulation that occurs when flat-rate EAS is established; the currently used 30-day period may be distorted by seasonal impacts such as holidays and vacation periods.

The majority of the telephone companies believed that calling studies should be required for all EAS proposals primarily as an indicator of community of interest, need, and demand. Carolina felt calling studies offered a more fair and equitable approach than evidence of interest showings because such evidence of interest showings can vary substantially from one location to another, and are difficult to analyze. Southern Bell felt that a firm CIF standard based upon toll calling studies and below which EAS will not be considered should be established, and that the specific standard should be different for intracounty and intercounty proposals.

2.b. WHAT STANDARDS SHOULD BE DEVELOPED TO EVALUATE THE CALLING STUDY RESULTS?

(The Public Staff responded to 2.b-e by stating they do not believe that calling studies should be used to evaluate EAS community of interest.)

The majority of the companies responded that community of interest factor (CIF) and/or percentage of customers making calls should be used. North State believed the studies should include not only messages per access line per month over each interexchange route and in each direction but a detailed analysis of the distribution of calling usage among subscribers over each route and in each direction, showing, for business and residence users the number of customers making 0 calls, 1 call, etc., through 25 calls, the final category of 26 calls or more per month. GTE supported the development of a benchmark in terms of messages per access line per month to be used with some discretion in accordance with customer calling patterns and EAS needs in the state. Further, within the context of a regional calling plan, it may be necessary to include one or more routes with a community of interest factor less than the defined standard to have a uniform two-way regional calling area.

2.c. WHAT TIME PERIOD (ONE MONTH, THREE MONTHS, ETC.) SHOULD BE USED TO CONDUCT THE TOLL CALLING STUDIES?

The majority of the companies felt that a one-month period would be sufficient. Concord proposed three months. GTE suggested in addition to one month studies, that in cases of marginally high community of interest factors the Commission may wish to examine more than one month of data.

2.d. SHOULD STUDIES BE BROKEN DOWN BY RESIDENCE AND BUSINESS CATEGORIES?

The companies indicated generally that they believed calling studies should be broken down between business and residential. Carolina believed that such a breakdown would provide a clearer analysis of the residential impact of an EAS proposal, and would properly identify which class of customer bears the economic burden associated with EAS. GTE felt this type of analysis is often essential because it may become apparent that the business sector makes the bulk of out-of-exchange calls.

MCI and Central believed breaking studies down by residence and business was not necessary since EAS will not be provided to only one class of service, However, Central added that even though studies should not be split on a routine basis, if it is felt that solely one class of service is driving a request, then a business or residence split could be obtained.

2.e. SHOULD THE COMMISSION IMPLEMENT STANDARDS ESTABLISHING A THRESHOLD LEVEL OF TRAFFIC BELOW WHICH EAS WILL NOT BE CONSIDERED FURTHER AS EVIDENCED BY AVERAGE NUMBER OF CALLS PER ACCESS LINE PER MONTH AND PERCENTAGE MAKING CALLS? DIFFERENTIATE BETWEEN:

- SIMILAR SIZED EXCHANGES
- SMALL EXCHANGE/LARGE EXCHANGE
- COUNTY-SEAT CALLING
- COUNTY-WIDE CALLING
- OTHER CONFIGURATIONS

The majority of the telephone companies recommended implementing standards with threshold levels of traffic below which EAS would not be considered further. A general consensus seemed to be that the following proposals would apply regardless of exchanges size. The recommended standards are:

Carolina: (County-seat Calling): 1.5 CIF on residential customer usage, or a composite 2.0 CIF on aggregate of residence and business usage on at least a one-way basis; (County-wide Calling): 2.0 CIF on residential usage coupled with a 30% calling rate on residential calling, or a composite 2.5 CIF with a 35% customer calling rate on the aggregate of residential and business usage on at least a one-way basis; (Intercounty Calling): Between exchanges with common boundary - 2.5 or greater with a 40% or greater with a combined calling rate; between exchanges without a common boundary - 3.0 or greater with a combined calling rate of 50% or greater with distance not to exceed 22 miles on the latter.

Central: At least one exchange should meet the calling criteria of four calls per line as an average with 50% making at least one call.

GTE: An average 4.0 messages per access line pe month as a benchmark for all point-to-point EAS studies or regional calling plan studies with other circumstances evaluated if needed. (County-seat Calling): where not already in place, should be considered only if there is a high volume of calling into the county seat to warrant such an arrangement and not simply due to status as county seat; (County-wide Calling): Demonstrated calling volumes and needs should exist before any calling is considered.

North State: (1) Combined two-way calling rate over each interexchange route equals or exceeds four messages per access line per month, and 50% or more of the subscribers in the exchanges involved make three or more calls per month, except that: (2) on any given route between two exchanges, when the petitioning exchanges has less than half of the number of access lines as the larger exchange, studies of one-way traffic originating in the smaller exchange may be used, in which case the community of interest qualifications will require a calling rate of five or more messages per access line per month, with at least 50% of the exchange subscribers making three or more calls per month.

Southern Bell: (Intracounty): CIF of 2.0 with at 50% of the subscribers making at least one call per month. (Intercounty): A composite two-way CIF of 5.0 and with at least 75% of the affected subscribers in each exchange making one

call or more. If, however, one exchange has only 50% or fewer of the access lines located in the other exchange, then the smaller exchange should be required to meet a one-way CIF standard of 6.0, with at least 75% of its subscribers making one call or more.

AT&T and MCI: In any petitioning exchange, an average of at least four messages per subscriber per month to a desired exchange, and at least 50% of the total subscribers in the exchange must have completed at least four calls to the desired exchange. In the desired exchange, an average of at least two messages per subscriber per month to a petitioning exchange, and at least 50% of the total subscribers in the exchange must have completed at least two calls to the petitioning exchange.

3. Matrix Rating Plans

[T]HE COMMISSION WISHES TO SOLICIT COMMENTS ON WHETHER THOSE LECS NOT CURRENTLY USING A MATRIX RATING PLAN SHOULD BE REQUESTED TO FILE MATRIX TARIFFS. IF SO, SHOULD THOSE COMPANIES USE EXISTING MATRIX RATING PLANS OR DEVELOP MATRIX RATES BASED UPON INDIVIDUAL COSTS?

The Public Staff supported the use of a matrix rating plan because it eliminates the time, cost, and controversy related to performing and evaluating economic cost studies. In addition, the Public Staff believes an appropriately constructed matrix for rate calculations in prospective EAS proposals would be in the public interest. The Public Staff also recommended that Central be required to modify its tariff to include an exception provision. The Public Staff would support future matrix tariff filings that are designed like the currently approved tariffs other than Central's. The Public Staff is satisfied that the local rate increases resulting from the use of the EAS matrices designed like Carolina's would be fair to both the LECs and the affected subscribers.

Carolina believes the LECs not currently using a matrix rating plan should file matrix tariffs based upon the costs of that particular company. However, existing matrix rating plans might be used on an interim basis until a company can develop its own individual matrix rates. Carolina believes the matrix type of rating plan is a more fair and equitable method of charging for EAS because matrix rates are based on a company's historic and embedded cost of providing EAS, and the cost is spread over all of the company's customers who benefit from that service. Another advantage of the EAS matrix tariffs is the ease and speed with which rates can be quoted to interested parties without conducting costly and time consuming cost studies.

Concord believed a matrix would be excellent for a new company or an existing company without EAS.

GTE recognized the administrative ease of studying EAS by having a matrix tariff in place but perceives the use of a matrix tariff to generally support traditional, flat-rated EAS which offerings are inconsistent with today's competitive telecommunications. GTE believes a seven-digit dialed, measured EAS calling at discounted rates should always be considered first when addressing EAS needs between two or more communities.

North State does not feel that matrix rating plans are necessary or appropriate.

Southern Bell believes the matrix exception rate is an uneconomic solution to a political or social problem, and the result is inequitable to the affected LECs. Southern Bell suggested that the solution should be: (Intracounty) - establish lower voting thresholds for the larger exchange, which in intracounty proposals will generally be the county seat, or if that is not palatable, modify the matrix exception to reduce the large exchange rate only by 50% in cases where the large exchange is six times larger than the small exchange. (Intercounty) eliminate the matrix exception altogether.

ATC suggested cost-base pricing for all local services including EAS.

4. Polling Procedures and Results

4.a(a) HOW SHOULD THE PRESENCE OF MIXED POLLING RESULTS SUCH AS THOSE OCCURRING BETWEEN LARGE AND SMALL EXCHANGES BE HANDLED/SHOULD ONE-WAY EAS PLANS OR OPTIONAL TOLL CALLING PLANS BE CONSIDERED IN CIRCUMSTANCES OF MIXED POLLING RESULTS?

The Public Staff believed that mixed polling results should be handled on a case-by-case basis except for county-wide EAS proposals. If the overall results are positive, the Commission should consider other factors such as whether EAS would provide county-seat calling and/or would further economic development interests. The large exchange/small exchange situation is best handled by the exception provision. If all or part of an EAS proposal is rejected, the Commission should consider a request for alternatives.

ALLTEL, Carolina, Central, and Concord expressed opposition to one-way EAS while GTE supported implementation of one-way EAS if two-way EAS is not in the interest of the larger exchange customers. Several companies suggested that optional calling plans be considered in cases of mixed polling results.

Carolina expressed concerns that the exception provision of the EAS tariff does not properly assign the costs of EAS to the customers benefitting from the service, and suggested the Commission might wish to consider optional calling plans as a means of solving the large exchange/small exchanges EAS dilemma.

North State thought that large exchange customers should not be forced into a plan if the majority voted against the service.

ATC thought the Commission should look at results on a case-by-case basis and suggested that one way to handle mixed results would be to make EAS optional, monitor the results for a year and then determine if it should be made mandatory for all end users.

AT&T believed that a substantial majority of affected customers in each community must evidence their desire for the service. AT&T also stated that the desire for one-way EAS is a strong indication that the real problem is the level of toll rates and not one of expanding community of interest.

MCI believed that mixed polling results, particularly when they are derived from polling exchanges of approximately the same size, indicate that a community of interest does not exist.

4.b. IN REVIEWING THE POLLING RESULTS, SHOULD THE PERCENTAGE VOTING FOR OR AGAINST THE EAS BE DERIVED FROM THE TOTAL AFFECTED SUBSCRIBERS OR THE TOTAL RESPONDING SUBSCRIBERS? SHOULD A SPECIFIC PERCENTAGE OF FAVORABLE RESPONSES BE REQUIRED FOR THE EAS TO BE GRANTED?

The Public Staff recommended decisions regarding EAS poll results should continue to be based on only the valid ballots returned and that further, no specified percentage of favorable responses (other than a majority of those voting) or returned ballots should be required in granting EAS. The process should be designed to give every affected subscriber notice and absence of their vote should be given zero weight.

Carolina also recommended a simple majority of customers voting. (50%, plus one vote).

ALLTEL, Central, Concord, GTE, North State, AT&T, and MCI all believed that the percentage voting should be derived from the total affected subscribers and a specific percentage of favorable responses required. Recommended percentages were:

ALLTEL: (For example) minimum of 60% of the ballots should be returned with a minimum of 60% of those being in favor of the EAS to have the route approved.

Central: The exchange requesting EAS should have at least 50% of subscribers respond by ballot. If 50% respond and the majority favor EAS, then EAS would be approved for the requesting exchange. If the rate increase for the other exchange is less than 5%, then a simple majority of those returning ballots would indicate acceptance of EAS. If the rate increase is more than 5%, at least 50% of those polled would have to return ballots for a valid poll.

GTE: At least 50% of total subscribers must vote in favor of a flat-rate EAS plan before it is adopted. If the number of respondents falls below this level, close examination of a measured EAS option would be warranted.

North State: (1) 51% of all affected subscribers in each exchange required to be surveyed vote favorably; or, (2) 60% of the respondents in each exchange vote favorably and at least 70% of all subscribers in each exchange required to be surveyed respond.

Southern Bell: (Intracounty) - If at least 50% of the affected subscribers vote, at least 50% of those voting approve the proposal, or, in the alternative, if less than 50% vote, at least one-third of the subscribers in each affected exchange must vote, and that of those voting, at least two-thirds must vote favorably. (Intercounty) - At least 50% of all subscriber approve the proposal; or, in the alternative, that at least 50% of the subscribers in each affected exchange must vote, and that of those voting, at last 60% must vote in favor of the EAS proposal. (De Minimis increases) - If the rate additive is de minimis, generally considered to be less than 50¢, the Commission may waive the requirement for a poll.

MCI: Two-thirds of the subscribers in the petitioning exchange and a simple majority of subscribers in the desired exchange must vote in favor of the EAS proposal in order for the Commission to consider approval.

4.c. HOW SHOULD MIXED POLLING RESULTS BE HANDLED IF ONE OR MORE EXCHANGES IN A MULTI-EXCHANGE PROPOSAL VOTE AGAINST THE PROPOSAL WHERE THE OVERALL RESULTS ARE FAVORABLE? SHOULD MIXED POLLING RESULTS IN COUNTY-WIDE EAS PROPOSALS BE HANDLED ANY DIFFERENTLY?

The Public Staff recommended that county-wide EAS proposals should be decided as a total package based on the combined poll results of all affected subscribers in all affected exchanges and not on any individual exchange vote. The Public Staff believes this is important since county-wide EAS proposals are an effort to unify the total county through flat-rate local calling to address many county-wide concerns such as consolidated school systems, emergency services, and general economic development. Poll results in other multi-exchange proposals should be handled on a case-by-case basis, but giving special attention to county-seat calling. The Public Staff also recommended that Rule R9-7(h)(1) and (2) should be amended to include the use of no-protest notices at exchanges for which minimal or de minimis local rate increase have been determined for establishing proposed EAS. Subdivision (4) should be deleted or modified to reflect the following statement that is currently being used in polling letters to affected subscribers: IF YOU WISH TO HAVE A VOICE IN THIS DECISION, YOU MUST RETURN YOUR MARKED BALLOT.

ALLTEL felt that all aspects of a multi-exchange proposal should be considered, such as is the dissenting exchange small as compared to the other exchanges, overall favorable response from all the exchanges, can the dissenting exchange be removed from the proposal without ruining the overall route.

Carolina recommended that for EAS proposals involving three or more exchanges, the polling results should be combined and the plan either implemented or rejected on the basis of a simple majority of votes. For EAS proposals involving only two exchanges, the polling results should be considered on the basis of each exchange separately. Each exchange would have to approve the plan by a simple majority vote; if either exchange failed to approve the plan by a simple majority vote, the plan would be rejected.

Central and GTE suggested that measured plans would offer the best solution to mixed polling results. GTE felt that a measured EAS plan would address calling needs in the majority number of exchanges, which may want some form of EAS, while recognizing that a minority number of exchanges may not want to be charged for additional flat-rate EAS.

Concord and North State both suggested optional calling plans in cases of mixed polling results. North State felt county-wide EAS proposals that incur mixed polling results should be treated in the same manner as the previously discussed multi-exchange proposal.

AT&T suggested that mixed polling results indicate that an EAS solution is probably not desirable for the entire area subject to the request. An EAS arrangement, whether in the case of multiple exchange or county-wide proposals, should be granted only for exchanges where there has been a clear demonstration of community of interest.

MCI believed the rule should specify that if any petitioning exchange in a multi-exchange proposal fails to get a two-thirds majority of favorable votes or if any desired exchange fails to get a simple majority of favorable votes, the Commission must reject the proposal.

EAS REPLY COMMENTS

Public Staff - The Public Staff noted that as of its writing, approximately 44 EAS requests had been presented to the Commission since Rule R9-7 has been adopted (excluding Triangle J and Triad Regional Calling requests). Of these, 38 have been finally decided with 30 being approved as proposed. The Public Staff stated that it believe that it would be a serious mistake to amend the Rule either to legitimate past decisions or to anticipate future decisions in unusual or difficult situations. The Public Staff questioned the argument that flat-rate EAS does not benefit the subscriber base as a whole but forces subscribers who do not make toll calls to subsidize those who do. The Public Staff pointed out that a fundamental principal of local service pricing as the rates are based on the value of service and that value is largely proportional to the extent of the flat-rate calling area. This kind of subsidy has long been accepted as a matter of policy on the grounds that, to the extent that barriers to communication are minimized, everyone benefits. As for CIFs, the Public Staff stated that comments from the telephone companies merely demonstrate the futility of trying to adhere to a rigid standard. A poll is the best test of community of interest. The practice of interpreting poll results based on the total number of subscribers rather than the number of subscribers voting, is both unnecessary and unreasonable since it amounts to assigning a "no" vote to every subscriber who chooses not to vote. The Public Staff noted that both Southern Bell and Carolina had expressed concern regarding the exception provision in their matrix tariffs and that Southern Bell proposed some changes in the rate increment and polling threshold. The Public Staff argued that these changes are unnecessary and inappropriate and would undermine, if not defeat, the purpose of the exception provision. Southern Bell's proposals regarding cost studies also go beyond the issues on which the Commission requested comments. The EAS rules from other states should not be considered.

Attorney General - The Attorney General stated that he continued to believe that EAS is an extension of the obligation of the telephone company to provide universal service. Rule R9-7 should not be changed to prohibit consideration of EAS under certain geographic boundaries. The toll study should not be used as a bright line or threshold to bar EAS consideration. The Attorney General argued that all companies should establish and apply matrices and that successful EAS polling for like size exchanges should be a simply majority, while large exchange - small exchange arrangements with de minimis increases for the large exchange should be subject to a non-protest notice to the large exchange rather than polling the large exchange.

Carolina Utility Customers Association, Inc. - CUCA stated that it believed that the Commission should limit its final Order in this proceeding to a consideration of the specific issues that were in its original Order and decline invitations of Southern Bell and other LECs to redefine extended area service so as to include usage-based calling plans or otherwise treat local measured service as an acceptable means of meeting the continued demand for EAS. Any rule the

Commission adopts in this proceeding should not treat local measured service plans as an acceptable device for providing EAS.

AT&T - AT&T reiterated that it is essential that approval of EAS plans be grounded on a clear showing of a significant community of interest. AT&T supports the adoption of explicit criteria and strict standards of procedures to be uniformly applied in reaching EAS determinations.

MIC - MCI disagreed with the presumption that community of interest should apply in the case of intra-county EAS requests. MCI also objected to Southern Bell's proposal to include in the definition of EAS optional usage-based calling between two exchanges located in the same or separate counties.

Carolina - Carolina argued that some restrictions on flat-rate EAS are necessary. A continued proliferation of flat-rate EAS will have a negative impact on toll contribution to local service. The Commission should amend Rule R9-7 to specify some measurable objective criteria for conducting a poll of subscribers and for approving or rejecting a proposal on the basis of voting results. However, the Commission should avoid overly strict criteria.

Southern Bell - Southern Bell reiterated that the rule should reflect current Commission practice and procedure regarding geographical boundaries which Southern Bell believes recognize a distinction between intra-county proposals, inter-county proposals, and regional proposals. Southern Bell also suggested that the Commission should adopt specific CIFs standards and should apply those standards consistently and uniformly to eliminate a significant number of questionable proposals that now come before it. As to matrix rating plans, Southern Bell stated that it believed that the exception provision was unfair and do not compensate the LEC for the true cost of the EAS proposal. As for polling results, Southern Bell proposed that for intra-county proposals if at least 50% vote, a majority of those must vote favorably or if the fewer than 50% vote, at least one-third of the affected subscribers must vote and of those voting, at least two-thirds must vote favorably. For inter-county proposals, Southern Bell recommended that at least 50% of all subscribers approve the proposal or, in the alternative, that at least 50% must vote and of those voting, at least 60% must vote in favor of the EAS proposal.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

In its April 7, 1988, Order in Docket No. P-55, Sub 888, concerning the Triangle J EAS proposal, the Commission wrote that "[q]uestions relating to extended area service are some of the most perplexing with which the Commission deals." (at 4). This statement is as true now as it was then. The purpose of this Order is, at least in some measure, to reduce this perplexity for applicants and the Commission itself by clarifying the rules governing EAS applications.

Before setting out and explaining the amendments to be promulgated, the Commission believes it is worthwhile to consider why it is the EAS applications have been so perplexing and difficult.

The first reason is that, quite simply, the imposition of EAS involves the imposition of costs on both subscribers and companies alike. EAS is not "free"

calling. The subscriber may need to pay an EAS additive and the phone company is deprived of profitable toll routes and must construct or reconfigure facilities. Few persons enjoy paying more, and the benefits of EAS, while tangible to some, may be more abstract or of little interest to others.

The second reason that EAS is difficult is that the Commission must balance the interests of many different groups. Certainly, EAS can have general economic and social benefits by widening the communications nexus in the affected exchanges. Persons who are high toll users obviously tend to favor EAS, but the Commission must also take into consideration the interests of those likely to be opposed to EAS such as low toll users and subscribers on low or fixed incomes. The telephone companies, as noted before, lose toll routes and revenues. Furthermore, there is at least a tangential impact on subscribers in the state as a whole because of the existence of the intraLATA toll pool. Elimination of toll routes, whether through EAS or other means, reduces the amount of money going to the pool at a given moment in time.

The third reason for difficulty is the geographical and configurational complexity of many EAS proposals. EAS proposals, for example, come in many possible configurations, including same-size exchange to same-size exchange, small exchange to large exchange, county-seat calling, county-wide calling, inter-county calling, and multi-county calling. There are well over 20 LECs and exchange boundaries are almost never completely coterminous with county boundaries. Some major counties, such as Forsyth, Randolph, and Davidson have as many as five LECs operating within the counties. Moreover, there are technical and cost problems associated with splitting exchanges, and, especially in multi-exchange proposals, it is not easy to determine where the true community of interest lies. For instance, there may be a high community of interest as reflected by high calling studies between or to major metropolitan exchanges but not between and among outlying exchanges.

For all these reasons, EAS proposals can be difficult and complex. It is, therefore, desirable that EAS rules have a certain degree of built-in flexibility. The high number of variables and contingencies makes facile comparisons between one EAS proposal and another misleading and fallacious. Accordingly, the Commission must apply the EAS rule to each proposal on a case-by-case basis.

The Commission believes that it has correctly applied the old EAS rules to the proposals before it. In some cases, the Commission has reconsidered decisions, but this has been done pursuant to rule and within the standards set out by the existing EAS rules.

At the same time, the Commission also believes that the EAS rules can and should be improved and clarified. The amended rule will not only give applicants a better idea of acceptable proposals, it may also clarify and simplify the Commission's decisionmaking process.

The amendments with commentary are as follows:

Rule R9-7(c)(3) is rewritten to read as follows:

(3) While consideration may be given to the geographical nature of an EAS proposal, it is not appropriate to limit EAS arrangements based

solely on geographical location. So long as a significant community of interest and support for the EAS can be demonstrated, the Commission will consider each request for EAS on a case-by-case basis. A chief consideration in any request for EAS is the public interest and need for EAS, which is not necessarily constrained by geographical boundaries.

This amendment simply inserts the opening clause. Since the rewrite of Rule R9-7(d) contains geographical classifications for various CIFs and PMCs, the Commission thought it desirable to note in this rule that the geographical nature of an EAS proposal may be considered. However, this is not of itself the grounds for limiting an EAS arrangement.

Rule R9-7(d) is rewritten to read as follows:

(d) Toll Calling Studies.

(1) All proposals for EAS shall be accompanied by toll calling studies concerning the affected changes. Such toll calling studies shall be for thirty-day periods, unless circumstances are shown to warrant a longer study period, and shall be broken down into residential and business categories. Such toll calling studies shall include information concerning community of interest factors (CIFs) and the percentage of persons making one or more calls (percentage making calls or PMCs) in the relevant time period.

(2) Absent special circumstances, an EAS proposal shall generally not be approved for polling unless all the affected exchanges in the proposal meet the relevant CIF and PMC standards on at least a one-way basis as set out below:

(a) For intra-county, county-seat EAS proposals, a CIF of 1.0 or greater in the residential category of a CIF of 2.0 or greater in the residential and business categories combined.

(b) For other intra-county EAS proposals, a CIF of 2.0 or greater in the residential category or a CIF of 2.5 or greater in the residential and business categories combined and a PMC of 25% or greater.

(c) For inter-county EAS proposals between exchanges with a common boundary, a CIF of 2.5 or greater in the residential and business categories combined and a PMC of 45% or greater.

(d) For inter-county EAS proposals between exchanges without a common boundary, a CIF of 3.0 or greater in the residential and business categories combined and a PMC of 50% or greater.

(3) Notwithstanding Rule R9-7(d)(2), the Commission may approve, disapprove, narrow, or limit an EAS proposal for polling if special circumstances require such action.

This is a complete rewrite of Rule R9-7(d). The old Rule R9-7(d) recognized a role for toll calling studies in evaluating community of interest and provided that such studies could be used to limit or narrow an EAS proposal.

The Commission believes that the cornerstone of the EAS process is the existence of a sufficient community of interest between exchanges to justify starting the EAS process. Certainly, this can and should be demonstrated in part by testimony concerning "broad-based support." But, the Commission also agrees with the companies that calling studies are a valid indication of community of interest between two exchanges. While not perfect, such studies are a basic and measurable reflection of calling interest between exchanges. Their use will interject a greater degree of certainty and objectivity into the EAS proceedings.

The numerical criteria that the Commission has selected vary according to the geographical configuration of the proposal. For instance, a county-seat proposal, which allows subscribers toll-free access to government and other services, needs the lowest CIF with no PMC requirement while an inter-county proposal needs a higher CIF and a PMC requirement. These numerical criteria are quite moderate and need be met only on a one-way basis as to each pair of routes in the proposal.

Furthermore, the CIF and PMC standards, while important, are not completely inflexible. Rule R9-7(d)(3) provides that, if special circumstances require such action, the Commission may "approve, disapprove, narrow, or limit an EAS proposal." Similarly, if it is desirable for the calling study to exceed 30 days, there is a provision in the rule whereby the study period can be extended.

Rule R9-7(h)(4) is rewritten to read as follows:

(4) The customer notice which is used in conjunction with an EAS poll shall specify that if the subscriber wishes to have a voice in the decision, he must return his marked ballot.

This subsection was rewritten to conform to the language currently appearing on customer notices.

Rule R9-7(h)(2) is rewritten to read as follows:

(2) In cases where dominant interest does not exist at one exchange, both exchanges will generally be polled using rate increases based upon incremental costs as described in subparagraph (e) of this rule, except where the increase in one of the exchanges is minimal or <u>de minimis</u>, in which case no poll will be conducted in that exchange, but the EAS rate increase shall apply at the time the EAS, if approved, is implemented.

Rule R9-7(i) is rewritten to read as follows:

(i) <u>Polling Results</u>

All decisions regarding EAS poll results will be based on the valid ballots returned. Generally, a simply majority of those valid ballots returned voting in favor of the EAS will constitute a positive vote for EAS as to that exchange. An EAS proposal will be approved if each

of the polled exchanges is in favor of the EAS proposal. When two or more exchanges are polled and mixed results occur, the approval or disapproval of the request will be based on the individual poll results as well as other factors that may be reflective of any unique circumstances affecting the request, including valid public policy considerations such as economic development and county-seat calling. In making a final decision, the Commission will exercise its discretion in considering all relevant factors.

The rewrite of these rules should be read together since the Commission concluded that the final sentence of the old Rule R9-7(h)(2) more properly belonged in the section on polling results. Rule R9-7(i) simply makes plain that a majority of valid ballots voting in favor of EAS constitutes a positive EAS vote as to that exchange and that an EAS proposal will be approved if each of the polled exchanges votes in favor of the EAS proposal. Mixed poll results will be approved or disapproved based on individual poll results (not combined poll results, as previously) but other factors may be adduced in the decisionmaking. This seems to the Commission to be more just than in an arrangement in which an exchange voting against EAS may nevertheless presumptively be required to receive EAS.

As to matrix rating plans, the Commission believes that such plans are desirable and tend to simplify the process of arriving at the appropriate EAS additive. However, the Commission does not believe that non-matrix LECs should be required to adopt them at this time. The Commission notes that LECs with matrix rating plans comprise the vast majority of access lines.

IT IS, THEREFORE, ORDERED that the amendments to Rule R9-7 set out in Appendix A be promulgated.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of May 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Chairman William W. Redman, Jr., dissents.
Commissioner Robert O. Wells dissents.
Commissioner Sarah Lindsay Tate concurs.

APPENDIX A

Rule R9-7(c)(3) is rewritten to read as follows:

(3) While consideration may be given to the geographical nature of an EAS proposal, it is not appropriate to limit EAS arrangements based solely on geographical location. So long as a significant community of interest and support for the EAS can be demonstrated, the Commission will consider each request for EAS on a case-by-case basis. A chief consideration in any request for EAS is the public interest and need for EAS, which is not necessarily constrained by geographical boundaries.

Rule R9-7(d) is rewritten to read as follows:

(d) Toll Calling Studies.

(1) All proposals for EAS shall be accompanied by toll calling studies concerning the affected exchanges. Such toll calling studies shall be for thirty-day periods, unless circumstances are shown to warrant a longer study period, and shall be broken down into residential and business categories. Such toll calling studies shall include information concerning community of interest factors (CIFs) and the percentage of persons making one or more calls (percentage making calls or PMCs) in the relevant time period.

(2) Absent special circumstances, an EAS proposal shall generally not be approved for polling unless all the affected exchanges in the proposal meet the relevant CIF and PMC standards on at least a one-way basis as set out below:

(a) For intra-county, county-seat EAS proposals, a CIF of 1.0 or greater in the residential category or a CIF of 2.0 or greater in the residential and business categories combined.

(b) For other intra-county EAS proposals, a CIF of 2.0 or greater in the residential category or a CIF of 2.5 or greater in the residential and business categories combined and a PMC of 25% or greater.

(c) For inter-county EAS proposals between exchanges with a common boundary, a CIF of 2.5 or greater in the residential and business categories combined and a PMC of 45% or greater.

(d) For inter-county EAS proposals between exchanges without a common boundary, a CIF of 3.0 or greater in the residential and business categories combined and a PMC of 50% or greater.

(3) Notwithstanding Rule R9-7(d)(2), the Commission may approve, disapprove, narrow, or limit an EAS proposal for polling if special circumstances require such action.

Rule R9-7(h)(2) is rewritten to read as follows:

(2) In cases where dominant interest does not exist at one exchange, both exchanges will generally be polled using rate increases based upon incremental costs as described in subparagraph (e) of this rule, except where the increase in one of the exchanges is minimal or de minimis, in which case no poll will be conducted in that exchange, but the EAS rate increase shall apply at the time the EAS, if approved, is implemented.

Rule R9-7(h)(4) is rewritten to read as follows:

(4) The customer notice which is used in conjunction with an EAS poll shall specify that if the subscriber wishes to have a voice in the decision, he must return his marked ballot.

Rule R9-7(i) is rewritten to read as follows:

(i) Polling Results

All decisions regarding EAS poll results will be based on the valid ballots returned. Generally, a simple majority of those valid ballots returned voting in favor of the EAS will constitute a positive vote for EAS as to that exchange. An EAS proposal will be approved if each of the polled exchanges is in favor of the EAS proposal. When two or more exchanges are polled and mixed results occur, the approval or disapproval of the request will be based on the individual poll results as well as other factors that may be reflective of any unique circumstances affecting the request, including valid public policy considerations such as economic development and county-seat calling. In making a final decision, the Commission will exercise its discretion in considering all relevant factors.

CHAIRMAN WILLIAM W. REDMAN, JR., DISSENTING. I respectfully dissent from the rule changes regarding extended area service (EAS) adopted by the Majority because I fear they will unjustifiably impair the Commission's ability to consider and approve future requests for EAS. I dissent in particular from the Majority's decision to implement rigid standards based on toll calling studies which will, in all likelihood, impede if not stifle many legitimate requests for EAS. I believe that our long-standing EAS practices, policies, and rules have served North Carolina well and have clearly promoted the public interest by ensuring the many benefits of local calling to affected consumers throughout the State. The benefits of EAS touch almost every consumer in this State in a significant way. The Commission should promote the ability of consumers to communicate through EAS at reasonable rates. I fear that the community of interest factors (CIFs) and percentage making calls (PMCs) standards adopted by the Majority will be rigidly construed to the detriment of valid EAS requests and that "special circumstances" will rarely, if ever, be found. The PMCs of 45% and 50% for inter-county EAS proposals are much too high and will serve only to discourage consumers from pursuing EAS in certain instances.

Because I see no real need to amend our EAS rules at this time, I dissent from the rule changes adopted by the Majority. There is no justification for actions which erect unnecessary roadblocks to EAS. The benefits of EAS should not be denied simply because certain proposals fail to meed arbitrary standards. In my view, EAS requests afford the Commission with golden opportunities to provide tangible benefits for consumers which are genuinely appreciated and used.

Chairman William W. Redman, Jr.

COMMISSIONER ROBERT O. WELLS, DISSENTING. I respectfully dissent from the Majority in its decision in Docket No. P-100, Sub 89, regarding the rule changes from extended areas service (EAS). I agree substantially with the opinion set forth by Chairman Redman in his dissenting opinion to this order, in particular as it relates to percentage factors relative to the community of interest factor (CIFs) and the percentage making calls (PMCs) standards.

The essence of the majority order is to promulgate more restrictive rules for EAS than not exist. Such rules make more difficult the accommodations of changing social, economic and political needs in our state.

Adoption of these restrictive rules is a flawed backward step and ignores the need for flexibility, which is paramount to the development of a modern telecommunications policy for North Carolina.

Commissioner Robert O. Wells

COMMISSIONER TATE, CONCURRING: I believe the rules adopted in this order will allow the Commission to be fairer and more consistent in its treatment of EAS matters. The low number of responses to EAS polls is still of concern to me. When less than 50% of the eligible subscribers vote, the effect is that a minority of subscribers impose charges on the majority. If there is a high community of interest, it would seem logical that a high percentage would vote. I hope the Public Staff and the Companies will continue to seek methods that would improve subscriber participation in our polling.

Commissioner Sarah Lindsay Tate

DOCKET NO. P-100, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Exemption of Domestic Public Cellular Radio Telecommunications Service Providers from Regulation Under Chapter 62 of the North Carolina General Statutes	))))	ORDER EXEMPTING DOMESTIC PUBLIC CELLULAR RADIO TELECOMMUNICATIONS SERVICE PROVIDERS FROM REGULATION

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 21, 22, and 26, 1991

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

APPEARANCES:

For GTE Mobile Communications Incorporated, Contel Cellular Company, General Cellular Corporation, Blue Ridge Cellular Telephone Company, and G.M.D. Limited Partnership:

Henry C. Campen, Jr., and J. Allen Adams, Attorneys at Law, Parker, Poe, Adams and Bernstein, One Exchange Plaza, Post Office Box 389, Raleigh, North Carolina 27602

For Centel Cellular Company, N.C. RSA-2 Cellular Telephone Company, and N.C. RSA-3 Cellular Telephone Company:

Robert F. Page, Attorney at Law, Crisp, Davis, Schwentker, Page, Currin & Nichols, 4011 Westchase Boulevard, Suite 400, Raleigh, North Carolina 27607

For Metro Mobile CTS of Charlotte, Inc.:

Robert W. Kaylor, Attorney at Law, Patterson, Dilthey, Clay, Cranfill, Sumner & Hartzog, 225 Hillsborough Street, Suite 300, Post Office Box 310, Raleigh, North Carolina 27602

For ALLTEL Mobile Communications and United States Cellular Corporation:

F. Kent Burns and Daniel C. Higgins, Attorneys at Law, Burns, Day & Presnell, 2626 Glenwood Avenue, Suite 560, Post Office Box 10867, Raleigh, North Carolina 27605

For Cellcom of Hickory, Inc.:

James P. Cooney III, Attorney at Law, Kennedy, Covington, Lobdell & Hickman, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For North Carolina Cellular Association, Inc.:

Ralph McDonald and Cathleen M. Plaut, Attorneys at Law, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company:

Jack H. Derrick, Sr., Senior Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Eastern Radio Service, Inc.:

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

For the Attorney General:

Karen Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On May 13, 1991, the North Carolina General Assembly enacted legislation authorizing the Commission, to the extent it finds such services to be competitive and such action to be in the public interest, to exempt domestic cellular radio telecommunications provides (cellular carriers), if licensed by the Federal Communications Commission (FCC), from regulation under any and all of the provisions of Chapter 62 of the North Carolina General Statutes.

On May 24, 1991, GTE Mobile Communications Incorporated, Centel Cellular Company, ALLTEL Mobile Communications, United States Cellular Corporation, Metro Mobile CTS of Charlotte, Inc., General Cellular Corporation, Cellcom of Hickory, Inc., Contel Cellular Company, Blue Ridge Cellular Telephone Company, G.M.D. Limited Partnership, N.C. RSA-2 Cellular Telephone Company, and N.C. RSA-3 Cellular Telephone Company (Joint Petitioners) filed a generic proceeding pursuant to the legislation cited above seeking an Order from the Commission exempting cellular carriers from regulation under Chapter 62 of the General Statutes (Joint Petition).

On May 31, 1991, the Attorney General filed Preliminary Comments requesting that the comment period be set for 45 days, that notice be given by newspaper publication and by bill insert and suggesting that it was too soon for the Commission to give up its regulatory authority over cellular service complaints. The Attorney General suggested that the Commission follow the model of Electric Membership Corporations (EMCs) with respect to the retention of complaint jurisdiction.

On June 7, 1991, the Public Staff filed a response to the Preliminary Comments of the Attorney General. The Public Staff argued that the EMC model suggested by the Attorney General was inappropriate for cellular carriers, that the FCC has provided for competitive services in each cellular service area and urged the Commission not to retain complaint jurisdiction over cellular carriers.

On June 10, 1991, the Joint Petitioners filed a Reply to the Preliminary Comments of the Attorney General opposing the suggestions made by the Attorney General.

On June 19, 1991, the Commission issued an Order Requiring Public Notice seeking comments by interested parties with respect to the petition. The Order provided a 30-day period within which interventions and comments were to be received.

On July 11, 1991, Carolina Telephone and Telegraph Company filed a Petition to Intervene in this docket. This petition was allowed by Order dated July 17, 1991.

On July 22, 1991, the Joint Petitioners filed a motion requesting that the Commission accept as sufficient the notice published in four newspapers, which

notice did not strictly conform to the Commission's Order Requiring Public Notice. The Joint Petitioners' motion was allowed by the Commission on July 30, 1991.

On August 2, 1991, the Attorney General filed a Motion for Hearing in this docket.

On August 5, 1991, the Public Staff filed Comments recommending that the Commission approve the petition and deregulate cellular service.

On August 6, 1991, the Attorney General filed a Request for an Extension of Time to make comments through and including September 6, 1991.

On August 7, 1991, the North Carolina Cellular Association (NCCA) filed a Petition to Intervene, Preliminary Comments and a Request for Hearing and Request for an Extension of Time to File Comments. In its comments, the NCCA opposed the relief sought by the Joint Petitioners.

On August 9, 1991, the Joint Petitioners filed a Response. In their response, the Joint Petitioners opposed the NCCA petition to intervene, responded to the NCCA comments and opposed the motions by the NCCA and the Attorney General for a hearing in the docket and an extension of time to file comments.

On August 13, 1991, the Commission allowed the NCCA petition to intervene and extended the time for comments to Friday, September 6, 1991.

On September 6, 1991, Eastern Radio Services, Inc., filed a Petition to Intervene, Preliminary Comments and Request on Procedure. In its petition, Eastern Radio urged the Commission to grant the relief sought by the Petitioners and requested the Commission to determine that there was no need for a hearing in this docket. Eastern Radio's petition to intervene was granted by the Commission on September 17, 1991.

On September 26, 1991, the Commission issued an Order Setting Hearing ordering that a hearing be conducted and that it commence on November 20, 1991.

On October 31, 1991, the Commission issued an Order Setting Date for Rebuttal Testimony requiring that parties prefile any rebuttal testimony no later than Friday, November 15, 1991.

On November 4, 1991, the NCCA filed a Motion to Continue and a Motion to Enlarge the Scope of the Proceeding. The NCCA requested that the Commission extend the time within which to prefile testimony by 60 days and continue the hearing to a later date. With respect to scope, NCCA argued that the Commission should enlarge the scope of the proceeding to determine whether bundling of cellular customer premises equipment (CPE) with cellular transmission service is lawful and in the public interest.

On November 5, 1991, Centel Cellular Company, one of the Petitioners, filed a response opposing the NCCA Motion to Continue and Motion to Enlarge the Scope of the Proceeding. On the same date, the remainder of the Joint Petitioners filed a response opposing both NCCA motions. On November 6, 1991, the NCCA filed

a Reply to the responses filed by the Joint Petitioners. On that date, the Attorney General filed a separate Motion to Continue and to Enlarge the Scope of the Proceeding supporting the NCCA motions of November 5, 1991.

On November 7, 1991, the Commission issued an Order Denying Motion to Continue and Addressing Scope. The Commission's Order granted the NCCA an extra week in which to prefile testimony of all of its witnesses and postponed until the week after the commencement of the hearing the time for hearing testimony by the NCCA expert witness. The Commission concluded that the scope of the hearing should not be enlarged to the extent requested by the NCCA and Attorney General. However, the Commission ordered that the effect of bundling without a tariff filing could be considered at the hearing. In its Order, the Commission also propounded the following four questions concerning Wide Area Call Reception (WACR) authority:

a. Whether under the Joint Petitioners' proposal cellular companies offering WACR will continue to need to obtain authority from the Commission to do so.

b. Whether under the Joint Petitioners' proposal cellular companies utilizing IXCs for long-distance cellular traffic but which charge their customers more than a pass-through amount will continue to need or obtain authority from the Commission to do so.

c. Whether under the Joint Petitioners' proposal cellular companies offering WACR over their own facilities should still be forbidden to carry non-WACR traffic over those facilities.

On November 15, 1991, the Commission issued an Order Concerning Rebuttal Testimony rescinding its October 31, 1991, Order on rebuttal testimony and requiring the Joint Petitioners to file rebuttal testimony by November 22, 1991.

On November 15, 1991, the NCCA filed a Motion for Reconsideration of Order Addressing Scope. Citing several FCC cases, the NCCA argued that the practice of bundling was prohibited by the FCC and that the states are preempted by the FCC from permitting bundling. While acknowledging that the Commission had approved several bundled cellular tariffs, the NCCA argued that merely allowing these tariffs to become effective was not in and of itself a determination by the Commission that bundling is lawful in North Carolina.

On November 19, 1991, the Joint Petitioners filed response to the questions propounded by the Commission in its November 7, 1991, Order.

The hearing commenced on November 20, 1991. The Commission first heard oral argument on the NCCA motion for reconsideration. The motion was denied.

The Attorney General offered the following public witnesses: Mr. Ole Madsen, Ms. Judy Ward, Ms. Lisa Burney, Mr. Charles G. England, and Mr. Rod Birdsong.

Thereafter, the following witnesses offered testimony and exhibits on behalf of the Joint Petitioners: Mr. Dwayne R. Nichols, Vice President and General

Manager of Snyder Telecom, Inc.; Mr. Donald E. Steely, Senior Vice President - Administration of ALLTEL Mobile Communications, Inc.; Michael F. Altschul, Esquire, General Counsel, Cellular Telecommunications Industry Association; Mr. Russell E. Patridge, Vice President/General Manager, GTE Mobilnet-Southeast; Mr. Jack Plating, Vice President, Southeast Region, Metro Mobile CTS of Charlotte, Inc.; Mr. Robert M. Curran, Regional Vice President, Centel Cellular Company; Mr. Randy Jenkins, Director of Partnership Relations and Regulatory Affairs, United States Cellular Corporation; and Dr. Jerry A. Hausman, Professor of Economics, Massachusetts Institute of Technology.

Mr. Jack Bailey, President of Eastern Radio Services, testified on behalf of Intervenor Eastern Radio.

Ms. Lynn Ward, Sales Representative/General Manager, Car Phones Incorporated; Mr. Allen L. Guin, Jr., Two-Way Radio of North Carolina, Inc.; Mr. Tony Lilley, Car Cellular, Inc.; and Dr. J. Carl Poindexter, Professor of Economics, North Carolina State University, all testified on behalf of Intervenor NCCA.

Ms. LuAnn Lenz testified on behalf of the Public Staff Communications Division.

Witnesses Curran, Patridge and Hausman offered rebuttal testimony on behalf of the Joint Petitioners.

The hearing recessed on Friday, November 21, 1991, and reconvened on Tuesday, November 26, 1991, for the purpose of hearing the testimony of Dr. Poindexter and rebuttal testimony of witnesses Currin, Patridge and Hausman. The hearing concluded on November 26, 1991.

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

FINDINGS OF FACT

1. Joint Petitioners are domestic public cellular radio telecommunications service providers licensed by the FCC. Petitioners are certificated by this Commission to offer cellular service within their respective cellular geographic service areas (CGSA).

2. The provision of cellular service in North Carolina is competitive.

3. The bundling of cellular service with cellular CPE is in the public interest, so long as both the CPE and cellular service can also be purchased separately.

4. The exemption of cellular carriers from regulation under Chapter 62 of the North Carolina General Statutes is in the public interest. However, the exemption should not extend to the following matters: (1) the rates, terms and conditions of interconnection between cellular carriers and local exchange companies and other telecommunications services providers regulated by the

Commission and (2) the provision of land-to-land telecommunications services by cellular carriers. The Commission should reserve the right to reassert its jurisdiction over cellular carriers on petition of any interested party for good cause shown.

5. The same exemption from regulation by the Commission afforded cellular carriers should be extended to those who resell cellular service from cellular carriers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding of fact is contained in the filings of the Joint Petitioners. This finding is largely procedural and jurisdictional and was not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The FCC established the two-firm market structure with the objective of ensuring an effective degree of competition while providing for the efficient use of the limited radio spectrum available for cellular service. By definition, a duopoly market is not perfectly competitive. On the other hand, the Commission concludes that the mere fact that a market is a duopoly does not mean that it cannot be effectively competitive. In his testimony, witness Hausman gave examples of market-created duopolies that are very competitive, e.g., the microprocessing industry--Intel and Motorola. Cellular carriers presently have excess capacity (i.e., capacity to handle additional subscribers), and technological innovations (e.g., cell splitting) on the horizon promise continued excess capacity. The Commission believes that these factors promote competition in the duopoly structure.

The Commission concludes that while there is no rote formula for determining whether a market is competitive, there are a number of indicia of competitiveness. The Joint Petitioners presented evidence of competition among cellular carriers on quality, price, and service.

Witness Patridge testified that GTE Mobilnet increased the number of cell sites in its Raleigh/Durham market by 64% in the past two years and that this level of increase was typical of the five other GTE Mobilnet markets in North Carolina. The cost of these sites and other capital investment in its network in North Carolina resulted in a total investment by GTE of $24 million in 1991 in the southeast region. (North Carolina represents 75% of GTE's southeast region.) Witness Patridge testified that this investment was necessary to improve the quality of GTE's cellular service. He testified that this investment was motivated by competitive factors. The Commission believes that this and other testimony is evidence of competition in the area of service quality within the cellular service industry.

With respect to price competition, witness Hausman testified that he had conducted a study of cellular prices in North Carolina and found them to be competitive. The NCCA agreed that current cellular service prices in North Carolina are competitive. Cellular carriers compete by way of special promotions which offer discounts on cellular service. The increase in the number of price plans offered by cellular carriers is further evidence of price competition. The fact that some cellular carriers discount cellular CPE as an incentive to

prospective customers is also evidence of price competition. Despite the contention by the NCCA and the Attorney General that there is no head-to-head price competition in cellular service, witness Patridge testified that GTE lowered its prices in 1991 in direct response to new service plans introduced by its competitor, Centel Cellular.

Witness Poindexter offered evidence purporting to show that cellular service prices in North Carolina are closely matched and testified that closely matched pricing indicated an absence of price competition. Witness Guin also testified that cellular service prices tracked each other, but offered no evidence to support his testimony. By way of refutation, Joint Petitioners' expert witness Hausman testified that closely matched pricing is to be expected where services are close substitutes and consumers can switch firms as, for example, in the case with Coke and Pepsi, two soft drinks which are close substitutes and similarly priced. If one company raises its prices significantly, it will likely lose customers who will choose the less expensive substitute. The Commission concludes that there is effective price competition among cellular carriers.

Customer service is another area in which cellular carriers compete. There was testimony from the carrier panel that the cost of obtaining a new customer is as much as $300. Unless the customer remains a subscriber for an extended period, the company cannot recover this investment. Accordingly, cellular carriers devote substantial effort and resources to maintaining customer satisfaction. Notwithstanding these efforts, the incidence of customer "churn" (customers switching from one firm to another) is significant. Witness Hausman testified that the industry-wide percentage was as high as 25%. The Commission believes that this is an indication that customers are availing themselves of their right to choose between carriers. The Commission concludes that there is competition among cellular carriers in the area of customer service.

Motorola is the only reseller of cellular service currently active in North Carolina. The NCCA witnesses contended that the absence of an active reseller market in North Carolina is evidence of a lack of competition in the cellular industry in North Carolina and maintained that a price spread between cellular wholesale and retail prices must be mandated before effective reseller competition can exist. However, the Commission finds more persuasive witness Hausman's testimony that the success of resellers is determined purely by the size of the market and is not dependent upon the existence of the mandated price spread. Moreover, there is free access entry to cellular markets by resellers. The Commission concludes that the absence of resellers in North Carolina does not indicate a lack of competition in cellular service.

The evidence was undisputed that two cellular carriers were certificated and operating in all MSAs and more than half of the RSAs. Over 70% of the State's population is represented in these MSAs and RSAs. Witness Altschul testified that the FCC licensing procedure caused a delay in North Carolina RSAs going into service. The Commission takes judicial notice of an FCC Public Notice dated December 17, 1991, announcing that a construction permit has been issued to a non-wireline applicant in RSA NC-4. This market is one of the RSAs in which only a single carrier was licensed at the time of the hearing on this docket. The Commission believes that it is inevitable that both licensed cellular carriers will be operating in all North Carolina RSAs within a matter of months. Witness Hausman testified that the imminence of competition from a second carrier would serve as a strong influence against monopolistic behavior by carriers operating

in markets where the second carrier has not yet been licensed. The Commission does not believe that the statute requires a finding that there are two facilities-based cellular carriers in service in every MSA and every RSA before it can find that cellular service is competitive. Rather, it is sufficient that most areas are being served by at least two carriers and an inexorable process is underway by which the rest will be served in the near future.

After careful consideration of the arguments and evidence presented at the hearing, the Commission concludes that the provision of cellular service in North Carolina is competitive. This conclusion is consistent with the Commission's December 6, 1991, Order Allowing Tariffs in Docket No. P-190, Sub 6, and related dockets wherein the Commission concluded that packaging tariffs are in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

A central point in the NCCA's argument against deregulation is that it will lead to widespread bundling and that bundling is against the public interest. Because of the attention it received throughout the proceedings, the Commission deems it appropriate to make a separate finding of fact regarding bundling. At the hearing, consideration of the issue was limited to whether bundling in the absence of regulation is in the public interest.

Three terms were used during the course of the hearing in connection with this issue--bundling, packaging and tying. All three terms have to do with the joint provision of cellular CPE and service. Tying is distinguished from bundling or packaging. Under a tying arrangement, a consumer may only purchase the service by also purchasing the CPE. It was uncontested during the hearing that, with the joint provision of cellular CPE and service, consumers may purchase either CPE or service independently. Thus, there is no evidence of unlawful tying CPE and service in this docket. As between the terms bundling and packaging, the Commission believes that the term "packaging" most accurately describes the joint provision of CPE and service in North Carolina.

The Commission concludes that the principal effect of packaging is to reduce costs to consumers and offer a wider array of choices and prices to them. The Commission believes that packaging, without regulation, is unlikely to lead to anti-competitive or predatory behavior by cellular carriers. The Commission concludes that there is no evidence of anti-competitive cross-subsidization in the cellular service industry in North Carolina. Such price discrimination as may be associated with packaging is no different than that which is associated with discount sales or special promotion activity in other areas of commerce. The Commission believes that the motivation for packaging is competition within the cellular service industry.

The Commission concludes that term contracts for cellular service and the associated penalties for early termination are not anti-competitive or against the public interest. Again, such arrangements are common in commerce. There are penalties associated with early termination of leases, early withdrawal of funds deposited in certificates of deposit and so on. The overriding fact remains that consumers retain the right of choice in selecting cellular service and CPE, either on a joint basis or separately. Likewise, a consumer may choose to sign a term contract for service or receive service on a month-to-month basis.

Independent agents, such as NCCA's membership, and mass retailers of cellular CPE are beyond the purview of this Commission. The effect of the relief sought by the Joint Petitioners on agents and retailers is not a factor which may be considered by the Commission in this proceeding, except as it bears on the competitiveness of cellular service and the public interest. The Commission does not believe that the effect of deregulation on these businesses--whatever it may be--affects either of the statutorily prescribed criteria which the Commission must consider in this proceeding. Prohibiting packaging, as requested by the NCCA, would be anti-competitive and would result in higher CPE prices being paid by consumers.

Although the NCCA cited the FCC Notice of Proposed Rulemaking in CC Docket No. 91-34, In the Matter of Bundling of Cellular Customer Premises Equipment and Cellular Service, this proceeding offers little comfort to those opposing bundling. The Notice of Proposed Rulemaking states at several places that the cellular equipment market is extremely competitive both locally and nationally. Indeed, the Notice identified benefits:

> . . .[W]e tentatively conclude that there may be significant public interest benefits associated with bundling of cellular service and CPE. . .[B]undling or packaging of cellular CPE and cellular service and discounting practices can benefit consumers by offering them an expanded choice of goods and services at reduced cost. This, in turn, could encourage others to respond by developing innovative marketing practices as well, thus stimulating further competition in the cellular industry. Such competition would ultimately benefit consumers (Notice at 3).

The Commission concludes that tying arrangements are anti-competitive and not in the public interest. The Commission also concludes that, so long as consumers have the right to purchase service and CPE independently, packaging is in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commission believes that exempting cellular carriers from regulation under the framework discussed below will increase the degree of competition. The elimination of the notice and filing requirements for tariff changes and new service offerings will give carriers more freedom to offer special promotions and discounts--in effect sales--and to experiment with different pricing strategies. Witness Steely testified that as the level of this activity increases by one carrier, it will likely be met by the competition from other cellular carriers. The Commission believes that the benefactor will be the using and consuming public for whom the range of choices will increase.

Both witness Hausman's econometric study and the testimony and exhibits offered by witnesses Patridge and Curran indicate that cellular prices are lower in unregulated states than in fully regulated states. Witnesses Jenkins and Curran testified that the cost of providing service was less in deregulated states. This fact was confirmed by witness Lilley's testimony. While cellular prices in North Carolina are presently competitive, the Commission concludes that exempting carriers from regulation holds the prospect for even lower prices for North Carolina consumers in the future.

While the cellular industry is experiencing tremendous growth, especially with the addition of the RSAs, the Commission concludes that cellular service is a nonessential, discretionary service. While the Commission can certainly not predict the future, a cellular phone is not yet a necessity of life in modern society, such as basic local exchange telephone service. Accordingly, the nature of the service itself does not alone warrant continued regulation by this Commission.

The Commission further concludes that retention of complaint jurisdiction over cellular carriers is not necessary to protect the public interest. Many of the complaints about cellular carriers have been about matters over which the Commission presently has no jurisdiction, i.e., the quality of reception or effective coverage range. These matters fall within the exclusive jurisdiction of the FCC. Other compliance-type complaints concerning advertising or tariff matters would be eliminated and would be unnecessary under the framework outlined below. Consumers of cellular services will have available all of the usual remedies open in the competitive marketplace--the Better Business Bureau, the courts, and the Consumer Protection Division of the Attorney General's Office. Of even greater significance is the fact that consumers of cellular service will have available to them a remedy not available to consumers of monopoly services, they may choose another service provider.

The Commission concludes that cellular carriers should be exempt from all regulation by the Commission under Chapter 62 of the North Carolina General Statutes with the following exceptions:

1. The rates, terms, and conditions of interconnection between cellular carriers and local exchange companies and other telecommunications service providers regulated by the Commission; and,

2. The provision of land-to-land telecommunications services by cellular carriers.

Under this framework, certificates of public convenience and necessity will no longer be required by cellular carriers. No authority will be required from this Commission for cellular carriers to offer WACR or to resell long-distance service to their cellular customers. Cellular carriers will be exempt from all Commission rules concerning deregulated matters. Cellular carriers offering WACR service will continue to be obliged to pay access charges to LECs pursuant to their access tariffs in accordance with the Commission's Order in Docket No. P-100, Sub 109. Likewise, cellular carriers will continue to be governed by the provisions of the Commission's Order concerning interconnection between cellular carriers and the LECs contained in Docket No. P-100, Sub 79.

Cellular service is a rapidly growing industry and technological developments may dramatically affect it and other telecommunications services in the future. Accordingly, the Commission concludes that it should retain the right to reassert its jurisdiction over cellular carriers at any time upon petition of any interested party for good cause shown. While the Commission is satisfied that the public interest will best be served at the present time by lifting regulation of cellular carriers, retaining the right to reassert jurisdiction will ensure that the Commission is in a position to act if, in the future, competitive forces are not adequate to protect the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The Commission concludes that the exemption from regulation outlined above should be extended to resellers of cellular service. There is presently only one active reseller in North Carolina. However, in a deregulated environment, other resellers may find North Carolina markets attractive. The legislation under which this proceeding was initiated did not directly address resellers. However, after having found that cellular service is competitive and that deregulation is in the public interest, the Commission concludes that the legislative purpose would be frustrated were the Commission's exemption Order not extended to resellers and that it would be anomalous and illogical to regulate an entity reselling a deregulated service.

IT IS, THEREFORE, ORDERED as follows:

1. That effective as of the date of this Order all cellular carriers and cellular resellers be, and hereby are, exempt from all regulation by the North Carolina Utilities Commission pursuant to Chapter 62 of the North Carolina General Statutes except as provided below:

a. Cellular carriers shall continue to be regulated by this Commission with respect to the rates, terms, and conditions of interconnection between cellular carriers and local exchange companies and other telecommunications service providers regulated by the Commission.

b. The provision of land-to-land telecommunications services by cellular carriers, if any, shall continue to be regulated by the Commission.

2. The Commission retains the right to reassert its jurisdiction over cellular carriers at any time upon petition of any interested party for good cause shown.

3. That cellular carriers with applications for certificates of public convenience and necessity or other matters now deregulated file motions with the Commission to terminate these dockets.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 116

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Establish Classifications For Radio Common Carriers and Cellular Communications Licensees	)	ORDER ADOPTING PROPOSED RULE R16-1 AND WITHDRAWING PROPOSED RULE R17-1

BY THE COMMISSION: On November 20, 1991, the Commission, on its own motion, issued an Order instituting a rulemaking proceeding to establish classifications for radio common carriers (RCCs) and cellular communications licensees (CCLs) for the purpose of assessing fees and charges pursuant to G.S. 62-300.

Based upon consideration of the current revenue distribution which exists among the RCCs and the CCLs operating in North Carolina, the Commission initially proposed the following classifications: (1) the RCCs were proposed to be categorized using classifications that would be similar to the current National Association of Regulatory Utility Commissioners (NARUC) classifications for water and sewer companies and (2) the CCLs were proposed to be categorized using classifications that would be similar to the current NARUC classifications for electric and gas companies.

In its November 20, 1991 Order, the Commission requested the Public Staff and the Attorney General to file comments on these proposals. By January 6, 1992, both the Public Staff and the Attorney General filed comments in this docket. The Attorney General stated that it had no reason to contest the Commission's proposed classifications. The Public Staff, however, commented that it could see no regulatory need to distinguish between these two classes of radio common carrier. The Public Staff suggested that both non-cellular RCCs and CCLs should be categorized under the classification proposed by the Commission for CCLs.

On December 19, 1991, the Commission received a petition to intervene from Asheville Metronet, Inc., d/b/a Cellular Services of Asheville; Carolina Metronet, Inc.; Fayetteville Cellular Telephone Company; GTE Mobilnet Sales Corp.; Jacksonville Cellular Communications; Triad Metronet; and Wilmington Cellular Communications, Inc., d/b/a Cellular One. These petitioners stated that they are all CCLs and thus have a substantial interest in the subject matter of this proceeding.

On January 6, 1992, the Commission received a petition to intervene from the North Carolina Cellular Association, Inc. (NCCA). NCCA stated in its petition that it was in favor of establishing classifications for CCLs for the purpose of assessing fees and charges pursuant to G.S. 62-300.

On January 16, 1992, the Commission issued an Order that revised its original proposed rules to agree with the Public Staff recommendation that the classifications for both the RCCs and CCLs should be categorized using classifications that would be similar to the current NARUC classifications for electric and gas companies. In that Order, the Commission allowed the RCCs and CCLs under its jurisdiction to file comments on the proposed new Rules R16-1 and R17-1 and stated that if no written objections were filed within 30 days of the Order issuance date, the proposed Rules would be approved by further Order.

On February 19, 1992, Centel Cellular Company and its North Carolina operating subsidiaries and affiliates filed a letter stating that it had earlier planned to intervene in this matter, but found it now unnecessary in view of the Commission's issuance on February 14, 1992, of its Order Exempting Domestic Public Cellular Radio Telecommunications Service Providers From Regulation (cellular deregulation Order).

Other than the filings in this docket made by the CCLs as previously noted herein, the Commission received no comments or other filings in this regard.

In view of the Commission's issuance on February 14, 1992, of its cellular deregulation Order, the Commission finds that at this time it would be appropriate to withdraw from consideration our proposed Rule R17-1 relating to the establishment of classifications for CCLs. It should also be noted that exceptions and notice of appeal were filed in regard to the February 14, 1992 cellular deregulation Order by the Attorney General. However, on March 12, 1992, the North Carolina Court of Appeals (Court of Appeals) issued a writ of supersedeas temporarily staying the cellular deregulation Order and on May 7, 1992, the Supreme Court of North Carolina vacated the Court of Appeals' stay.

Upon consideration of the fact that no comments were filed in opposition to our proposed new Rule R16-1 relating to establishing classifications for RCCs, the Commission is of the opinion that it should create Chapter 16 in its Rules and Regulations titled "Radio Common Carriers" and that Rule R16-1 should be adopted as shown below in Ordering Paragraph No. 2.

IT IS, THEREFORE, ORDERED:

1. That the Rules and Regulations of the Commission shall be, and hereby are, amended so as to include Chapter 16 titled "Radio Common Carriers".

2. That Rule R16-1 shall become effective on the date of issuance of this Order and shall be as follows:

Rule R16-1. Classifications.

For the purpose of assessing fees and charges pursuant to G.S. 62-300, radio common carriers under the jurisdiction of the North Carolina Utilities Commission shall be divided into four classes, as follows:

Class A: Utilities having annual carrier operating revenues of $2,500,000 or more.

Class B: Utilities having annual carrier operating revenues of $1,000,000 or more but less than $2,500,000.

Class C: Utilities having annual carrier operating revenues of $150,000 or more but less than $1,000,000.

Class D: Utilities having annual carrier operating revenues of less than $150,000.

3. That proposed Rule R17-1 shall be, and hereby is, withdrawn from consideration by the Commission at this time.

4. That a copy of this Order shall be mailed to all the RCCs under the jurisdiction of the Commission and to all other parties of record in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of June 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. W-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Revise Commission Rules and Regulations: R7-35 Relating to Water Utilities and R10-21 Relating to Sewer Utilities	) ORDER AMENDING) RULES R7-35) AND R10-21

BY THE COMMISSION: On November 18, 1991, the Commission, on its own motion, issued an Order instituting a rulemaking proceeding for the purpose of revising its current Rules, R7-35 and R10-21(a), to reflect the adoption of the National Association of Regulatory Utility Commissioners' (NARUC) 1984 Uniform System of Accounts (USOAs) for water and sewer utilities.

The USOAs for all classes of water and sewer utilities was revised by NARUC in 1984. The Commission proposed that Rules R7-35 and R10-21(a) be rewritten to reflect adoption of the 1984 USOAs and also proposed the inclusion of language which would automatically adopt future NARUC revisions of the USOAs unless otherwise ordered by the Commission. Additionally, the Commission recommended that the current language in existing Rule R7-35 which exempts water companies having annual gross operating revenues of less than $10,000 from the USOAs' requirements should be retained and proposed that this same exemption be written into Rule R10-21 for the sewer utilities. The Commission proposed that Rules R7-35 and R10-21(a) be, respectively, rewritten as follows:

Rule R7-35. Uniform system of accounts.

The Uniform System of Accounts for Water Utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners, and all subsequent revisions thereto unless otherwise ordered by the Commission, are hereby adopted by this Commission as the accounting rules of this Commission for water companies and are prescribed for the use of all water utilities under the jurisdiction of the North Carolina Utilities Commission having annual gross operating revenues of $10,000 or more derived from the sales of water, viz:

Uniform System of Accounts for Class A Water Utilities - 1984
Uniform System of Accounts for Class B Water Utilities - 1984
Uniform System of Accounts for Class C Water Utilities - 1984

Rule R10-21. Accounting.

(a) The Uniform System of Accounts for Sewer Utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners, and all subsequent revisions thereto unless otherwise ordered by the Commission, are hereby adopted by this Commission as the accounting rules of this Commission for sewer companies and are prescribed for the use of all sewer utilities under the jurisdiction of the North

Carolina Utilities Commission having annual gross operating revenues of $10,000 or more derived from the sales of sewer service, viz:

Uniform System of Accounts for Class A Sewer Utilities 1984
Uniform System of Accounts for Class B Sewer Utilities - 1984
Uniform System of Accounts for Class C Sewer Utilities - 1984.

In its November 18, 1991 Order, the Commission requested the Public Staff and the Attorney General to file comments on these proposals. By December 31, 1991, the Commission had received comments from both the Public Staff and the Attorney General as requested. The Public Staff stated that the proposed Rules should be adopted. The Attorney General responded that it did not oppose the Commission's proposed amendments.

On January 31, 1992, the Commission issued an Order allowing the water and sewer utilities under its jurisdiction to file comments on the proposed new Rules R7-35 and R10-21(a). The Order also stated that if no written objections were filed within 30 days of the Order issuance date then the proposed Rules would be approved by further order of the Commission. No such comments or other filings were received in this regard.

Upon consideration that no comments were filed in opposition to the proposed changes in Rules R7-35 and R10-21(a), the Commission is of the opinion that Rules R7-35 and R10-21(a) should be revised as set forth herein.

IT IS, THEREFORE, ORDERED:

1. That Commission Rules R7-35 and R10-21(a) are hereby amended as set forth in Appendix A attached hereto to become effective on the date of issuance of this Order.

2. That a copy of this Order shall be mailed to all the water and sewer utilities under the jurisdiction of the Commission and to all other parties of record in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of June 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

Revisions in Commission Rule R7-35

The Rule number and title shall remain the same.

The wording of the existing Rule shall be deleted and replaced with the following:

The Uniform System of Accounts for Water Utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners, and all subsequent revisions thereto unless otherwise ordered by the Commission, are hereby adopted by this Commission as the accounting rules of this Commission for water companies

and are prescribed for the use of all water utilities under the jurisdiction of the North Carolina Utilities Commission having annual gross operating revenues of $10,000 or more derived from the sales of water, viz:

Uniform System of Accounts for Class A Water Utilities - 1984
Uniform System of Accounts for Class B Water Utilities - 1984
Uniform System of Accounts for Class C Water Utilities - 1984.

Revisions in Commission Rule R10-21

The Rule number and title shall remain the same.

The wording of part (a) of the existing rule shall be deleted and replaced with the following:

(a) The Uniform System of Accounts for Sewer Utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners, and all subsequent revisions thereto unless otherwise ordered by the Commission, are hereby adopted by this Commission as the accounting rules of this Commission for sewer companies and are prescribed for the use of all sewer utilities under the jurisdiction of the North Carolina Utilities Commission having annual gross operating revenues of $10,000 or more derived from the sales of sewer service, viz:

Uniform System of Accounts for Class A Sewer Utilities - 1984
Uniform System of Accounts for Class B Sewer Utilities - 1984
Uniform System of Accounts for Class C Sewer Utilities - 1984.

The wording of part (b) of the existing rule shall remain as currently written.

DOCKET NO. E-2, SUB 599

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Armando Gentile, Lonesome Pine Road, Whitakers, North Carolina 27891, Complainant	)	
v.	)	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER
Carolina Power & Light Company, Respondent	)	

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 28, 1992, at 9:30 a.m.

BEFORE: Chairman William W. Redman, Jr., Presiding; and Commissioners Sarah Lindsay Tate, Julius A. Wright, Robert O. Wells, Charles H. Hughes, Laurence A. Cobb, and Allyson K. Duncan

APPEARANCES:

For the Complainant:

Armando Gentile, Pro Se, Lonesome Pine Road, Whitakers, North Carolina 27891

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 Respondent:

Len S. Anthony, Carolina Power & Light Company, 411 Fayetteville Street Mall, Raleigh, North Carolina 27602

BY THE COMMISSION: On December 4, 1991, Commission Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket denying the complaint filed by Mr. Armando Gentile (Complainant) against Carolina Power & Light Company (CP&L or Respondent).

On December 11, 1991, the Complainant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

On December 18, 1991, the Commission entered an Order in this docket scheduling an oral argument for January 28, 1992, to consider the Complainant's exceptions.

On December 23, 1991, CP&L filed a response in opposition to the Complainant's exceptions.

Upon call of the matter for oral argument at the appointed time and place, the Complainant appeared pro se and the Public Staff and CP&L were represented by counsel. The Complainant and CP&L offered oral argument.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon a careful consideration of the entire record in this proceeding, the Commission finds good cause to affirm the Recommended Order and deny the Complainant's exceptions. The alternative proposals made by CP&L are reasonable based upon the facts established at the hearing in this matter and are in accordance with the Commission's rules and the filed tariffs. The Complainant has failed to offer justification which would require the Commission to reach a contrary conclusion. The Commission agrees with the Hearing Examiner that the Complainant has not complied with the appropriate Nash County regulations and obtained an electrical permit to install electric service to serve and/or construct a residence (or any other buildings) on the property in question except the permit relating to the plug-in type pump. The ability to obtain the requisite permit or permits is wholly within the Complainant's control. Neither CP&L nor this Commission can waive any such permitting requirement. Therefore, Mr. Gentile's complaint must be denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the Recommended Order entered in this docket on December 4, 1991 be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the exceptions to the Recommended Order filed by Armando Gentile on December 11, 1991, be, and the same are hereby, overruled and denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-2, SUB 605

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joe R. Ellen, Jr., d/b/a/ Rocky River Power Plant, 4720 Rembert Drive, Raleigh, North Carolina 27612, Complainant
v.
Carolina Power & Light Company, Respondent

ORDER DENYING COMPLAINT

HEARD: February 25, 1992, in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27626-0510

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Lawrence A. Cobb and Robert O. Wells

APPEARANCES:

For the Using and Consuming Public:

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

For Carolina Power & Light Company:

Len S. Anthony, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

BY THE COMMISSION: By letter dated June 19, 1991, the Complainant, Joe R. Ellen, Jr., d/b/a Rocky River Power Plant, filed a formal Complaint against Carolina Power & Light Company (CP&L). The Complainant, a small power producer, asked the Commission to order CP&L to convert him from the variable avoided cost energy rate he contracted for in June 1982 to the fixed 15-year avoided cost energy rate that was in effect at that time. The Complainant asserts that he relied to his detriment on certain CP&L fuel cost forecasts and that he was told he would have to obtain a surety bond in order to contract for a fixed rate.

On July 15, 1991, CP&L filed its Answer to the Complaint. In its Answer CP&L denied the pertinent allegations of the Complaint and requested the Commission to dismiss the Complaint.

On July 30, 1991, the Complainant filed his Reply to the Answer of CP&L in which he stated that CP&L's Answer was not satisfactory and requested a public hearing.

By Order dated August 7, 1991, the Commission scheduled a public hearing.

On August 20, 1991, CP&L filed a Motion for Summary Judgment. On September 4, 1991, the Public Staff filed its Response to CP&L's Motion for Summary Judgment. By Order dated September 9, 1991, the Commission required all parties to file briefs and continued the hearing pending further order on CP&L's Motion for Summary Judgment.

By Order dated January 24, 1992, the Commission denied CP&L's Motion for Summary Judgment and scheduled a hearing for February 25, 1992.

On February 20, 1992, the Public Staff filed a Motion for Leave to Amend the Complainant's Complaint. In the proposed amendment the Complainant asserts that he has been double billed for certain services provided by CP&L since 1982. CP&L did not oppose the Public Staff's Motion.

The case was called for hearing at the time and placed indicated above. The Complainant presented the testimony of Joe R. Ellen, Jr. and Frank Kelly. CP&L presented the testimony of G. Wayne King, Director of Rate Studies for CP&L.

Based upon consideration of the testimony and exhibits presented at the hearing and the entire record in this matter, the Commission now makes the following:

FINDINGS OF FACT

1. The Complainant is a citizen and resident of Wake County, North Carolina and is the owner and operator of a small hydroelectric power plant known as the Rocky River Power Company. The Complainant qualifies as a small power producer pursuant to G.S. 62-3(27a) and as a qualifying facility pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA).

2. CP&L is an electric utility organized and operating under the laws of the State of North Carolina for the purposes of generating, transmitting and distributing electric power in its service territory in North Carolina.

3. Each electric utility in North Carolina is required by Section 210 of PURPA to offer purchase available electric energy from small power production facilities which obtain qualifying facility status under Section 201 of PURPA. The rates electric utilities are required to pay such small power producers must reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers.

4. G.S. 62-156 requires the Commission "no later than March 1, 1981, and at least every two years thereafter" to determine the rates to be paid by electric utilities for power purchased from small power producers according to certain standards prescribed therein. Such standards generally approximate those which are prescribed in the Federal Energy Regulatory Commission's regulations regarding the factors to be considered in the determination of an electric utility's avoided cost pursuant to Section 210 of PURPA.

5. Pursuant to the requirements of G.S. 62-156, the Commission held the first avoided cost hearings in the fall of 1980 and established rates to be paid by electric utilities for power purchased from small power producers. The rates established by the Commission as a result of that proceeding consisted of an energy rate and a capacity rate. The energy rate provided small power producers with the option of choosing a variable energy rate or a 5-, 10- or 15-year fixed energy rate. The capacity rate provided small power producers with the option of choosing a 5-, 10- or 15-year fixed capacity rate.

6. On June 1, 1982, the Complainant and CP&L entered into a 15-year contract pursuant to which CP&L would purchase all power produced by the Complainant's hydroelectric power plant. At the time CP&L and the Complainant entered into the contract, the avoided cost rates which were on file with and approved by the Commission were contained in CP&L Rate Schedule CSP-3. However, CP&L agreed to purchase the Complainant's electricity pursuant to a revised rate

schedule which had been filed with the Commission on April 8, 1982, and identified as Schedule CSP-4. The rates in CSP-4 were approximately 30% greater than the comparable rates in CSP-3.

7. The Complainant contracted for the variable energy rate and the fixed 15-year capacity rate. The contract had Rate Schedule CSP-4A attached to it. The rates contained in CSP-4 and CSP-4A were identical.

8. Both the contract signed by the Complainant and the CSP-4A rate schedule attached to the contract advised the Complainant that the variable energy rate would be adjusted from time to time based upon increases or decreases in the approved fuel charge applicable to retail service and upon changes or modifications to the cogeneration and small power producer avoided cost rate schedules.

9. At the time CP&L and the Complainant entered into the contract, CP&L believed that its cost of fuel and the variable energy rate would increase over the life of the contract. CP&L conveyed this information to the Complainant. Both CP&L's variable and fixed energy rates as reflected in CSP-4A were based upon these fuel cost forecasts and CP&L entered into numerous contracts with small power producers who selected a fixed energy rate.

10. In August 1982, as a result of a change in CP&L's approved fuel charge, the Complainant experienced a one percent decrease in his variable energy rate. By letter dated November 16, 1983, the Complainant was notified by CP&L that CP&L did not believe its projected fuel cost would increase as rapidly as had been estimated at the time the Complainant and CP&L entered into the contract. As a result, very early in the term of the contract, the Complainant was placed on notice that the variable energy rate could decrease and that CP&L's fuel cost forecasts may have over-estimated the potential increases in fuel cost. The Complainant should have recognized the fact that CP&L could not and did not guarantee that the projected increases in fuel costs would actually occur.

11. Prior to the Complainant and CP&L entering into the contract, CP&L and the Complainant discussed the possibility and/or prudence of the Complainant obtaining a surety bond in the event he elected to contract for a fixed energy and/or capacity rate. The Complainant was allowed to contract for a 15-year fixed capacity rate without providing CP&L with a surety bond. There is no reasonable basis for Complainant's assertion that if he had selected a fixed energy and/or capacity rate, he would have been required to obtain a surety bond. Neither the contract between the Complainant and CP&L nor CP&L's avoided cost rate schedule contained the word "bond" or in any manner indicated that a small power producer must obtain a surety bond in order to contract for a fixed energy and/or capacity rate.

12. The Complainant failed to establish that his decision to contract for the variable energy rate on June 1, 1982, was the result of a misrepresentation by CP&L. The fuel cost forecasts which were the basis of the variable energy rate in CSP-4A selected by the Complainant were also the basis of the fixed energy rates in CSP-4A. Both CP&L and the Complainant relied upon these fuel cost forecasts. At the time of the contract, the Complainant was made aware of the fact that CP&L could not guarantee the fuel cost projections in question and he was on notice that the variable energy rate would be adjusted to reflect changes in the approved fuel charges as well as the avoided cost rates.

13. The Complainant has known since at least August 1982 (two months after he signed the contract) that the variable energy rate could, in fact, decrease. The statute of limitations for misrepresentation and action on a contract is three years. G.S. 1-52. Thus, even if the Complainant was induced to enter into the contract through a misrepresentation, the statute of limitations has now expired and his claim is barred as a matter of law.

14. The Complainant purchases electricity from CP&L pursuant to CP&L's Small General Service Rate Schedule SGS-76. The electric service purchased by the Complainant is three-phase service. CP&L's currently approved Rate Schedule SGS-76 provides that the monthly rate for three-phase service shall be the charge for single phase service plus $9.00. The monthly interconnection facilities charge the Complainant pays CP&L pursuant to the June 1, 1982 contract does not include the cost of the three-phase meter installed by CP&L which is used to provide electricity by CP&L to the Complainant's hydro power plant. CP&L is prohibited by G.S. 62-139 from charging any customer a greater or lesser charge than that prescribed by the Commission. CP&L is required by law to charge the Complainant the applicable rates set forth in SGS-76, including the $9.00 per month three-phase charge.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

Evidence and Conclusions for Finding of Fact No. 1

The evidence and support for this finding is contained in the testimony of the Complainant in Docket No. E-100, Subs 57 and 59 which, upon agreement of all parties, was made a part of the record in this proceeding. This finding is also supported by cross-examination hearing Exhibit No. 1 (the contract entered into between CP&L and the Complainant on June 1, 1982).

Evidence and Conclusions for Finding of Fact No. 2

The evidence for Finding of Fact No. 2 is essentially informational, procedural, and jurisdictional in nature and is not controversial.

Evidence and Conclusions for Findings of Fact Nos. 3 and 4

Findings of Fact Nos. 3 and 4 describe the state and federal laws relevant to the Complainant's complaint, i.e, the Public Utility Regulatory Policies Act of 1978 and G.S. 62-156. These findings are essentially procedural and jurisdictional in nature and are not controversial.

Evidence and Conclusions for Finding of Fact No. 5

The evidence for this Finding of Fact is contained in the Commission's Order issued on September 21, 1981, in Docket No. E-100, Sub 41, the testimony of CP&L witness Wayne King and in cross-examination hearing Exhibit No. 1 (the contract entered into between the Complainant and CP&L on June 1, 1982). This finding is essentially informational in nature and is not controversial.

Evidence and Conclusions for Findings of Fact Nos. 6 and 7

The evidence supporting these Findings of Fact is found in cross-examination hearing Exhibit No. 1 (the contract entered into between CP&L and the Complainant

on June 1, 1982), the testimony of the Complainant and the testimony of CP&L witness Wayne King. The contract reflects that it was signed on June 1, 1982, and indicates that it is for a 15-year term, June 1, 1982, through June 1, 1997. Witness King explained in his testimony that on the very day that the Complainant and CP&L entered into the contract, the Commission approved new avoided cost rates which were set forth in CP&L rate schedule CSP-3. Witness King further explained that subsequent to the filing of CSP-3 by CP&L, but prior to the Commission's approval of these rates, CP&L filed a new avoided cost rate schedule in April 1982, which was identified as CSP-4. The rates contained in CSP-4 were approximately 30% higher than the comparable rates in CSP-3. Witness King testified that because CP&L felt the avoided cost rates in CSP-4 were more representative of CP&L's actual avoided cost at that time, CP&L agreed to purchase the Complainant's electricity pursuant to the rates set forth in CSP-4. The Complainant contracted for the variable energy rate contained in CSP-4 and the fixed 15-year capacity rate. The rate schedule attached to the contract was identified as CSP-4A. The rates contained in CSP-4A were identical to the rates contained in CSP-4.

Evidence and Conclusions for Finding of Fact No. 8

The evidence for this Finding of Fact is contained in cross-examination hearing Exhibit No. 1 (the contract entered into between the Complainant and CP&L on June 1, 1982), the rate schedule identified as CSP-4A which was attached to the contract, the testimony of the Complainant and the testimony of CP&L witness Wayne King.

Paragraph 11 of the contract states that

> The increase or decrease in the approved fuel charge applicable to retail service and adjusted to time-of-day shall apply to all Energy Credits under the Variable Rate provision of Schedule CSP-4A. Whenever the North Carolina Utilities Commission approves a fuel cost adjustment for retail service, the Variable Rate for Energy Credits will be adjusted correspondingly, with such adjustment to take effect at the same time as the adjustment approved by the Commission for retail service.

The contract also stated

> This Agreement and the attached applicable Schedule, Riders, and Terms and Conditions are subject to changes or substitutions, either in whole or in part, made from time to time by legally effective filing of the Company with, or by order of, the regulatory authority having jurisdiction, and each party to this agreement reserves the right to seek changes or substitutions, in accordance with law, from such regulatory authority. Unless specified otherwise, any changes or substitutions shall become effective immediately and shall nullify all prior provisions and conflict therewith.

Schedule CSP-4A, which was attached to the contract, stated that the variable energy rate "will be adjusted for approved fuel charges" and that "the increase or decrease in the approved fuel charge applicable to retail service and adjusted

to time-of-day shall apply to all Energy Credits under the Variable Rate provision of the schedule." CSP-4A also contained a provision entitled "Rate Updates" which stated

> Sellers who have contracted for the Fixed Long Term Rates will not be affected by updates in the Energy and Capacity Credits until their rate term expires, however, upon approval of Cogeneration and Small Power Producers Schedule CSP-4 by the Utilities Commission, either in its entirety or in any modified or rewritten form, Schedule CSP-4A will be superseded and seller will be paid for purchases under the schedule approved by the Commission for the remaining portion of the contract.

As a result, the Complainant was placed on notice at the time he signed the contract that the variable energy rate would be adjusted from time to time over the life of the contract.

Evidence and Conclusions for Finding of Fact No. 9

The evidence supporting this Finding of Fact is found in the testimony of CP&L witness Wayne King and in the testimony of the Complainant in Docket No. E-100, Sub 57. Witness King explained that in 1982 CP&L believed that its cost of fuel and, therefore, the variable energy rate, would steadily increase over the life of the contract. Witness King testified that these fuel cost projections were used as the basis for both the variable energy rate and the fixed energy rates contained in CSP-4A. Witness King explained that CP&L relied upon these forecasts and entered into numerous contracts with small power producers who selected a fixed energy rate. Witness King further explained that CP&L is required by these contracts to continue paying these small power producers pursuant to these fixed energy rates, notwithstanding the fact that fuel costs have not increased as anticipated.

The Complainant testified that CP&L provided him with these fuel cost and variable energy rate forecasts. In Docket No. E-100, Sub 57, he explained that at the time he entered into the contract "we all expected" that fuel costs and the energy rate would indeed increase over the term of the contract. He further explained that

> We all felt that way. None of us realized back in 1982 when I negotiated this contract, when we went on line that fuel would be coming down in a gradual trend during all that time.

As a result, both CP&L and the Complainant relied upon these fuel costs when entering into small power producer contracts.

Evidence and Conclusions for Finding of Fact No. 10

The evidence supporting this Finding of Fact is found in the testimony of CP&L witness Wayne King and in the testimony of the Complainant. Both the Complainant and witness King testified that in August 1982 as a result of a change in CP&L's approved fuel charge, the Complainant experienced a decrease in his variable energy rate. Witness King testified that the decrease was approximately 1%. By letter dated November 16, 1983, which was introduced into evidence and identified as Ellen Exhibit No. 2, CP&L notified the Complainant

that CP&L had reviewed its current projected fuel costs through 1998 and had determined that these costs would not increase as rapidly as had been estimated in 1982 when Mr. Ellen's rates were developed. CP&L further explained in the letter that the rates contained in Mr. Ellen's contract exceeded CP&L's currently projected avoided cost and, therefore, must be revised.

The Complainant testified that he knew as of August 1982 that the variable energy rate might decrease. He further testified that CP&L did not guarantee him "anything" regarding future increases or decreases in the variable energy rates.

Evidence and Conclusions for Finding of Fact No. 11

The evidence for this Finding of Fact is contained in the testimony of CP&L witness Wayne King, the Complainant's testimony, the affidavit of Bobby L. Montague which was accepted into evidence without objection, and the contract entered into between CP&L and the Complainant on June 1, 1982.

Both the Complainant and witness Montague testified that prior to the Complainant and CP&L entering into the contract, CP&L and the Complainant discussed the possibility and/or prudence of the Complainant obtaining a surety bond in the event he elected to contract for a fixed energy and/or capacity rate. Witness Montague explained that although such conversations were held, at no time did he advise the Complainant that if the Complainant wished to contract for either a fixed energy or capacity rate CP&L would require him to obtain a surety bond. The contract between the Complainant and CP&L indicates that the Complainant was allowed to contract for the fixed 15-year capacity rate without obtaining a surety bond. Neither the contract between the Complainant and CP&L nor CP&L's CSP-4A rate schedule, which was attached to the contract, contain the word "bond" or in any matter indicate that a small power producer must obtain a surety bond in order to contract for a fixed energy and/or capacity rate. CP&L witness King verified the fact that the Complainant was allowed to contract for the fixed 15-year capacity rate without obtaining a surety bond.

Evidence and Conclusions for Finding of Fact No. 12

The evidence supporting this Finding of Fact is found in the testimony of the Complainant, the testimony of CP&L witness Wayne King and the contract entered into between the Complainant and CP&L on June 1, 1982.

Witness King testified that CP&L relied upon the same fuel cost forecasts to establish both the variable energy rate and the fixed energy rates in CSP-4A. The Complainant testified that CP&L never guaranteed him that the fuel cost projections in question would actually occur and it is intuitively obvious that the Complainant was aware of the fact that CP&L had no control over and, therefore, could not guarantee the cost of fuel over the next 15 years. CP&L relied, to its detriment, upon the same fuel costs that were relied upon by the Complainant. CP&L has numerous contracts with other small power producers who contracted for the fixed energy rates. Given the fact that CP&L detrimentally relied upon these same forecasts, it is apparent that CP&L did not misrepresent the fuel cost forecasts in question.

Evidence and Conclusions for Finding of Fact No. 13

The evidence for this Finding of Fact is contained in the testimony of the Complainant and G.S. 1-52. The Complainant testified that in August 1982 only two months after he signed the contract, he experienced a decrease in the variable energy rate. As a result, as of that date he was on notice of the fact that the variable energy rate could indeed decrease. Thus, assuming arguendo that CP&L had misrepresented its fuel cost and/or variable energy rate forecasts, the Complainant's cause of action accrued, at the latest, in August 1982. Pursuant to G.S. 1-52, the statute of limitations for misrepresentations and actions on a contract is three years. Therefore, the statute of limitations has now expired and the Complainant's claim is barred as a matter of law.

Evidence and Conclusions for Finding of Fact No. 14

The evidence supporting this finding of fact is found in the testimony of CP&L witness Wayne King, G.S. 62-139 and in CP&L's Small General Service Rate Schedule SGS-76.

Witness King explained that the Complainant not only sells electricity to CP&L, but he also purchases electricity from CP&L pursuant to CP&L's Small General Service Rate Schedule SGS-76. The electrical service purchased by the Complainant is three-phase service. CP&L's currently approved Rate Schedule SGS-76 provides that the monthly rate for three-phase service shall be the charge for single-phase service plus $9.00. Witness King testified that the monthly interconnection facilities charge the Complainant pays CP&L pursuant to the June 1, 1982 contract, does not include the cost of the three-phase meter installed by CP&L to provide electricity to the Complainant's hydro power plant and that all CP&L three-phase customers are subject to the $9.00 three-phase charge.

CP&L is prohibited by G.S. 62-139 from charging any customer a greater or lesser charge than that prescribed by the Commission. The rates contained in SGS-76 are on file with and have been approved by the Commission and CP&L is required by law to charge all customers, including the Complainant, the appropriate rates as set forth in SGS-76.

IT IS, THEREFORE, ORDERED as follows:

1. That the Complainant's complaint filed on June 19, 1991, should be, and is hereby, denied and

2. That the Complainant's amended complaint filed on February 20, 1992, should be, and is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of May 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-7, SUB 474
DOCKET NO. EC-10, SUB 37
DOCKET NO. E-13, SUB 151

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Mrs. Delora Dennis, Route 2, Box 478, Brevard, North Carolina 28712, and Other Customers of Haywood Electric Membership Corporation,
Complainants

v.

Duke Power Company and Haywood Electric Membership Corporation,
Respondents

and

Mr. Thomas W. McGohey and Other Customers of Haywood Electric Membership Corporation, 505 Connestee Trail, Brevard, North Carolina 28712,

v.

Duke Power Company and Haywood Electric Membership Corporation,
Respondent

and

Mrs. Carmeletta Moses, Route 68, Box 326, Tuckasegee, North Carolina 28783,
Complainant

v.

Duke Power Company and Haywood Electric Membership Corporation,
Respondents

and

ORDER REASSIGNING ELECTRIC SERVICE FOR M-B INDUSTRIES PLANTS, PROVIDING TIME TO RESOLVE CUSTOMER COMPLAINTS PURSUANT TO REVISED WORK PLAN, AND REQUIRING PROGRESS REPORTS

Mr. Forrest Cole[1], Route 63, Bull Pen Road, Cashiers, North Carolina 28717, and Other Customers of Haywood Electric Membership Corporation
Complainants

v.

Nantahala Power & Light Company and Haywood Electric Membership Corporation,
Respondents

HEARD IN: Brevard College Auditorium, Brevard, North Carolina on May 21 and 22, 1991

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on August 7 and 8, 1991, and April 30, 1992.

BEFORE: Chairman William W. Redman, Jr.; Commissioners Charles H. Hughes, and Laurence A. Cobb

APPEARANCES:

FOR HAYWOOD ELECTRIC MEMBERSHIP CORPORATION:

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

William I. Millar, General Counsel for Haywood EMC, William I. Millar, P.A., 110 Montgomery Street, Waynesville, North Carolina 28786-1018

FOR N.C. ELECTRIC MEMBERSHIP CORPORATION:

Thomas K. Austin, Associate General Counsel, North Carolina Electric Membership Corporation, Post Office Box 27306, Raleigh, North Carolina 27611

FOR DUKE POWER COMPANY:

W. Larry Porter, Associate General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001

FOR CAROLINA POWER & LIGHT COMPANY:

Len S. Anthony, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602-1551

[1]On December 10, 1991, Mr. Cole's complaint was dismissed at his request.

FOR NANTAHALA POWER & LIGHT COMPANY:

Edward S. Finley, Jr., Attorney at Law, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27612

FOR THE USING AND CONSUMING PUBLIC:

Victoria O. Hauser, Staff Attorney, A. W. Turner, Jr., Staff Attorney, Public Staff - N. C. Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On July 30, 1990, a complaint was filed by Delora Dennis and approximately 640 other customers of Haywood Electric Membership Corporation (Haywood) against Haywood, alleging that they had been receiving inadequate and undependable electric service from Haywood and requesting reassignment to Duke Power Company (Duke). By Order of August 13, 1990, the Commission served the Complaint upon Haywood for a response. Although the Complaint concerned the service of Haywood, the Commission also served the Complaint on Duke as an additional Respondent since the Complainants were seeking service from Duke.

On or about September 12, 1990, the Commission received a complaint by Thomas W. McGohey and approximately 229 other customers of Haywood against Haywood, making similar allegations of inadequate service and requesting reassignment to Duke. By Order of September 28, 1990, the Commission served the additional Complaint on Respondents Haywood and Duke.

By Order of November 29, 1990, the Commission scheduled a public hearing in Brevard on March 19 and 20, 1991.

In January 1991, the Commission received a complaint from Mrs. Carmeletta Moses of Tuckasegee, North Carolina, alleging inadequate service from Haywood. By Order of February 4, 1991, the Commission served the complaint of Mrs. Moses on Respondents Haywood and Duke.

On February 20, 1991, Forrest Cole and approximately 60 other customers of Haywood in the Cashiers, North Carolina, area filed a complaint against Haywood, alleging inadequate or inefficient service from Haywood and requesting reassignment to Nantahala Power & Light Company (Nantahala). By Order of February 24, 1991, the Commission served the Cole et. al. Complaint on Respondent Haywood, and on Nantahala as an additional Respondent since the Complainants were seeking service from Nantahala. On March 20, 1991, the Public Staff filed a request with the Commission to hold an additional public hearing in the Cashiers area. The Public Staff request was denied initially and again upon reconsideration.

On February 4, 1991, the Commission rescheduled the public hearing in Brevard to May 21 and 22, 1991. By Order of March 27, 1991, the additional Complaints were scheduled for hearing with the other Complaints in Brevard on May 21 and 22, 1991.

The North Carolina Electric Membership Corporation (NCEMC), Carolina Power & Light Company (CP&L), and the Public Staff intervened in this proceeding. On May 17, 1991, the Commission entered a Prehearing Order setting forth the procedural schedule to be followed in this docket and ruling on various motions

to strike testimony filed by Haywood and the Public Staff. By that Order, the Commission also denied the Petition to Intervene filed by the National Rural Utilities Cooperative Finance Corporation.

The matter came on for public hearing at the time and place appointed. The following 47 customer witnesses testified against Haywood: James E. Brannigan, Michael Daniel Owen, Carolyn Lund, Herman Greer, Arthur J. Weber, James E. McCall, Florina S. McCall, John H. Sardeson, Ed Morrow, Nina Price, Tracey Watts, James T. Hudson, Lori Beauregard, Terry Raxter, Lori Galloway, Sam and Sharon Owens, Thomas Henry, Abram R. Walker, Carmeletta Moses, Forrest Cole, Terry H. Crowe, Rev. John F. Arnette, Sandra G. Crowe, Ben W. Joyner, Jacqueline Robbins, Betty Sherrill, Gerald Steve McCall, William S. Dennis, Jr., George H. Brank, William D. Rogers, Lloyd Oye, George L. McDermott, Lee Therrien, Robert Magnuson, Richard Rogers, Don Stinchcomb, Myra Howey, Marquita and Bradley Owens, W. H. Mayben, Patricia L. Holden, Emmett Owen, Vickie Robinson, Betty Henderson, Sue Morgan, Delora Dennis, and Thomas W. McGohey.

John Browning, Executive Vice President and General Manager of Haywood, testified on behalf of Haywood regarding policies and procedures and in response to previous complainant testimony. Seven customers testified in support of Haywood: Thera Nix Chapman, Thomas Sweatt, James Crawford Frye, Lorain Zoltan Szabo, Joyce Young, Sidney M. Hatcher, and Marshall E. Welch, Jr.

The Commission Panel adjourned the hearing after the testimony of Mr. Browning with the expressed intention to reconvene in Raleigh, North Carolina, at a later date to hear further testimony. By Order of June 21, 1991, the Commission scheduled further hearing in this docket on August 7, 1991, in Raleigh.

On July 29, 1991, Duke filed the Revised Rebuttal Testimony of William Larry Shepherd. On August 2, 1991, Haywood filed Additional Direct Testimony of John W. Browning and Layne Alan Jordan, as well as affidavits by Willie Garland Wilson and Eddie Hall.

On July 30, 1991, the Commission issued notice of a request by NCEMC to videotape the proceedings. This was allowed over the objection of Duke with the understanding that NCEMC would provide copies to parties who requested it.

The hearing reconvened at the scheduled time and place. The Public Staff served a motion to strike the affidavit of Willie Garland Wilson, which was allowed in part and denied in part. John Browning, Executive Vice President and General Manager of Haywood, testified further on behalf of Haywood. The affidavits of Willie Garland Wilson and Eddie Hall, employees of Haywood, were admitted on behalf of Haywood. Layne Alan Jordan, Haywood's consulting engineer and an electrical engineer at Patterson & Dewar Engineers in Decatur, Georgia, also testified for Haywood.

Gregory L. Booth, Executive Vice President of Booth & Associates, Incorporated, a consulting engineering firm, testified on behalf of NCEMC.

William Larry Sheppard, Manager of Electric Facility Support for Duke Power Company, presented Duke's rebuttal testimony.

At the close of the hearing, the Commission requested NCEMC to produce a document referred to during testimony by its witness. NCEMC subsequently filed a request for reconsideration of that decision, and the request was denied. However, disclosure of the document was limited by Protective Order to the Commission, its staff, the Public Staff, and counsel for the various parties.

On February 13, 1992, Haywood filed with the Commission a 1991-1992 and 1992-1993 Construction Work Plan for the EMC dated December 1991, and advised the Commission that the December 1991 Work Plan was a revision of the two-year construction plan which had been testified to by Haywood witnesses in the August 1991 hearings.

By Order issued March 13, 1992, the Commission scheduled further hearings on April 30, 1992, in Raleigh for the purpose of hearing testimony regarding the revised Construction Work Plan of Haywood.

The hearing reconvened at the scheduled time and place. E.L. Ayers, the new Executive Vice President and General Manager of Haywood, testified on behalf of Haywood. Layne Alan Jordan, consulting engineer to Haywood, also testified for Haywood.

On June 1, 1992, Nantahala filed its comments and objections to portions of the testimony of Layne Alan Jordan which was given at the April 30, 1992, hearing. Nantahala's concerns addressed a proposed tie line between Haywood's Cashiers metering point and Quebec metering point, and a new metering point from Nantahala near Sapphire.

On June 4, 1992, Duke Power filed its objection to a portion of the Haywood work plan as testified to by Mr. Jordan at the April 30 hearing.

On June 16, 1992, Haywood and NCEMC filed their joint response to the objections of Duke and Nantahala to Haywood's revised work plan.

On July 2, 1992, Duke Power filed a comment to the joint response of Haywood and NCEMC. On July 7, 1992, Nantahala filed its reply to the joint response of Haywood and NCEMC.

Prior to, during, and subsequent to the hearings, the parties made various motions and the Commission entered various Orders, all of which are matters of record.

Based upon the evidence adduced at the hearings, the arguments of counsel, and the entire record in this latter, the Commission makes the following:

FINDINGS OF FACT

1. Haywood EMC is a duly constituted electric membership corporation in the State of North Carolina established pursuant to Chapter 117 of the General Statutes of North Carolina. It provides electric service to portions of Buncombe, Haywood, Jackson, Macon, and Transylvania Counties, with the bulk of its service being provided in Haywood and Transylvania Counties.

2. Haywood is subject to the jurisdiction of the North Carolina Utilities Commission under G.S. 62-110.2(d)(2), which gives the Commission the authority to reassign electric service territory from one supplier to another upon a finding that service to a consumer by the electric supplier which is providing the service to that consumer's premises is or will be inadequate or undependable, or that the rates, conditions of service or service regulations, applied to that consumer, are unreasonably discriminatory.

3. Duke, Nantahala, and CP&L are engaged in the generation, transmission, and distribution of electric power to the general public for compensation in North Carolina. They are public utilities as defined by G.S. 62-3 (23)(a)(1) and are electric suppliers as defined by G.S. 62-110.2 (a)(3). The Commission has jurisdiction over the extension of electric power service by these utilities to meet the reasonable needs of the electric consumers on the facts of this case and has jurisdiction over the subject matter of the complaints.

4. This proceeding is before the Commission on petition of certain customers of Haywood for reassignment to other electric suppliers on the grounds that the electric service they receive from Haywood is inadequate and undependable and that the conditions of service and service regulations as applied to them are unreasonably discriminatory.

5. Haywood's customer service is not provided uniformly to its customers. The district office has discretionary power which can be, and is, exercised arbitrarily in responding to customer complaints, deposit procedures, credit checks, disconnect procedures, equal payment plans, and late payments.

6. The complainants have received voltage from Haywood which is outside the voltage standards set by Haywood itself, REA, and this Commission. This includes periods of low voltage, high voltage, and voltage swings.

7. The improper voltage and electric service provided by Haywood has caused, and continues to cause, damage to the complainants, including, but not limited to, damage to heating equipment, water pumps, major electric appliances, and electronic equipment such as TVs, VCRs, computers, telephone answering devices.

8. The complainants have experienced and continue to experience frequent electric service outages. Among the major causes of these outages are:

(a) Haywood's inability to control or mitigate the impact of lightning, storms, planned outages, and similar problems;
(b) Haywood's inadequate and nonuniform line clearing procedures;
(c) Haywood's indifference, or inadequate response, to consumer problem reports;
(d) Haywood's lack of knowledge of customer growth and usage patterns; and
(e) lack of communication and coordination between Haywood and its consultant engineer.

9. The complaints of Haywood EMC against its power suppliers Duke and Nantahala are without merit. There has been no conclusive showing that the power supply to Haywood from Duke or Nantahala has been inadequate. The problems Haywood has experienced in attempting to obtain sources of supply at multiple

distribution level delivery points in difficult terrain, instead of obtaining a reliable transmission level supply, do not absolve Haywood of its responsibility for reliability of service.

10. The revised 1991-93 Construction Work Plan of Haywood substitutes a new tie line between the Quebec substation and the Cashiers metering point for the new transmission line and substation contained in the original work plan, although the details of such a tie line have not been discussed with Duke or Nantahala. Both Duke and Nantahala objected to approval of the tie line without first settling the various issues between Haywood and the suppliers which are raised by the new tie line.

11. Haywood has instituted a new management. Haywood has also prepared and adopted a revised 1991-93 Construction Work Plan which contains improvements that, according to Haywood, will "improve its reliability of service to members through the use of sound engineering and economics judgments."

12. Responsibility for the electric utility service to the M-B Industries plants served by Haywood EMC should be transferred from Haywood to Duke Power Company. One plant is only fifty feet away from Duke's lines, another plant is some 200 yards from Duke's lines, and a sister plant in the same area is already served by Duke with a satisfactory level of service. The load on the troubled Quebec substation of Haywood can be relieved by transferring the M-B Industries plant load from Haywood to Duke, and transfer of the plants to an alternate supplier would make clear to Haywood the Commission's determination to effect a resolution of the Complainants' service problems.

CONCLUSIONS

I. The Commission concludes that the electric service provided by Haywood EMC to the Complainants and to the public witnesses in this proceeding is inadequate and undependable and that Haywood's conditions of service and service regulations, as applied to the Complainants and to the public witnesses, are arbitrary and unreasonably discriminatory.

II. The Commission further concludes that, except for the M-B Industries plants served by Haywood, there should be no reassignment of customers or service territory at this time in order to allow Haywood the opportunity to undertake the improvements to its facilities outlined in its revised construction work plan.

III. With respect to the M-B Industries plants served by Haywood, the Commission concludes that electric service to these plants should be hereinafter furnished by Duke Power Company and that pursuant to the procedures set forth below, Haywood EMC shall cease and desist from supplying electric service to the M-B Industries plants.

Discussion of Evidence and Conclusions

The matters complained of by the Complainants and the public witnesses in this proceeding generally fall into the following categories: voltage levels, outages, tree-trimming practices, connect/disconnect/reconnect policies, complaint investigations and customer relations. Haywood responded to each category of complaints. NCEMC also responded to some complaints on behalf of

Haywood. Duke gave rebuttal testimony regarding its role as a power supply source to Haywood. The testimony of the witnesses will be discussed below under each category of complaint. The Commission first summarizes, however, the testimony of the 47 witnesses who testified against Haywood regarding the problems and their numerous attempts to obtain relief from these problems without satisfactory response by Haywood.

1. James E. Brannigan testified that he had been aware of complaints against Haywood as long as three years ago, and he had been satisfied with Haywood over the years and had problems with them as well. He testified that Haywood had dug a hole for a connection in front of his condominium project eight months previously, that he had fallen in the hole, and that he had called twice to complain about the hole by the time of his testimony.

2. Michael Daniel Owen testified to frequent power interruptions and power surges requiring repairs on his television three different times, as well as dimming and brightening light bulbs that last two weeks at most. He further testified that he had his house regrounded and a power surge protector put on his meter box, which did not improve the outages and surges. When he complained to Haywood that the interruptions were kicking out the reset button on the save device on his hot water heater, he was told that Haywood would remove its device, but he would have to hire an engineer to do the rewiring. He noted that he had notified Haywood of the problems by telephone on at least two occasions. Haywood's solution was to suggest trying another save rate device that would cost Mr. Owen approximately $400 to install. Mr. Owen testified that Haywood had not given him any real response regarding the service interruptions and surges.

3. Carolyn Lund testified that she questioned the accuracy of meter readings since the meter on her parents' house is twelve feet off the ground and the meter reader does not use a ladder.

4. Herman Greer also testified to concerns regarding the meter reading, indicating that the meter reader does not get out of his vehicle and the bill is an estimate. Further, at times the bill was double or triple the actual kilowatts used. Haywood's solution to this complaint was for the larger bill to be paid and an adjustment made on the next month's bill.

5. Arthur J. Weber testified to unsatisfactory service in the Connestee Falls area with numerous outages. He also stated that he had observed his meter reader reading his meter with binoculars from the neighbor's yard.

6. James E. McCall testified that he believed that his house had burned down due to power surges. He further testified that when he requested connection of service in the late 1980's, service was denied until he signed an agreement to repay an unpaid amount from service he had received in the early 1970's at the house that had burned. Mr. McCall signed the agreement but actually paid approximately 3/5 of the amount due.

7. Florina S. McCall testified that she was initially told that she could not regain her deposit because of one past due payment in a year's time. This one payment that was in fact paid late at Haywood's instruction to her due to an underbilling error. She received her deposit after threatening to file a complaint with the Utilities Commission. Ms. McCall also spoke of frequent power interruptions.

8. John Sardeson testified that he had been billed for more kilowatt hours in the month of January when he was not home for 26 days, than he was billed for February when he was home all but 9 days. Haywood refused to adjust the bill on the grounds that Mr. Sardeson had consumed that number of kilowatt hours. Mr. Sardeson noted that Haywood replaced his meter after he questioned his bill although he was told there was no problem with the original meter.

9. Ed Morrow appeared in his capacity as President of M-B Industries in Rosman. Of the three divisions of M-B Industries, Mitchell-Bissell Company (Mitchell-Bissell) and Flame Spray Engineering receive power from Haywood, and Sunbelt Spring and Stamping Corporation (Sunbelt) receives power from Duke. The Mitchell-Bissell plant and the Sunbelt plant are fifty feet apart; the Flame Spray plant is some 200 yards from Duke's lines. Mr. Morrow testified that the Haywood-serviced plants have frequent outages when the Duke-serviced plant does not. He also testified to motor losses due to dips in the voltage and computer module losses due to surges in the voltage. Mr. Morrow spoke of experiencing outages that forced plant shutdowns and early dismissal of employees. He stated that the problems have occurred for several years and that he has frequently tried to get Haywood to improve his service. He has also tried to obtain service from Duke in the past for the Haywood-serviced plants. In response, Haywood has changed its service so that M-B Industries can be served from either the Rosman or the Quebec substation, but beyond that has offered no further improvement.

10. Nina Price testified that a disconnection had caused hardship to herself and her son.

11. Tracey Watts testified to very erratic service with frequent outages from Haywood at the Pisgah Fish Hatchery in Pisgah Forest, particularly in winter.

12. James T. Hudson testified to unreliable service involving outages at least three times a day, loss of programs and computer data, and the loss of a hard disk.

13. Lori Beauregard testified that when she requested that Haywood send someone to hook up her service, she was told for three days that there were no service personnel in Transylvania County on those days. Because of this she was forced to rent a generator for that time.

14. Terry Raxter testified that in his opinion Haywood does not treat all customers the same regarding disposal of trees felled on the property during right of way clearance. On some properties Haywood removes and chips the trees, but on other properties it is left to the owner to arrange for clean up and to pay for removal.

15. Lori Galloway testified that her power was disconnected while her husband was away with Desert Storm and she had not received prior notice. She was initially told that in order to get her power restored she would have to pay $20 in disconnect and reconnect charges, the past due amount, and an additional $100 deposit. After some discussion, Haywood accepted her post-dated check and restored service.

16. Sam and Sharon Owens testified to problems with frequent power surges and outages and blowing light bulbs. Ms. Owens testified that when their power

was connected the line running from the transformer had sagged to within reach. The pump would run and the lights would dim. She stated that when she complained to Haywood, she was told they were receiving the right amount of power. When she complained about the sagged line as a hazard to children who played in that area, nothing was done. A year and a half later the height of the line was corrected when some other work was done. Ms. Owens was told at that time that the original placement was incorrect and intended as a temporary measure. Mr. Owens testified that the original line from the transformer to his house was approximately 400 to 500 feet long, and that Haywood indicated at the time it was corrected that it should be no more than 200 feet.

17. Thomas Henry testified that he has severe emphysema and asthma and is dependent on oxygen for about 40% of the day. He was very worried about the reliability of his electric service since his oxygen concentrator is powered by electricity. He testified to several outages since connecting to Haywood in June, 1990.

18. Abram R. Walker testified that Haywood should be regulated by the Utilities Commission or be dissolved because of its inadequate service.

19. Carmeletta Moses testified to frequent power outages and blinking appliances. She stated her belief that at times reports of outages were forgotten by Haywood or that Haywood believed that service had been restored when in fact it had not. Although Haywood advises members that the EMC accepts collect calls on outage problems, Ms. Moses stated that the Company had refused charges on her husband's second call some three hours after having reported an outage. Ms. Moses further indicated that there were many people in Jackson County who wished to address the Commission about problems with their electric service but could not make the long drive to the hearing.

20. Forrest Cole testified to having seven outages the week of the hearing. He also referred to many other power outages and surges. He stated that his answering machine had been "blown out" at the time of one of the outages. He noted that longer outages of two or three hours occurred approximately twice a month.

21. Terry Crowe testified that he and his father had had trees in contact with the power lines and both had contacted Haywood regarding the problem. Mr. Crowe stated that it took several long distance calls over a period of months before Haywood sent someone to cut the trees, and after they had finished and left, there were still limbs touching the wires. Mr. Crowe cut those limbs himself. He felt that he had been left to do hazardous work because of the inadequacy of the job done by Haywood.

22. John Arnette testified to frequent power interruptions, five or six a week, occasionally three in one day. He stated that he had to wait two weeks to get the electricity connected to his new home and ended up offering the crew cash to finish the job when they were going to leave before connection was completed. He further testified that he was told he would have to pay a $300 deposit and not to bother getting a credit reference from Duke, his previous electric supplier.

23. Sandra Crowe testified that it took over eight weeks to get power connected after Ms. Crowe threatened to file a complaint with the Utilities Commission. She stated that a demand meter had been put on her residence that

she had not requested. When it malfunctioned Haywood told her she would have to pay about $100 to have it removed. When power was rerouted on her property, Haywood left the dead power line lying on her property for her to remove. Ms. Crowe also testified to frequent outages.

24. Ben Joyner testified that a few weeks prior to the hearing his lights were too bright. As a result he called in a complaint regarding voltage. While he was waiting he attached a Beckman industrial digital volt meter to check the voltage. The reading was 146 volts on his 120-volt line. Two hours later a serviceman from Haywood used a D'Arsonval meter attachment and it read 125. The serviceman suggested that Mr. Joyner's volt meter was defective. Mr. Joyner checked behind the worker with his own meter and also got a 125 reading.

Mr. Joyner stated that having worked 15 years as a Field Service Engineer, he was aware of the problems caused by fluctuating voltages. When the voltage changes from 110 to 125 volts within a minute's time and consistently changes over a period of hours, it will cause problems in time. He noted that he had hooked up his meter near his computer when he heard of the upcoming hearing. In a four-day period, over approximately four to six hours a night, he had three outages. Within moments of the outage he would see a voltage fluctuation where the voltage would have jumped from 110 to as much as 128 or 129 volts and then back to 110. He noted that the volt meter used by Haywood was not capable of catching a momentary pulse.

Since 1987 Mr. Joyner has had to replace a color television, two VCR players, one heat pump compressor, one water pump, and at least one satellite receiver; repair a furnace fan; and replace a hot water heater due to burn-out from lightning. In his opinion, the voltage problems he is experiencing are primarily responsible for these losses. Mr. Joyner testified that he had placed metal oxide varisters on his power strips to help with the spiking problem. He further gave his opinion that the size transformers used were inadequate and that there was too much line loss between the line transformers and the houses.

Mr. Joyner stated that generally he had received good customer service, but that he was concerned with the way Haywood treated payments and people who had problems. He noted that although he was a regular payer, because his payment was overdue by one day when payments were due on a Friday, he was not eligible for the monthly flat rate plan.

25. Jacqueline Robbins testified that she had two telephones and a VCR knocked out in the last year. She believed that Haywood was billing for more power than her home could used when she was gone for months at a time leaving only a humidifier running. She stated she had been charged $50 to have her meter checked by Haywood.

26. Betty Sherrill testified to numerous power surges and outages and problems with electricity over the years. She lost two television sets, one of which burned all night. She lost approximately 200 baby quail raised for sale to restaurants due to an outage that cut off incubators. After that she notified Haywood of the problem and requested advance notice for planned outages. She then lost a similar number of quail in a planned outage for which she received no notice.

Ms. Sherrill also testified that at one time her bills had suddenly gone from around $30 a month to over a $100 dollars a month. Her husband, who is an electronic technician, checked the house for leakage to ground. Failing that, Haywood was asked to check its meter. Haywood requested a $25 payment to do so. Ms. Sherrill felt it was poor service to expect her to pay Haywood to check its own equipment.

She also felt that there was a real problem with customer service over deposits and disconnects. She noted that at one time her niece had her power cut off due to nonpayment. When the niece went to get the power reconnected, Haywood requested a $250 deposit, the disconnect charge, the reconnect charge, the past due bill, plus a bill in advance for a full month based on her average bill over the past year. The niece had a $100 deposit on file. She had three children at home and had to wait for three months to have her power reconnected. Haywood would not consider an extended payment plan.

27. Gerald Steve McCall testified that he called Haywood to trim limbs that were on the power line. When the Company came they trimmed the wrong limbs and left the others on the power line. A year and one-half later, the limbs were removed in a right-of-way clearing. At that time, the lines had frayed and only one line on the multi cable was still connected. Mr. McCall and his family called several times over a period of months, and nothing was done. After this complaint was before the Commission, they called again and this time it was repaired. Mr. McCall also testified to surges, light bulbs blowing, lights going dim then bright, and outages.

28. William S. Dennis, Jr., husband of complainant Delora Dennis, testified that in the last seven- to eight-year period, he lost three televisions, an answering machine, a washing machine, a portable telephone, and a furnace. He has complained to Haywood that his transformer at 400 feet is too far from his house. He noted that in his remodeling business he could not get answers from Haywood when he called. Mr. Dennis also noted that Duke and Haywood both have rough terrain but Haywood is the one with the problems. He spoke of how difficult it was to get through to the Company when an outage occurs.

29. George H. Brank testified that since April 1, 1991, he had changed 13 light bulbs at his home. He also testified to frequent power interruptions.

30. William D. Rogers testified that he notified a Haywood lineman that there was a dead tree above the line to his house. He was told that there were so many limbs hanging over the lines in Transylvania and Jackson counties, that whenever the tree fell and knocked out the line it would then be removed. Years later the tree fell at night, and men came to put the line back up.

He noted that during the major ice storm every house on his line was connected but his. When he called he was told that the crew had been pulled off at that point to work on another job. He felt this was inefficient and poor service. Mr. Rogers reported that when he spoke to Haywood about the problem he was told by the Lake Toxaway District Manager, Vernon Bishop, that his whining and crying just were not going to get his power reconnected.

31. Lloyd Oye testified that he was very concerned with the issue of safety. He noted that an underground high voltage power line servicing a utility sewer pump was placed on his land outside of the easement and was only a few

inches underground. He called Haywood at least six times over the next 90 days but nothing was done. He finally hauled 12 cubic yards of dirt to fill it up and cover it properly.

Mr. Oye further testified that when he called Haywood about an open junction box carrying high voltage power, he again had to call about six times over a 90-day period. He noted that children played in that area and could have been electrocuted.

Mr. Oye also stated his belief that Haywood had lost all credibility with its customers due to gross mismanagement.

32. George L. McDermott testified to a record of outages that he had kept from December 1990 through April 1991. He reported 22 interruptions in December, 15 in January, 7 in February, 4 in March, and 1 in April. He also reported having had 3 outages in May prior to the hearing. During 37 years in very similar terrain and weather conditions in upstate New York, he could only remember having had two outages.

33. Lee Therrien testified that he had complained to Haywood about his electric service. He felt they were pleasant but arrogant. He had experienced frequent outages.

When he complained about his bill, he was told he might have trouble in his house. When he had his house checked he was told it might be the meter but he would have to pay to have it checked.

34. Robert Magnuson testified about an incident on a Saturday in September of 1987. His lights were brighter, and neither his fluorescent light nor his two electric door openers would work. He called Haywood and explained the situation and was told someone would be sent on Monday. When the worker arrived on Monday he found that the meter read over 310 volts going into the house due to a faulty transformer. Mr. Magnuson was alarmed because he had been in that dangerous situation all weekend.

Mr. Magnuson testified that when he discussed payment for damages with the District Manager he was told his homeowner's policy would pay for it. When his agent told him it would not, the Lake Toxaway District Manager, Vernon Bishop, told him to send the bills for fixing his appliances to Haywood, Haywood would undoubtedly send a rejection letter, and then his policy would pay. Mr. Bishop said that this was what Haywood always did. At some point Mr. Bishop agreed Haywood would pay the deductible on the insurance policy. Mr. Bishop specifically told Mr. Magnuson that Haywood could not guarantee its service.

Mr. Magnuson also noted that he had lost two answering machines and the mother board on his computer which he suspected was due to his electrical service.

35. Richard Rogers testified to his belief that the Haywood management and some of the employees are insensitive and indifferent. Further, he felt that they acted more like they owned the company than they realized that the members did. He noted that it took seven days to have his electricity connected to his

new house, that he had to make a trip to the Company office to pay hook-up charges, and that he was delayed in getting his heating system connected because Haywood did not come to connect the power when they promised.

36. Don Stinchcomb testified to frequent short power outages lasting from one to several seconds and verified that George McDermott's outage record tallied with his. He characterized Haywood's response to the problem of "blinks" and other complaints as "simply excuse making and I think that's not indicative of any indication of a willingness to improve on their [Haywood's] part."

Mr. Stinchcomb also noted that he experienced power surges that had ruined his VCR. He also noted that when Haywood clears the lines, it leaves the trees and brush to lie wherever it falls.

37. Myra Howey testified that when her service was connected, the crew made at least three and possibly four trips to the site before the connection was completed. On two occasions they were sent elsewhere after they had begun work. Ms. Howey noted that brief power outages were an almost daily occurrence. In November 1990, a one hour power outage with resulting power surge caused extensive damage to her furnace and replacement parts had to be ordered. It took 10 days to restore heat. The furnace was new.

Ms. Howey stated her belief that Haywood did not follow a policy of attention to repair or maintenance of equipment and that its record of modernization was dismal. She based this belief on her past experience with other electric suppliers and the fact that Haywood's service was unsuccessful.

38/39. Marquita and Bradley Owens testified that in 1983 Ms. Owens lost approximately 30,000 fish in her hatchery because Haywood cut off her power to perform an installation even after she had asked them not to do so at that particular time of day because it would kill the fish. After the fish were dead, Haywood denied liability.

Another time a Haywood crew cut down a tree, which then fell on and broke the rock columns going up her steps. Haywood told her the Company could not be held liable.

Ms. Owens also testified that when she had a concern about double billing and payment after separation from her husband, Haywood told her that her records were unavailable.

At one point a tenant on property Ms. Owens owned left owing a large bill to Haywood. Ms. Owen entered into an agreement with Haywood to repay the amount over time. Haywood then abrogated the agreement, arbitrarily demanded total payment or disconnection, then switched the amount due to her ex-husband's residential account. He was out of the state at the time, so his power was disconnected and he lost a freezer full of beef. He had signed no guarantee of payment for her service.

Ms. Owen further testified that her son was out of power in the 1989 ice storm because a sapling fell on the power line. Her son's power was restored but the sapling was left hanging over the line after the ice melted and is still there.

40. W. H. Mayben testified that he was with an electric supply company for 32 years and worked with utilities all over the country during his career. He spoke of frequent outages, noting that between May 6 and May 16, 1991, he had five power outages. Three of those outages were approximately two hours in duration. He also noted that although he had an excellent payment record, Haywood came to disconnect his electricity when he missed a payment due to an accident in which his wife was killed and Mr. Mayben broke his back.

Mr. Mayben also felt that Haywood's service could not compare with that of other utilities, including REAs.

41. Patricia Holden testified that her store is beside a Duke line and that frequently when she was out of power, the Duke line would appear to have current. She testified that losing appliances was such a way of life that she quit counting years ago. She noted that the service she was receiving had been deteriorating since 1964.

42. Emmett Owen testified that the severe weather outages were due primarily to limbs and trees that knocked out the power. He felt these could have been avoided with appropriate line maintenance. He stated that repairs were haphazardly done.

43. Vickie Robinson testified that her power was disconnected for nonpayment when there was snow on the ground and her child had pneumonia. While she did not rely on electricity for heating or cooking, she did need her refrigerator to maintain her child's medicine at the proper temperature. At that time the Lake Toxaway District Manager, Vernon Bishop, informed her that nowhere in his book did it show anybody had to get their power left on because they had small sick kids. Another time she was disconnected for nonpayment, and after she borrowed and paid the past due amount her power was restored. The next day it was disconnected again. When she called the Company, Mr. Bishop told her she would have to come up with two hundred dollars more.

Ms. Robinson also testified that it was impossible to use the amount of kilowatts she was billed in her home with only lighting and refrigeration for a portion of that time. Haywood insisted the problem was not in the meter. She finally moved.

44. Betty Henderson testified that during the 1989 ice storm she was without electricity for two weeks. She believed the outages were due to poorly maintained right-of-ways.

45. Sue Morgan testified that at one time her electricity bill tripled. Haywood told her it must be because of her water heater. Ms. Morgan moved. The first month her bill was for over $700, including the past due amount. Ms. Morgan was on SSI/Disability due to diabetes and was unable to pay the amount at one time. Haywood allowed her to pay it off in installments. Ms. Morgan stated that when she had two payments left, her bill again went up to $700. A Haywood employee was sent to disconnect her electricity. At that point she called the office and asked again to be allowed to make installment payments. She explained that she was a diabetic and was dependent on refrigeration to keep the insulin from spoiling. The Lake Toxaway District Manager, Vernon Bishop, insisted that

the bill had to be paid off in one lump sum. The electricity was disconnected. Eventually Ms. Morgan had to move again and this time she moved into Duke's service area. In the last two years with Duke she had never been threatened with disconnection.

46. Delora Dennis testified that she filed the initial complaint that gave rise to the hearing. She stated that in 1986 she became increasingly annoyed with frequent outages. Many times, when she tried to call she could not get through to Haywood. In 1988, her brother tried to use her as a credit reference with Haywood and was told she had bad credit. When she checked, Haywood could only point to one instance of late payment in her records. When she got a copy of that check it showed that she had paid on her due date. At that point Ms. Dennis first requested Duke to provide her with power and was informed it could not.

Her service continued to worsen. She was losing light bulbs at an accelerated rate. As different things came on in the house, the lights would dim. At times only the filament would glow slightly. Her refrigerator sounded like a car motor flooding out as it tried to run. Her electricity would pop after an outage. At times it would pop even though there had been no outage. She called Haywood to complain and see if perhaps it could be a malfunctioning meter but was told she would have to pay for it to be checked out. Her husband called Haywood to complain about the transformer that was 400 feet from the house. The transformer was not checked.

In 1990, after the complaint was filed, she turned on the washing machine and "fire went everywhere." It was Ms. Dennis's opinion that this was due to a power surge. There was no storm at the time, and the washing machine was still under warranty. In addition to the other ruined appliances about which her husband testified, Ms. Dennis testified that she had also lost two eyes on her stove.

Ms. Dennis noted that after she filed her complaint Haywood rebuilt the line she was on. After those repairs a voltage recording meter supplied to her by the Public Staff was placed on her house during January of 1991. She looked at the meter graph which showed that her voltage had fluctuated from a low of 103 to a high of 128 in that period. This was both above and below Haywood's adopted standard, which she felt was already inadequate as it did not supply the actual needs of her appliances.

Ms. Dennis stated that during the ice storm of 1989 she called Haywood to tell them the line was down on the road and children were playing near it. Although the operator indicated that it would have to be gotten up immediately because of the possibility of a lawsuit, the line was left on the road two more days.

Ms. Dennis testified to her belief that the Board of Directors was indifferent to the needs of the customers. She also noted that she had circulated petitions asking to be removed from Haywood a year before she knew of the rate differential between Haywood and Duke.

47. Thomas W. McGohey testified that Haywood customers were the victims of inadequate, unreliable service and unacceptable customer service. He testified to power outages, power surges, brown outs, damaged appliances, and the danger

of potential fires. He noted that Haywood took a long time to connect service and refused to accept his mortgage bank as a credit reference although it had just completed an exhaustive credit investigation. Mr. McGohey stated that he felt discriminated against because of this treatment. He also questioned why Haywood did not choose to follow, as a reasonable guideline, something like the disconnect policies the investor owned utilities were required to follow.

Mr. McGohey, a former Regional Operating Director for a Fortune 500 company, stated his belief that Haywood was badly mismanaged. He noted that in 1989 Haywood had the highest gross trading margin (revenue less cost of power) of any EMC in North Carolina and the worst bottom line. He pointed out that in 1989 Haywood paid out 79% of net operating revenue in interest, leaving little funds available for operation.

Mr. McGohey further noted that Haywood is essentially unregulated. He felt that REA in Washington was a rubber stamp. As for the concept of regulation by the owner/members, attendance at Board meetings is limited to three members and these must sign up well in advance on a first come, first serve basis; the Board reserves the right to close the meeting for any matter they consider to be private; general access to Board minutes is denied to members except for excerpts regarding a specific subject at a specific meeting; and the use of proxies is restricted at the annual meeting.

Customer Service

The Commission is of the opinion that customer service is an integral part of providing adequate and dependable electric service. Testimony of the customers and Haywood tends to indicate that several of Haywood's customer service practices were arbitrary and unreasonably discriminatory as applied to its customers.

There were as many versions of initial deposit procedures testified to as there were witnesses testifying on this issue. Haywood witness Browning testified that the amount of the required deposit could range from the cost of 30 days service up to 90 days service or any variation in between, depending upon the judgment of the employee taking the application. He indicated that the method of determining the cost of that service to arrive at the deposit amount could vary from a year's average to an average of the highest months on record. Although Haywood's rules and regulations indicated that credit references were acceptable in lieu of a deposit, the customer testimony showed that this was followed in certain cases but not in others. Although Haywood's own policies showed that deposits were not to be requested from persons with evidence of good credit with their former electric supplier, there was testimony that deposits were nonetheless required under these circumstances.

Witness Browning again testified that the manner in which the district offices applied disconnect procedures and requirements for deposit at the time of reconnection depended primarily on the discretion of the district office personnel. He stated that the disconnect procedures Haywood generally followed differ from the procedures specified in the Haywood Service Rules and Regulations. Mr. Browning agreed that this was confusing to customers.

Testimony from customers showed radical variations in treatment on disconnect procedures. Some customers were at times allowed to utilize an

installment plan to pay off past due amounts. Others requested this and were refused. Joyce Young testified to the kindness of the Lake Toxaway District Manager in allowing her to make a late payment after the cutoff date when her husband had not paid the bill, even though she offered to bring the payment to the office on the due date. Vickie Robinson testified that her electricity was turned off when snow was on the ground and she had informed Haywood that she had a small child with pneumonia. Sue Morgan testified that she was allowed to make installment payments one time but not another. Witness Browning testified that there were no checks and balances to prevent possible abuse of the discretionary power held by the District Office. He further agreed that it was possible for an employee to punish complaining customers by denying assistance within that employee's discretion to grant.

Haywood's Service Rules and Regulations allow for deviation from suspension of service when disconnection might pose immediate danger to the member or other persons due to illness or some hazardous condition and also when it is determined that enforcement of the policy will constitute an undue hardship in relation to the amount of the delinquent bill. As written, this policy is clearly discretionary. The evidence before this Commission would tend to show that it was applied unevenly. The Commission is in complete agreement that Haywood must be paid on an ongoing basis for its service. But the arbitrary approach to installment plans and the unevenly applied compassion policy is troubling.

An important element of customer service is prompt response to customer complaints. The record is full of references to complaints made to Haywood that were not answered. To the extent that Haywood had a response to this allegation, it stated that there was no record of these complaints. For example, the circumstance testified to by Mr. Magnuson, of having to wait two days to discover that over 310 volts were going into his home, is illustrative of the dangers involved in disregarding or postponing investigation of electric service complaints until a more convenient time for Haywood.

The Commission is of the opinion, and so concludes, that certain customer service practices of Haywood were arbitrary and unreasonably discriminatory as applied to the Complainants and the public witnesses. Witness Ayers testified at the April 30, 1992, hearing that Haywood employee morale has improved over recent months, and that Haywood has attempted to contact all of the customers who complained at the Brevard hearings in order to convey to them that Haywood is under new management and will henceforth view their complaints with the utmost seriousness. The Commission is concerned whether this new commitment will stand the test of time.

Voltage Levels

Haywood and NCEMC witnesses repeatedly testified that voltage and voltage regulation were not a problem for the Haywood system. Customers of Haywood repeatedly testified that voltage was an extremely serious problem for them. The Company and EMC witnesses testified that Haywood's voltage levels met the standards established by the Rural Electrification Administration in REA Bulletin 169-4. The REA standard was characterized as primarily 110-126 volts (Range A), with a voltage range between 106-127 volts (Range B) being within acceptable limits on an infrequent basis. However, REA does not state that Range B levels are within acceptable levels on an ongoing basis. Bulletin 169-4 states that when voltage levels occur below or above the range of 110-126 volts, corrective

measures shall be taken within a reasonable time to meet Range A requirements. Witness Jordan testified that the trigger for application of corrective action is customers' complaining of lights actually dimming. Yet, customers testified to having made complaints to Haywood of dimming lights for some time with no action taken. Haywood claims to have received no voltage complaints from these customers prior to the hearings. A reading of the written complaints indicate, however, that voltage complaints were being made.

The Commission standard for investor-owned utilities is a range of 114-126 volts. Engineering witnesses Jordan and Booth testified that Haywood also met this standard. Witness Jordan later acknowledged that Haywood would only meet that standard if his originally proposed 1991-93 Work Plan was adopted in its entirety and only after all recommended actions were taken. Haywood's published standard voltage is a range of 108-126.

Witness Jordan also testified that the voltage regulators on the system were designed to regulate plus or minus 10%, a range of 108-132. Customer testimony indicated recorded values outside of Commission standards, REA standards, and Haywood's published standards. Furthermore, when Haywood finally conducted a voltage study at the point of residence, each customer's residence which was tested required major improvements.

Witness Jordan, as Haywood's consulting engineer and presently the only engineer who works for the Company, presented Haywood's primary evidence regarding voltage conditions. He testified that all the records indicated that the voltage being supplied by Haywood was well within the band of tolerance. However, the evidence shows that Haywood maintains volt meters at the substations, where it is not possible to determine the level of voltage received at the point of service, the customer's residence. Further, those volt meters will not detect an overloaded transformer or service wire, nor do they record milli-second voltage spikes that cause damage to appliances and electronic equipment. The only continuous recording testified to at the hearing was by customer Joyner, which showed substantial spiking.

Witness Jordan acknowledged that he did no checking of voltage prior to filing his testimony that there were no voltage problems, nor had Haywood ever asked him to do so. He agreed that "blinks" can be signs of voltage problems, and that Haywood had responded to "blink" complaints in several newsletters. He testified that he had never had occasion to perform any voltage profile studies for Haywood although he had studied voltage drop. After conducting his very limited voltage study, witness Jordan attributed any voltage problems to load growth. He stated his belief that this was not Haywood's fault, since the customers had not notified Haywood of increased load. Witness Jordan did acknowledge that he had no idea whether or not Haywood conducted load saturation studies. He also did not know if Haywood ever conducted appliance saturation studies. Yet, Witness Jordan was responsible for writing the 1991-93 Work Plan designed to address problem areas and to prepare for future load expectations.

Testimony from customers shows extensive damage to appliances and electronic devices due to improper voltage. Customers testified to their replacing and repairing refrigerators, furnaces, light bulbs, industrial motors, heat pump compressors, hot water heaters, cooking stoves, portable telephones, electric door opener, computer modules and hard disks, answering machines, VCRs, televisions, and satellite receivers. Testimony indicated that at times the

damage to appliances was accompanied by sparks and fire, as in the instance of Ms. Delora Dennis. Haywood's primary response to customer testimony on this issue was to defend its practice of expecting the homeowner's insurance to cover the costs.

The Commission is of the opinion, and so concludes, that the weight of the evidence points to a widespread voltage level problem and that a concerted effort to collect the types of information necessary to properly address this problem is clearly warranted.

Outage Levels

A major source of consumer complaint in this docket was the frequency of outages. It is the assertion of Haywood that its levels of outage are within the parameters of REA Bulletin 161-1, which indicates that an average of five or less consumer hours of interruption per year is satisfactory. Haywood's own figures show an average outage per consumer in the Rosman/Quebec/Connestee area for the last five years of 21.46 hours. The last two-years' average in the same area shows the problem is worsening, with 23.59 hours service interruption per customer. Moreover, the outage levels in the Cashiers/Scaly Mountain area are even worse. It should be noted that according to Witness Booth, a large number of momentary interruptions are not included in these figures. Haywood arrived at the conclusion that its levels of outage were within the five hour mark by removing several major categories of outages over which it asserts it has no control: planned outages, source outages, and outages due to storms.

A great deal of attention has been devoted in this docket to the quality of service provided to Haywood by two of its bulk power producers, Duke and Nantahala. This attention has focused solely on the level of source outages sustained by Haywood from these suppliers. Using the calculations Haywood accepts, these outages represent less than one-third of the outages reported. These calculations also show that the number of hours of source outages h's decreased over the last two years, while the number of outages attributed to the Haywood distribution system have increased.

It was the assertion of Haywood and NCEMC witnesses that storm outages were outside the control of Haywood and consequently should not be considered in determining the adequacy of service provided. It was their further assertion that REA does not require them to include those outage hours in reaching their five-year total. Witness Booth testified that this had been his experience with REA. However, the language of REA Bulletin 161-1, Section VI, states: "For example, long interruptions may result from severe ice or wind loads, or excessive interruptions may be due to trees, lightning or scheduled outages showing the need for corrective measures or different work procedures." Witness Booth testified that at the very least the language meant: "When you see that sort of thing you need to look at the fact that you have a problem." Further, Witness Browning acknowledged that any number of actions could be taken to provide some control over storm outages: circuit coordination, fusing, reclosers, lightning arresters, as well as better grounding and tree trimming. Yet, both witnesses steadfastly maintained that Haywood did not have a problem with outages outside of source outages. Witness Booth testified that in his opinion Haywood had done all that was prudent to minimize storm and lightning problems.

Several customers testified that storm outages are much worse for Haywood than the surrounding utilities. For example, both Ed Morrow and Patricia Holden stated that Duke has shorter storm outages than Haywood.

Numerous customers testified that they reported problems with trees and limbs affecting wires, with no discernible response from Haywood but with resultant interruption of service.

However, the testimony of Haywood and NCEMC witnesses was troublesome in its contradictions. Each of these witnesses testified to the aggressive tree-trimming program that Haywood had instituted. But their recollection of how long this program had been underway ranged from six years to just within the last year. Haywood's consulting engineer, witness Jordan, testified that Haywood had established and "should be approaching" the goal of a seven- to five-year cycle for right of way clearing. Yet the figures provided by Haywood indicate that approximately one-fourth of Haywood's territory would not be cleared in a seven-year cycle at the current clearing rate. The records do show a significantly expanded right-of-way clearing program beginning in 1989. It should be noted, however, that even with such an expanded program, outages from trees have actually increased in the Rosman/Quebec/Connestee area.

Witness Booth testified that Haywood's mountainous territory and ground resistance caused significant problems with lightning that were not within Haywood's control, resulting in unusual outages and surges that would be the same for any provider in the area. In cross-examination by the Public Staff, witness Booth indicated that his information resulted from a four-day study conducted in August, which happened to be all the data he could find. Witness Booth acknowledged that Haywood should study the level of lightning over a longer period and should experiment with installing more pole lightning arresters and with trying different types of grounding electrodes. Nevertheless, he concludes that Haywood does not have a problem with its treatment of lightning outages.

The Commission is of the opinion, and so concludes, that Haywood's customers experience excessive outages of service in the territory affected by this complaint. For reasons discussed in greater detail elsewhere herein, the Commission is not persuaded that the outage problem is primarily the fault of Haywood's suppliers Duke, Nantahala, and CP&L.

Source of Supply

Duke witness Sheppard testified that the purpose of his testimony was to provide a rebuttal to the prefiled testimony of NCEMC witness Booth. He indicated that Duke provides a transmission service to NCEMC pursuant to its Catawba Interconnection Agreement with NCEMC. Duke also leases a portion of its distribution substations and lines to NCEMC. NCEMC, not Duke, is the wholesale power supplier for Haywood.

Witness Sheppard noted that no request has been received by Duke from NCEMC regarding alternations to existing deliveries or additional deliveries from Haywood. Duke has had conversations directly with Haywood in response to Haywood's inquiries regarding delivery outages on the Quebec or Haywood Delivery No. 1. Duke has responded to Haywood's concerns by conducting line inspections and tree clearance, placing an alarm on the Quebec line oil circuit breaker, taking and other measures.

Witness Sheppard provided a detailed summary of all outages for the deliveries to NCEMC for Haywood as Exhibit 1 to his testimony. A comparison of the delivery outage data supplied by Duke and the outage data as provided by witness Booth indicates that the outage data is different. Witness Booth did not indicate the source for the information on his summary of outage data other than a general description of reports that he reviewed. Duke's supply outages are less than those provided by witness Booth.

Witness Booth indicated that the average consumer hours outage per customer per year for 1986 through 1990 for the Rosman, Quebec, and Connestee areas was 21.46 hours, and for the 1989 through 1990 two-year time period was 23.59 hours. These outage rates exceed the REA standard by 4.29 and 4.72 times, respectively. Witness Booth testified that, "Removing those items for which Haywood EMC has no control and for which REA's five consumer hours outage per consumer per year standard is not applicable, Haywood EMC's outage rate is well below the five consumer hours outage per consumer per year in the Rosman, Quebec, and Connestee areas."

Witness Sheppard pointed out that the REA goal does not exclude any outages or causes for interruption when determining the average service interruption consumer hours per consumer per year. In fact, item II-B-2a, page 2 of REA Bulletin 161-1 dated March 31, 1972, states: "Annual service interruption hours per consumer is calculated by adding consumer hours for all interruptions during the year and dividing the sum by the average number of consumers receiving service during that period."

As indicated in the quotation from the REA's bulletin, the outage standard includes all outages. No outages, whether controllable or not, are to be eliminated in calculating the consumer hours outage per consumer per year.

Witness Sheppard testified that the REA standard makes no concessions to storm, source, or planned outages. The standard already acknowledges the difficulty of rural cooperatives in maintaining an outage performance of more urbanized systems. Witness Sheppard quoted again from REA Bulletin 161-1, Section VI, p. 18:

> "Electric utilities in largely urban areas tend to aim at one hour or less service interruption per year for the average urban consumer and two hours or less for the average rural consumer. However, many rural electric systems would have difficulty meeting such goals because of longer lines, severe environmental conditions, and more frequent interruptions of power supply.
>
> "The present REA criteria for rural distribution systems are shown in Table 8."

Table 8 indicates five or less hours are satisfactory and more than five hours should be explained.

In reference to the Haywood deliveries at Rosman, Connestee, and Quebec, witness Booth states, "This means bulk supply outages represent 62% (6.28 hours divided by 10.1 hours) of the total hours outage per consumer per year (excluding severe storms and planned outages) over the last five years."

However, witness Booth acknowledged that, in the work he performed, no Duke source outages were excluded because of severe storms or planned outages. Therefore, the comparisons he made between Haywood outages and Duke outages were not statistically valid.

Witness Sheppard stated that using the total annual outage hours per consumer for the Rosman, Quebec, and Connestee Falls areas as contained in witness Booth's data, the contribution of Duke source outages to the total of all outages is 21.58% (4.63 hours divided by 21.46 hours) for the five-year period 1986-1990, and 11.32% (2.67 hours divided by 23.59 hours) for the two-year period 1989-1990. Witness Sheppard pointed out that while no level of outages is entirely satisfactory, Duke's contribution of 4.63 average outage hours over the five-year time period and 2.67 average outage hours over the two-year time period constitute reliable and adequate distribution service to the Haywood deliveries. Duke's lines and facilities delivering electric service to Haywood are subject to the same geographic and environmental concerns as was expressed at length in witness Booth's testimony. Trees, lightning, storms, highway accidents, animals, and gunshot/vandalism to insulators and equipment plague Duke facilities as well as those of Haywood. Operating within the same mountainous regions and territory, and subject to the same difficulties as Haywood, Duke provides service to Haywood with an average outage rate of 4.63 hours over the five-year period 1986-1990, while Haywood's service to its customers averaged 21.46, hours or 4.63 times as great. For the two-year period 1989-1990, Ouke's average outage rate to Haywood was 2.67 hours, while Haywood's average outage rate to its customers was 23.59 hours, or 8.84 times greater.

Witness Sheppard noted that Duke has worked diligently over the period to reduce the frequency of its outages to the Haywood delivery points. Duke's two-year average outage rate of 2.67 hours from 1989-1990 shows a considerable improvement over the five-year 1986-1990 average history of 4.63 hours. He testified that Duke is making a substantial investment in its Rich Mountain 100/12 KV Distribution Substation, to be operative in the fall of 1991. The addition of Rich Mountain will further improve the reliability of service to the Connestee area including Haywood Delivery No. 3.

Duke's 44 KV distribution line from Rosman to Quebec serving Haywood Delivery No. 1 has undergone extensive tree clearance. Duke has surveyed the line and inspected the poles, conductors, insulators, and line hardware. Duke is currently conducting engineering feasibility studies for other line improvements. Several years ago Duke installed an alarm on the breaker at Rosman serving the Quebec line. Before the alarm was installed, Duke had an incident of delayed notification of an outage on the line due to no calls from the few customers which Duke serves from the line. It was some time before the outage was reported by Haywood on its substation at Quebec. Placing the breaker for the Quebec line on an alarm circuit under the area dispatcher gives Duke immediate notification of a breaker operation so that restoration efforts can be started immediately.

Duke's Haywood deliveries are not supplied directly from Duke's transmission system. Haywood Delivery No. 1 is served by a 44 KV distribution line from Duke's Rosman Distribution Substation to the Quebec delivery. In addition, this distribution line serves five other Duke distribution customers. Haywood Delivery No. 2 is a 12 KV delivery from an oil circuit breaker directly off the substation bus in the Rosman 44/12 KV distribution substation. Haywood Delivery

No. 3 is served by the Tucker's Creek 12-03 distribution line approximately 7.7 miles from Duke's Tucker's Creek Distribution Substation. This substation circuit serves an additional 2,104 distribution customers of Duke. Witness Sheppard concluded that none of the deliveries to Haywood by Duke are directly from transmission but rather from distribution facilities, and as such, they are subject to the increased exposure of such distribution facilities. He stated that should Haywood desire alterations to its existing deliveries or additional transmission deliveries, Duke will consider such requests as it may receive from NCEMC pursuant to the Catawba Interconnection Agreement.

The Commission is of the opinion that the weight of the evidence discloses that the primary fault for the Haywood outages lies with Haywood and not with its suppliers. The Commission is persuaded that a statistically correct comparison of Duke's outage data with Haywood's outage data would show that Duke's outages affecting Haywood have not exceeded five hours per year during the period in review, while Haywood outages have apparently exceeded five hours by a considerable amount.

The Commission is further persuaded of the adequacy of Haywood's source of supply by its review of numerous complaints from Haywood customers spread over various parts of Haywood's service area. The Haywood service area is approximately the same as the adjacent service areas of Duke, Nantahala and CP&L, and subject to approximately the same geography, weather, vandalism, animals, and the like, as those utilities. Yet the Commission has not had any complaints from any of the suppliers' customers in the area.

The Commission has also considered comments received from Duke and Nantahala following the April 30, 1992, hearing regarding the allegations of inadequate supply to Haywood from Duke and Nantahala. They commented that years ago, Haywood chose to take service from them at multiple distribution delivery points. The decision also was made by Haywood to purchase power from multiple suppliers. By configuring its system in this manner, Haywood avoided the expense of building a strong internal transmission system.

Duke and Nantahala commented that distribution deliveries are less expensive for Haywood. The higher cost of transmission lines and the cost of substations were avoided. However, distribution circuits are not as reliable as transmission circuits. Lightning protection is not as great, and rights-of-way are narrower and cannot have the same clearance. Usually, line transformers and tap lines are present, increasing exposure to problems. While reasonable attempts are made to improve the reliability of service to all of their distribution customers, including Haywood, there has never been an indication that outages would not occur. Likewise, the suppliers have not contended that distribution level service is as reliable as transmission service.

The suppliers commented that Haywood seems to be attempting to request transmission level reliability while maintaining the cost savings associated with distribution level service. They contend that this is an unfair request to be placed on any supplier. The earlier two-year plan included an upgrade of some deliveries to transmission level. The revised two-year work plan again opts for a lower cost distribution solution that now would result in interconnecting two suppliers.

The Commission concludes that there has been no showing that the power supply from Duke or Nantahala has been inadequate. The Commission also concludes that Haywood is experiencing the difficulties inherent in attempting to obtain sources of supply at multiple distribution level delivery points in difficult terrain instead of obtaining a strong transmission level supply.

Construction Work Plan

At the public hearing in this matter on August 7, 1991, Haywood witness Jordan testified that he had prepared a 1991-93 Construction Work Plan for presentation to the Haywood Board of Directors which would contain improvements that would alleviate many of the problems that customers were complaining about. The work plan consisted primarily of upgrading approximately 18 miles of overhead line and approximately 6 miles of underground line, replacement of old copper conductors, converting single phase lines to multi-phase, and upgrading voltage regulators.

Witness Jordan recognized in his testimony on August 7, 1991, that the cost of improvements would have to be reflected in the service rates charged by Haywood, and he pointed out that spreading the needed improvements over five or ten years might alleviate the need for rate increases although it would not resolve the service problems as rapidly. He stated that the decisions as to how quickly improvements should be made were policy decisions best left to the Haywood Board of Directors, and that the Board of Directors were in the best position to balance the needs for improved service against the need for rate stability.

Witness Jordan testified at the April 30, 1992, hearing that he had presented the original 1991-93 Construction Work Plan to the Haywood Board of Directors in late August 1991, and that the Board approved the work plan "as a starting point" and instructed Haywood officials to review the plan further in order to determine if there were any alternatives to the projects contained therein which might be cheaper and yet provide reliable service.

In December 1991, witness Jordan prepared a revised 1991-93 Construction Work Plan for Haywood which deleted a number of the projects contained in the original two-year work plan and revised others. The revised work plan was approved by the Haywood Board of Directors and was filed with the Commission on February 13, 1992.

At the April 30, 1992, hearing, witness Jordan testified that a major reduction in the cost of the revised work plan over the original work plan was substitution of a new three-phase tie line between the Cashiers metering point and the Quebec substation for the new transmission line and substation proposed in the original work plan. He contended that the new tie line should be as effective as a new substation at the Cashiers metering point and in resolving service problems in the Cashiers area. However, the new tie line would be a short term solution to power source problems in the Cashiers area, and a new supply source would probably be needed in the long term. The new tie line would also enable the Quebec substation to receive an alternate source of power from Nantahala in case the Quebec substation source of supply from Duke is intercepted.

Witness Jordan further testified that over 30 miles of copper lines are to be replaced with new ACSR aluminum lines in the revised work plan. However, over 35 miles of line replacements were deleted from the revised work plan based on the conclusion that overgrown right-of-way was the real problem, not degraded conductors or lines. He pointed out that the revised work plan has 90 percent of the work located in the Lake Toxaway area and 10 percent in the Waynesville area, whereas the original work plan had 60 percent of the work located in the Lake Toxaway area and 40 percent in the Waynesville area.

In June and July 1992, Nantahala and Duke each filed objections to that portion of Haywood's testimony on April 30, 1992, regarding the new tie-lines proposed in the revised 1991-93 Construction Work Plan. Both parties contended that they had not fully understood what Haywood was proposing until the time of the hearing and when they had an opportunity to fully examine the transcript of the April 30 hearing.

Duke and Nantahala both objected to the proposed new tie line between the Quebec substation (served by Duke) and the Cashiers metering point (served by Nantahala). They also objected to the proposed new metering point from Nantahala near Sapphire. Duke and Nantahala both pointed out that the proposed new tie line raises complex financial, contractual, operational, safety and technical issues which Haywood had not discussed with either Duke or Nantahala. They protested that the tie line gives Haywood the means to shift its source of supply in the area from Duke to Nantahala (or vice versa) during non-emergency times as well as emergencies, possibly solely to take advantage of rate differentials between the two suppliers, and that the tie line imposes the obligation on both Duke and Nantahala to plan sufficient reserve capacity to accommodate the Quebec area and the Cashiers area at the same time.

Duke and Nantahala had similar objections to the proposed new feeder from the Sapphire Valley substation of Nantahala to an area currently served by the Quebec substation (with Duke as the source of power). The new feeder would also create another tie line between Duke and Nantahala through the Haywood system without addressing the problems such a tie line would impose on Duke and Nantahala. While witness Jordan indicated in his testimony on April 30, 1992, that the Sapphire Valley feeder was deleted from the revised work plan because the proposed route was not currently feasible, he stated that the project could be added if it was later needed.

Both Nantahala and Duke emphasized in their comments that they reserved the right to refuse their consent for the proposed tie line if subsequent negotiations should indicate a valid reason for doing so, and they reiterated that neither NCEMC nor Haywood had discussed the details of the tie line with them. Both suppliers also complained that Haywood and NCEMC continue to blame the suppliers for the power outages and insinuate that the new tie lines are needed to correct the Duke and/or Nantahala supply problems.

As discussed elsewhere herein, the Commission is of the opinion that the outage problems are primarily the result of decisions made by Haywood, not its suppliers, and are largely due to reliance on multiple supply deliveries from supplier distribution systems which are by their very nature less reliable than transmission systems. Duke and Nantahala's concerns are understandable in light

of the substitution of the proposed tie lines in the revised work plan for a new transmission facility and substation in the original work plan. This Order will direct Haywood and its suppliers to resolve differences over the proposed tie lines.

Conclusions on Decision

The Commission has heard abundant testimony that tends to show that a less than acceptable level of service has been provided by Haywood to its customers. The record is complicated by the changes in Haywood's management and Board of Directors in 1991, although there is good reason to believe that these changes are positive for Haywood and its customers. Further, the Commission is troubled by the revisions to the 1991-93 Construction Work Plan of Haywood which have been made in order to hold down the cost of service improvements

The Public Staff has recommended that, based on the totality of the evidence in this proceeding, all of the service territories of Haywood represented by the complaints be reassigned to other providers of electric utility service. Haywood and NCEMC oppose reassignment of any service areas.

General Statute 62-110.2(d) states:

> (2) The Commission shall have the authority and jurisdiction, after notice to all affected electric suppliers and after hearing, if a hearing is requested by any affected electric supplier or any other interested party, to order any electric supplier which may reasonably do so to furnish electric service to any consumer who desires service from such electric suppliers at any premises being served by another electric supplier, or at premises which another electric supplier has the right to serve pursuant to other provisions of this section, and to order such other electric supplier to cease and desist from furnishing electric service to such premises, upon finding that service to such consumer by the electric supplier which is then furnishing service, or which has the right to furnish service, to such premises, is or will be inadequate or undependable, or that the rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory.

This statute provides that the Commission shall reassign consumers where it finds that service being furnished to those consumers is inadequate, or undependable, or unreasonably discriminatory.

In this proceeding, the Commission is faced with an unprecedented number of complainants requesting reassignment. In Docket No. ES-81, Sub 2, In the Matter of Larry Eaves vs. Town of Clayton, the Commission was petitioned by approximately 90 persons requesting reassignment of an area served by the Town of Clayton. In that docket the Commission denied the request, based on its belief that the problems addressed were not of a degree to call for this drastic remedy. Most of the testimony dealt solely with inadequate voltage.

Furthermore, there was reason to believe in that case that the electric provider had made substantial improvements in the service. Moreover, the supplier was considered to be both capable and willing to continue to improve.

This is not necessarily the case in this docket. The range of problems cited herein is extensive. Furthermore, the evidence tends to show that Haywood remained unwilling to acknowledge and investigate the possibility of deficiencies for well over a year after the filing of the complaints.

For example, consider the complaints of voltage problems. According to Haywood, either they did not exist or it was the customer's fault or there is no record that the customer complained. Delora and William Dennis are a case in point. Both testified to having complained on a frequent basis to Haywood. Mrs. Dennis circulated a petition and made formal complaint to the Commission. That complaint involved the written complaints and signatures on a petition of over 800 customers of Haywood. In her complaint she stated the problems she was experiencing with her electric service. Haywood was in possession of this letter in February 1990. It received an even more complete explanation of her concerns in April 1991. Haywood still did not investigate the problem. At the initial hearing in Brevard, Haywood witnesses denied that Ms. Dennis actually had service problems. Only after that hearing did Haywood investigate this complaint. Their study showed that the electric service to the Dennis home required major improvements to be acceptable.

Haywood now contends that it can resolve the problems. It has acquired new management; there are new Directors. It proposes a revised work plan for addressing the problems and is seeking REA approval of the plan. However, the work plan is not the first choice of its engineer/consultant but is a plan more compatible with the desire of the Haywood Board of Directors to alleviate the effect of the improvements on electric rates. The work plan proposes at least one new interconnection between the delivery points of two different suppliers, although Haywood has not discussed the interconnection with the affected suppliers in sufficient detail to determine whether the interconnection is economically feasible.

The Commission is of the opinion that, except for the M-B Industries plants served by Haywood, the new management of Haywood should be given a reasonable amount of time to implement the proposed changes in the troubled EMC. It is the opinion of Haywood's consulting engineer Jordan "that, by implementing the system improvements recommended in the latest issue of the 1991-1993 Construction Work Plan, Haywood is continuing to improve its reliability of service to members through the use of sound engineering and economic judgments." (Testimony of April 30, 1992.) The Commission concludes that the new management of Haywood is committed to resolving the problems so abundantly testified to by the customers. The effectiveness of the new management will depend greatly upon the support it receives from the Haywood Board of Directors and upon the willingness of the Board to fund the needed improvements. The effectiveness of the new management will also depend upon the viability of the revised Construction Work Plan for Haywood and upon the resolution of concerns raised by the proposed interconnection of Duke and Nantahala through the Haywood system.

The Commission further concludes that this proceeding should remain open for at least two years in order to monitor the effectiveness of Haywood's two-year improvement program for addressing and resolving the customer complaints

testified to in this proceeding. Consistent with that conclusion, the Commission is of the opinion that it should schedule another public hearing approximately one year after the date of this Order in Brevard in order to receive testimony from Haywood and the customers of Haywood as to the effectiveness of Haywood's efforts to resolve the customer complaints.

The Commission is further of the opinion that Haywood should be required to file with the Commission every three months after the date of this Order a written progress report describing the status of improvements to facilities or customer services, the status of customer response to the improvements, and the status of necessary approvals from REA and other agencies.

The Commission also concludes that the first three-month progress report should describe the status of negotiations between Haywood, NCEMC, Duke, Nantahala and others, as appropriate, regarding the proposed tie lines interconnecting the suppliers' systems through the Haywood system. Consistent with that conclusion, the Commission is of the opinion that any progress report furnished to the Commission describing the proposed tie lines should also be furnished to the suppliers and the parties in order to give them the opportunity to comment on the report.

The Commission expects Duke, Nantahala, and Haywood to negotiate in good faith regarding the tie lines, and to be forthcoming with any information reasonably needed to complete said negotiations in a timely manner. If the parties are unable to reach agreement, they should bring the matter back before the Commission for decision.

Transfer of the M-B Industries Plants

Witness Ed Morrow described the difficulties that the M-B Industries plants have had with Haywood electric service. The Mitchell-Bissell plant receives its electric service from Haywood, while the Sunbelt plant receives electric service from Duke. Both plants are divisions of M-B Industries, and the two plants are approximately 50 feet apart. The other plant served by Haywood, Flame Spray, is some 200 yards from Duke's lines. Witness Morrow is President of M-B Industries.

Witness Morrow indicated that the Haywood-serviced plants consistently had many power outages over the years, usually attributed by Haywood to lightning. The power interruptions at the plants shut down the computers, and the voltage fluctuations caused large motors to burn out, both resulting in disruption to production. Such problems have been frequent at the Haywood serviced plants and rare at the Sunbelt plant serviced by Duke.

Witness Morrow pointed out that Duke had recently installed new underground lines and new transformers at its facilities serving the Sunbelt plant in order to ensure that the plant would be protected from future service problems. Duke made the improvements on its own initiative without any formal request from the Sunbelt plant.

In spite of many complaints and requests for relief from the M-B Industries plants over the years, the only improvement Haywood has made in its facilities serving the plants is a tie-line between Haywood's Quebec substation serving the plant and Duke's Rosman substation, so that the Rosman substation can serve as a backup when the Quebec substation is out of service. Even then, the switch

from the Quebec substation to the Rosman substation must be made manually, so that the time of interruption is shortened but not eliminated. Haywood still has the same lines and transformers installed to serve the Mitchell-Bissell plant as were installed in 1960, according to witness Morrow.

Haywood has responded to the current service complaints by proposing in its revised work plan to install a new tie-line between the Quebec substation and the Cashiers substation. However, Haywood has not negotiated the necessary service agreements with Duke or Nantahala to implement the tie-line.

The Commission has concluded that the service complaints in the Quebec substation area indicate a level of service that has been unacceptable and needs to be improved. The most severe remedy would be a transferral of the entire service area to another supplier. Other remedies include an upgrade of the service facilities, or transferral of a portion of the service area to another supplier in order to relieve the load on the Haywood facilities, or some combination thereof.

The Commission further concludes that the best candidate for a transferral of a portion of the Haywood service area to another supplier is the M-B Industries plants. One plant is fifty feet away from an alternative supplier (Duke), its sister plant in the same area is already served by that alternative supplier with a satisfactory level of service, and the third plant (Flame Spray) is some 200 yards from Duke's lines. No other single customer in the area affects as many employees, and people, as these plants. Transferral of the M-B Industries plants from Haywood to Duke would relieve the load on the troubled Quebec substation. Transferral of the plants would also make it clear to Haywood, and particularly to the Board of Directors of Haywood, the seriousness with which the Commission views the service problems that have been occurring, and the Commission's determination to press for a resolution of the service problems throughout the Haywood service areas. The plants are apparently the only industrial plants in Transylvania County served by Haywood. It pays Haywood approximately $4,000 per month for the electric service.

The Commission concludes that responsibility for electric utility service to the M-B Industries plants served by Haywood should be transferred from Haywood to Duke. Consistent with that conclusion, the Commission is of the opinion that Duke should be required to file a proposal for review by the Commission describing the actions needed, the timetable for such actions, and the costs of such actions to Duke and to the plants to transfer responsibility for electric utility service from Haywood to Duke. Finally, the Commission is of the opinion that implementation of the transfer should commence upon approval by the Commission of the proposal prepared by Duke.

IT IS, THEREFORE, ORDERED as follows:

1. That, except for the M-B Industries plants, serviced by Haywood EMC, final decision on the complaints in this docket shall be deferred in order to provide Haywood EMC an opportunity to resolve the customer complaints through implementation of its revised work plan. Haywood EMC is hereby directed to file with the Commission a written progress report describing the status of improvements to facilities and customer services of the Haywood system, the status of customer response to the improvements, and the status of necessary

approvals from REA and other agencies; and that the progress reports shall be filed beginning three months after the date of this Order and continuing every three months thereafter until terminated by the Commission. Copies of the report should be served upon the Public Staff and any other party of record.

2. That the first three-month progress report shall also describe the status of negotiations between Haywood, NCEMC, Duke, Nantahala and others, as appropriate, regarding the proposed tie lines interconnecting the suppliers' systems through the Haywood system; and that any future three-month progress reports shall describe further changes in the status of negotiations regarding the tie lines if necessary. Copies of any progress reports describing the status of negotiations with suppliers regarding the tie lines shall be furnished to said suppliers, and to the Public Staff and other parties, in order to give them the opportunity to comment on the reports.

3. That by further order of the Commission in this docket, a public hearing shall be scheduled in Brevard approximately one year after the date of this order to receive testimony from Haywood and the customers of Haywood regarding the effectiveness of Haywood's efforts to resolve customer complaints.

4. That this docket shall remain open for a least two years in order to monitor and address the effectiveness of Haywood's two-year improvement program for addressing customer complaints. During this two-year period, the Commission may issue further and final Order regarding the complaints.

5. That responsibility for furnishing electric utility service to the two M-B Industries plants in Transylvania County serviced by Haywood EMC shall be transferred from Haywood to Duke Power Company as soon as possible, but no later than 90 days after the date of this Order (unless extended or shortened by Commission Order); and that Duke shall file a proposal with the Commission within thirty days after the date of this Order describing the actions needed, the timetable for such actions, and the estimated costs of such actions to Duke and to the plants to transfer responsibility for said electric utility service from Haywood to Duke.

6. That implementation of the transfer of responsibility for furnishing electric utility service to the M-B Industries plants from Haywood to Duke shall commence upon approval by the Commission of the proposal for transfer prepared by Duke.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of October 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

ELECTRICITY - COMPLAINTS

DOCKET NO. E-7, SUB 492

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Empire Power Company, Complainant v. Duke Power Company, Respondent	)	ORDER DENYING COMPLAINT

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 11, 1991

BEFORE: Commissioner Allyson K. Duncan, Presiding, Chairman William W. Redman, Commissioner Sarah Lindsay Tate, Commissioner Julius A. Wright, Commissioner Robert O. Wells, and Commissioner Laurence A. Cobb

APPEARANCES:

For Empire Power Company:

William Woodward Webb, Broughton, Wilkins & Webb, P.A., P. O. Box 2387, Raleigh, North Carolina 27602

For Duke Power Company:

William Larry Porter, Associate General Counsel and Karol P. Mack Senior Attorney, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001

Robert W. Kaylor, Patterson, Dilthey, Clay, Cranfill, Sumner and Hartzog, Post Office Box 310, Raleigh, North Carolina 27603

For the Using and Consuming Public:

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

BY THE COMMISSION: On April 4, 1991, Empire Power Company (Empire) filed a formal complaint with the North Carolina Utilities Commission against Duke Power Company (Duke) alleging that Duke failed to comply with Commission Rules R8-56(a) and R8-58(e) and with the Commission Order Granting Certificate of Public Convenience and Necessity for Duke's Lincoln Combustion Turbine Station (Lincoln) in Docket No. E-7, Sub 461. On May 13, 1991, Duke filed its answer and a motion to dismiss. On June 11, 1991, Empire filed its response and requested an evidentiary hearing. On June 17, 1991, the Attorney General served notice of intervention. On June 20, 1991, the Public Staff filed a statement of position. On June 25, 1991, the Attorney General filed a motion for a hearing. The Commission, by Order dated June 28, 1991, ordered that oral argument be scheduled for July 11, 1991, for the purpose of considering Duke's motion to dismiss. The oral argument was held as scheduled.

By Order of the Commission dated August 28, 1991, the Commission denied Duke's motion to dismiss and scheduled the matter for hearing on October 23, 1991, on the issues set forth in the Order. The Order required that the hearing be limited to consideration of two issues: (1) whether Empire made to Duke a proposal of reasonably available purchased power that would have a significant impact on Duke's least cost integrated resource plan and whether such proposal was complete, detailed, and sufficient for assessment, and (2) whether Duke arbitrarily denied Empire's proposal without making a detailed assessment of it using reasonable methods and assumptions or, if such assessment was made, whether Duke made it available to Empire.

Extensive discovery was conducted by the parties. In response to Duke's motion that prefiling of testimony be required and Empire's motion that the hearing be rescheduled, the Commission issued an Order on September 17, 1991, requiring prefiled testimony and rescheduling the hearing for December 11, 1991. Empire filed its direct testimony by letter dated November 19, 1991, and its rebuttal testimony on December 6, 1991. Duke filed its testimony by letter dated November 27, 1991. Subpoenas were requested by Empire, and various motions were filed with regard to the request. At the public hearing, Empire withdrew its motions concerning the subpoenas.

On December 9, 1991, Duke filed its motion to strike certain portions of the testimony of Empire witness Steven L. Greenberg. Empire filed a motion to strike testimony of Duke witness W. F. Reinke and T. C. McMeekin on December 11, 1991. The motion concerning witness Greenberg's testimony was addressed during the hearing, and a portion of witness Greenberg's testimony was struck. The outstanding motion to strike testimony of witness Reinke and witness McMeekin is denied. All other motions not dealt with at the hearing are deemed denied.

Upon call of the case for hearing, both Empire and Duke were present and represented by counsel. Empire presented the testimony of Steven L. Greenberg, Vice President of Empire Power Company, in support of its complaint. Duke presented the testimony of W. F. Reinke, Vice President of System Planning and Operating, Duke Power Company and T. C. McMeekin, Vice President, McGuire Nuclear Site, Duke Power Company. Witness McMeekin was Vice President, Design Engineering during the time of the Empire proposal which is the subject of the complaint. Design Engineering and System Planning and Operating were responsible for review of the Empire proposal.

Based upon careful consideration of the testimony and exhibits presented at the hearing, the entire record in this matter, and the issues set forth by the Commission, the Commission now makes the following:

FINDINGS OF FACT

1. Empire Power Company is a non-utility power company or independent power producer (IPP) that was created in October 1990 to take over the new business and project development functions of Empire Energy Management Systems, Inc. Empire is a project developer.

2. Duke Power Company is a public utility operating in North and South Carolina where it is engaged in the business of generating, transmitting, distributing and selling electric power.

3. In July 1990, Empire proposed to sell electric power to Duke from a combustion turbine generating facility to be built in Person County. Empire subsequently updated and modified its proposal numerous times between August 1990 and January 1991 and again in June 1991 and in November 1991. The site was changed to Rockingham County in December 1990. Other changes included site size, facility size, combustion turbine capability and manufacturer, heat rate, fuel cost, staffing, water supply, operating and maintenance costs, and others.

4. Empire's sole experience in power plant development is a 10-megawatt cogeneration facility at MacDill Air Force Base in Florida that is still under construction. Empire has never generated any electric power anywhere.

5. Empire had a Memorandum of Understanding with Westinghouse for the design, engineering, procurement, and construction of its project. However, the Memorandum of Understanding was subject to termination and was structured so that neither party was bound to liability.

6. Empire proposed Westinghouse W501D5 combustion turbines. There are only two such turbines in operation in peaking application in the United States.

7. Empire does not have an income statement or balance sheet. It has few assets. It has participation offers, but it has no firm agreements for financing or equity participation.

8. Empire's proposal lacked site-specific, balance-of-plant information, i.e., information concerning those portions of the plant not supplied pursuant to a typical combustion turbine manufacturer's contract.

9. When Empire subsequently applied to the Commission for a certificate of public convenience and necessity, much of the technical plant information submitted was identical to information submitted by Duke in its application for a certificate of public convenience and necessity for its Lincoln project.

10. Even though the proposal was not complete, Duke was able to make several assessments of Empire's initial proposal and its supplemental proposal by using Duke's own experience and information from other industry sources. Duke conducted two technical assessments and three economic assessments of Empire's proposal during the period of August 1990 through January 1991. Duke spent significant time and resources in these assessments and Duke discussed its overall concerns and conclusions with Empire in September and November 1990 and in January and June 1991.

11. Duke made certain modifications to Empire's proposal in order to either correct errors or put it on a comparable basis with Duke's supply-side alternative, the Lincoln County Project. Duke made certain assumptions because the proposal was incomplete. Duke's modifications and assumptions were reasonable.

12. Duke conducted a technical assessment of Empire's original proposal in August and September 1990. This evaluation identified 13 areas of concern, including (among others identified in the discussion of evidence) the output rating and the startup time of the turbines proposed, the reliability of the water source proposed, the maintenance and inspection intervals proposed, the inadequate staffing proposed, inconsistencies in the construction schedule proposed, and Empire's lack of experience. Duke concluded from this evaluation that it could not prudently rely upon Empire for peaking power in the time frame proposed.

13. Duke conducted an economic assessment of Empire's original proposal in September 1990. This assessment showed that the proposal offered no cost advantage to Duke.

14. Empire made a supplemental proposal in October 1990 and Duke performed additional assessments of it in November 1990. The supplemental proposal satisfactorily addressed some, but not all, of Duke's concerns. Duke continued to have concerns about the turbines' startup time, maintenance and inspections, noise, and Empire's lack of experience. Duke again concluded that it was not prudent to rely upon Empire and that the proposal offered no cost advantage.

15. Empire presented Duke a Life Cycle Cost Analysis in January 1991 in which it claimed that its project offered Duke a $100 million savings. Duke performed its own economic analysis using Empire's methodology and again concluded that there was no cost advantage in Empire's proposal.

16. Other issues raised during this proceeding relating to the interpretation of Commission Rule R8-58(e) and to the appropriate evaluation process by which utilities should assess future purchased power proposals may be raised in the pending least cost integrated resource planning docket, Docket No. E-100, Sub 64.

EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDINGS OF FACT NOS. 1-7

These findings concern the issue of whether Empire made a proposal of reasonably available purchased power.

Empire witness Greenberg contends that from July 1990 to January 1991, Empire made a bona fide power sales proposal to Duke. He testified that on July 24, 1990, Empire telephoned Duke and sent a facsimile letter describing its power sales proposal for dispatchable, long-term peaking capacity, beginning as early as 1994. On July 31, 1990, Empire presented Duke with a written proposal. In its proposal, Empire had identified several sites which would support the proposed facility, had entered into a Memorandum of Understanding for engineering, equipment procurement and construction services with an experienced,

turn-key supplier of such facilities (Westinghouse), and had identified various methods of financing the facility it proposed. Empire's original offer to Duke was for up to three 100-MW increments of peaking power from a site in Person County, North Carolina called the Rolling Hills project.

Witness Greenberg stated that the Rolling Hills project was conceived at the beginning of 1990 when Empire prepared to respond to a competitive solicitation for peaking power being conducted by a North Carolina municipal utility system. Empire decided not to submit a bid to the municipals and instead made a proposal to Duke for the Rolling Hills project.

Witness Reinke testified that on July 24, 1990, Empire telephoned to ask Duke if it might be interested in an offer from Empire to sell Duke up to 1,000 MW of simple cycle combustion turbine capacity in 100-MW increments from a facility to be located in Person County. No price information or other details were discussed in the phone conversation. On July 31, 1990, Empire provided its original proposal including prices for up to 300 MW in Person County following up on its July 24, 1990, oral offer. Witness Reinke further testified that on numerous occasions between August 1990 and January 1991, Empire updated and modified its proposal. In fact, Empire modified its proposal in June 1991, after Empire had filed its complaint against Duke. Changes included site location, site size, facility size, combustion turbine capability and manufacturer, heat rate, fuel cost, staffing, water supply, and operating and maintenance cost, among others. Empire changed two major aspects (capacity and site size) of its project as late as November 1991. Witness McMeekin testified that Empire's numerous changes contributed to Duke's belief that Empire was not very knowledgeable about generating facilities. Duke's preliminary assessments of Empire's proposal were on the basis of Empire's 300-MW offer at the Person County site.

Duke witnesses Reinke and McMeekin testified that Duke had serious concerns about Empire's lack of experience in the development, design, construction, ownership and operation of large generating plants, Empire's uncertain financial resources, and what Duke considered to be significant technical problems associated with Empire's proposal. These concerns led Duke to conclude that it could not prudently rely on Empire for reliable, cost-effective peaking power in the 1994 time frame. Therefore, Duke did not consider Empire's project to be reasonably available.

Witness McMeekin testified that one of Duke's major concerns was Empire's lack of experience. Empire's sole experience in power plant development consisted of a 10-MW cogeneration facility at MacDill Air Force Base in Florida. That $15 million facility was still under construction and has not generated power to date. Witness McMeekin indicated that Empire's lack of experience was obvious from the proposal in that the proposal demonstrated little knowledge of combustion turbine licensing, siting, design, construction and operation. He further testified that the principals of Empire had limited experience. He said that Duke had concerns about the reliability and deliverability of a product by a team with no experience in the generating facility business.

Empire witness Greenberg pointed out that Empire was trying to sell Duke capacity, not equipment, and that Duke should have considered the experience of Westinghouse. Witness Greenberg testified as to Westinghouse's experience in the

turn-key design, fabrication and construction of peaking combustion turbine plants and to Empire's reasons for selecting Westinghouse turbines for its proposal.

Witness Greenberg testified that Empire's role as project developer is to coordinate the resources of those entities which specialize in specific aspects of a power project, such as siting, permitting, licensing, procurement, construction, financing, fuel supply, and operation and maintenance. Witness Greenberg said, "You could almost describe [Empire] as a shell corporation. . ." He testified that Empire had entered into negotiations with a subsidiary of Baltimore Gas and Electric, a company with substantial experience in the independent power industry, for participation in the Rolling Hills project and had discussed participation in its project with Westinghouse and Commercial Union Energy. He stated that Empire had almost a dozen major developers, utility subsidiaries and contractors who expressed their desire to participate in the Rolling Hills project. Duke witness McMeekin pointed out that while Empire brings up the possibility that Westinghouse and other experienced and financially strong companies might participate in the Rolling Hills project, no firm commitments from these companies have been forthcoming. Further, no information regarding potential equity investors had been presented to Duke.

Witness McMeekin testified that all utilities must deal with the fact that signing a purchased power contract with an IPP or QF does not assure that the power will be available when needed. He pointed out that Virginia Power signed up nearly 30 projects as a result of its December 1986 and March 1988 solicitations. The majority of the accepted proposals were by QFs. Of those, seven have been terminated and others are struggling. To avoid this problem, witness McMeekin said utilities must carefully screen potential suppliers and rely only on those that have a high probability of success. For this reason, purchased power solicitations ask for financial information as well as technical information. Potential suppliers must demonstrate through their proposals that they are financially and technically capable of delivering the project as proposed. Duke witness McMeekin testified that Empire did not demonstrate its financial or technical capability.

In response to Empire's assertions regarding Westinghouse's experience and the claimed advantage of Westinghouse W501D5 combustion turbines (CTs), Duke witness McMeekin testified regarding industry experience with General Electric (GE) and Westinghouse CTs in peaking applications and pointed out that field experience with Westinghouse W501D5 CTs in peaking applications is limited. When considering the need for CTs on the Duke system, Duke determined that high reliability was paramount given the expected use of the CTs in peaking applications. Duke concentrated on filling this need with field-proven equipment. Witness McMeekin stated that there were approximately 15 W501D5s installed in the United States with two of these in peaking applications. There were nearly 100 GE 7001EA CTs installed in the United States with over half of these in peaking applications. Duke selected GE turbines for its Lincoln project, partly on the basis of this concern.

Empire witness Greenberg testified that Empire offered various guarantees, such as completion, output quantity, output availability, startup availability, and heat rate. These included guarantees of Westinghouse, insurance policies, completion bonds, cash, marketable securities and letters of credit. He testified to Empire's willingness to provide bonds, deposits, guarantees, other

forms of security, and a right of first refusal on the plant to Duke so as to provide Duke with the utmost protection for its customers and the utmost confidence in Empire's ability to deliver on its proposal. Empire's contention was that its guarantees on the project made it "reasonably available." However, witness Greenberg admitted on cross-examination that its guarantees do not protect against not having power available.

Duke witnesses Reinke and McMeekin addressed Duke's concern about Empire's guarantees. Duke had grave doubts about any guarantees from an inexperienced developer like Empire, and Duke questioned what recourse Duke would have in the event that such guarantees were not met. Witness McMeekin testified that even if Empire could provide guarantees, Duke must be concerned about its risks if Empire cannot successfully complete the project. No amount of penalties could account for the impact to Duke's customers of not having the generation in place when needed to meet customer demand. Witness Reinke noted that Empire's statement that it will guarantee the project means nothing at this time because Empire apparently has no assets. He said that Empire was simply asking Duke to trust its ability to obtain such guarantees from other sources.

Witness Greenberg contended that Empire's proposal was one of reasonably available power because Westinghouse, an experienced builder of CT projects, had signed a Memorandum of Understanding (MOU) with Empire to provide turn-key design, engineering, equipment procurement, construction and probably operation of Empire's Rolling Hills project. Empire's position was that Duke should not rely on Empire, but on Westinghouse. However, the Memorandum of Understanding states that if Westinghouse's revised price under their agreement makes the transaction uneconomic for Empire, then the Memorandum Of Understanding may be terminated, and further that neither Empire nor Westinghouse shall be liable to the other for any damages arising out of termination of the letter. Under cross-examination, witness Greenberg described MOUs as documents that are structured so that they can be signed quickly, sometimes overnight, to demonstrate the interest of two parties to do a project. They are not reviewed by counsel, and they are structured so that neither party is bound to a multi-hundred million dollar liability.

Duke witness Reinke testified that financial strength was an important consideration in assessing the ability of an independent power producer (IPP) to successfully execute the contractual obligations of any project. Requisite financial strength is required by lenders prior to providing project financing. Financial strength is also important during the operational phase of any project in case of deficient cash flow projections. The ability of the owners to back a project with adequate financial resources is essential in assuring a reliable, dependable project.

In response to Duke's request for financial information, Empire stated that it was a privately held company and therefore does not have an annual report or SEC Form 10-K. Empire also indicated to Duke that it had not needed to assemble a certified or uncertified income statement or balance sheet and thus none was available. If one were available, it would primarily reflect the expenses incurred in developing the Rolling Hills project as a net loss on the income statement and as a capitalized asset on the balance sheet. Empire further stated that it had received "bona-fide" proposals from equity investors but that Empire could not provide them because they were confidential.

Witness Greenberg testified that Empire has not had any difficulty financing the project to date. He stated that Empire's proposal indicated that financing was to be provided by Sanwa Business Credit Corporation, a wholly-owned subsidiary of Sanwa Bank of Japan. He testified that since making its proposal, Empire had also had participation offers from electric utilities, subsidiaries of an equipment manufacturer, and an insurance company, each of which confirmed the viability of Empire's project based on their detailed review of Empire's proposal and on their experience in having developed and financed similar large independent power projects. However, he acknowledged that no firm agreements for financing or equity participation had been reached with any partners, financiers, or subcontractors.

Duke witness McMeekin testified that problems with Empire's proposed schedule for its project contributed to Duke's conclusion that Empire's proposal was not one of "reasonably available purchased power." The Siting section of Empire's proposal stated that construction of the plant should take approximately one and one-half years. The Schedules section, however, only showed a one-year construction duration on both schedule charts, and the construction period ended six months prior to the last equipment delivery. Also, the earliest CT procurement and fabrication activities shown on the schedule charts would not result in equipment delivery supporting the construction schedule.

Witness Reinke testified that an IPP project like Empire's does not offer flexibility equivalent to a utility-built project like Lincoln. Duke could accelerate or slow down the construction of Lincoln to bring any number of units on line as needed. Duke has negotiated supply contracts with its vendors that allow Duke the flexibility to change the schedule so that Duke can place the units in service when they will be needed and when they will be least cost. This flexibility also supports Duke's efforts in demand-side management (DSM) in that DSM program impacts are less exact than supply-side options. Duke evaluates its resource needs each year as a part of its normal planning cycle and utilizes the least cost resources that provide an adequate and dependable electric supply. If planned supply-side resources are provided by purchased power contracts which require capacity payments beginning on a specific date, provided the capacity is available, flexibility would be limited by the contract and may only be achievable at a substantially increased cost.

The Commission concludes that Empire did submit to Duke a written power sales proposal for dispatchable peaking combustion turbine capacity on July 31, 1990. This proposal was updated and modified by Empire on several occasions between July 1990 and June 1991. The Commission also concludes that Duke made a preliminary examination of Empire's proposal and, based on its preliminary examination, Duke had legitimate concerns regarding Empire's lack of experience, the limited experience in peaking service of the CT units proposed by Empire, Empire's uncertain financial resources, and problems with Empire's proposed construction schedules. These concerns led Duke to conclude that Empire's proposal would present an unacceptable risk to Duke's customers and was, therefore, not a reasonably available purchased power option.

It is important that utilities screen potential suppliers for financial and technical capability and rely on those that have a high probability of success. Duke's conclusions that it could not safely rely on Empire for peaking power and therefore that Empire's proposal did not constitute a reasonably available purchased power resource were appropriate.

EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDINGS OF FACT NOS. 8-9

These findings concern the issue of whether Empire's proposal was complete, detailed, and sufficient.

Witness Greenberg contended in his direct testimony that Empire's proposal included virtually all of the elements that are commonly required by utility-sponsored peaking power solicitations, citing excerpts from the 1989 Virginia Electric and Power Company solicitation. He then listed solicitation information requirements which Empire provided to Duke. In his rebuttal testimony, witness Greenberg provided an itemized listing of balance-of-plant technical information in Empire's application for a Certificate of Public Convenience and Necessity. He cross-referenced this information to locations in Empire's proposal to Duke, which was included in Empire Exhibit SLG-1. Under rebuttal cross-examination, witness Greenberg contended that the bulk of the balance-of-plant information sought by Duke was contained within Tabs (I) through (N) of Empire's proposal. He denied Duke's statement that Tabs (I) through (N) contained turbine, not balance-of-plant, information.

Witness Greenberg indicated in direct testimony that Empire did not provide Duke all its data and that much of the equipment-specific information was not provided because Empire was selling Duke capacity, not equipment. He stated that more information was available, but Empire expected to provide that later in response to specific questions.

Witness Greenberg also testified that a number of updates to the proposal were provided to Duke as a result of Empire's continued development of the project, further review of its proposal and ongoing discussions with Westinghouse. The updates included transmission price estimates to move the power into Duke's territory, updated power output guarantees, and updated pricing proposals based on these other updates. Witness Greenberg noted several changes and options regarding the responsibility and costs of facility operating and maintenance (O&M). In response to Duke's September 1990 comments on O&M, Empire increased its prices, added contingencies, and confirmed costs and prices with Westinghouse. Empire also provided Duke the option of performing O&M itself or through its preferred contractor.

In regard to sites, witness Greenberg testified that after the supplemental proposal was submitted, Empire continued to pursue additional sites in Duke's territory, primarily in Rockingham County. Rockingham County was selected due to its classification as an attainment area, its location in the northeast part of Duke's service territory, and its location on the Transco pipeline. He also stated that Empire did not tell Duke about the site until December 1990, when it provided the Rockingham County Site Proposal to Duke along with additional heat rate information on the Westinghouse equipment. Witness Greenberg claimed this would enable Duke to re-analyze the economics of Empire's project by relying on the heat rates provided by Empire and by eliminating the fixed cost of transmission from the Person County site.

Witness McMeekin testified that Empire's original proposal was not complete, detailed and sufficient for Duke to perform a detailed assessment thereof. However, based upon Duke's knowledge of combustion turbines, Duke performed technical and economic evaluations of the proposal in order to determine whether

Empire's proposal could conceivably benefit Duke's customers. The assessment of the proposal was difficult because Empire provided numerous changes to the proposal during the time Duke was making its assessments.

Witness Reinke testified that Empire provided a supplement to its proposal dated October 9, 1990, revising certain aspects of its proposal. The revision primarily addressed several, but not all, of Duke's major areas of concern. Witness Reinke indicated that Empire continued to correspond with Duke. On December 28, 1990, January 2, 1991, and January 7, 1991, Empire identified an additional site for the Empire project and provided further information on sites and heat rate. Empire met with Duke on January 9, 1991, and provided Duke with its Life Cycle Cost Analysis of the Empire project.

Witness McMeekin disagreed with Empire's statement that these changes were a sign of flexibility. He stated that Empire's numerous changes contributed to Duke's belief that Empire was not very knowledgeable about generating facilities. For example, Empire adjusted its pricing only once due to siting changes. Empire increased the capacity charge to reflect the cost of using a pumping station for one of the Alamance County sites but proposed different site locations and sizes without changes in price.

Witness McMeekin indicated that one of the shortcomings of the various Empire proposals was the lack of balance-of-plant information, i.e., information concerning all portions of the plant not supplied pursuant to the typical turbine manufacturer's contract. Duke contended that Empire provided a standard package of information on the turbine package from Westinghouse, which is typically provided to potential customers, but did not provide sufficient site-specific balance of plant information. Witness McMeekin stated that necessary technical information for adequate balance-of-plant assessment would have included the following:

1. Conceptual mechanical and electrical system descriptions to include electrical one line diagrams, process flow diagrams, etc;

2. Conceptual identification and description of components and structures included in the facility; and

3. Site plan and other drawings defining the basis of the offer.

Witness McMeekin provided excerpts from 1989 Florida Power and Light Company and Virginia Electric & Power Company proposals to demonstrate that other utilities have required this level of technical detail.

Witness McMeekin described the balance-of-plant information and the level of detail included in Empire's proposal, including updates and revisions, to support his contention that inadequate information was provided. As an example to further demonstrate that balance-of-plant information was lacking, the body of the Technical Information section of the original proposal was shown in McMeekin Exhibit 3. No balance-of-plant data was included. None was included in this section of the supplemental proposal either. Other sections provided detailed information on the turbine and supporting auxiliary equipment. No such sections existed for the balance of plant. The balance-of-plant information which was provided was very general with little or no detail.

Witness McMeekin provided an example of the importance of balance-of-plant information for the plant. He noted that Empire had allocated $1.75 million for interconnection in the Financing section of its proposal. Yet using the estimate range and unit cost figures submitted by Empire in its proposal for the switchyard and transmission line and using the actual length of transmission line required to the Eno Tie at the Person County site, the cost for the switchyard and transmission line could have been as high as $12.3 million. Thus, the Empire interconnect allocation could have been understated by as much as $10.55 million, which would have increased Empire's $122 million capital cost by 8.6%. Similar interconnect cost discrepancies existed at the Rockingham County site where Duke estimated interconnect cost at approximately $6 million. These interconnect cost estimates did not include the cost of upgrading the existing transmission system.

Witness McMeekin described other errors associated with Empire's interconnect cost. The Financing section of Empire's original proposal contained a constant $1.5 million interconnect cost for a one-, two-, or three-unit facility. In the supplementary proposal, the constant interconnect cost increased to $1.75 million; however, much of the cost associated with interconnect is unit-related so that the cost should increase with the number of units. He testified that this was a costly error and served to demonstrate Empire's lack of understanding regarding the elements involved and their interrelationship with the plant.

Witness McMeekin noted that Empire attempted to divert attention away from its lack of adequate information by stating that detailed and "working scale model information" was not available. Such type of modeling is not part of industry practice and was clearly neither required nor appropriate. On the other hand, balance-of-plant information, including layout drawings and descriptions of plant systems and equipment, has been and continues to be provided as standard practice in bid solicitations of utilities.

Witness McMeekin stated that there was recent evidence indicating that Empire realized that its balance-of-plant information submitted to Duke was deficient. In its October 31, 1991, application to the Commission for a Certificate of Public Convenience and Necessity for the Rolling Hills facility in Rockingham County, Empire included the kind of balance-of-plant information that Duke considered necessary for an adequate technical assessment. This information was essentially not included in Empire's proposal to Duke. Witness McMeekin noted, however, that much of the technical plant information submitted to the Commission by Empire in its Rolling Hills certificate application was a verbatim duplication of the information submitted by Duke in its Lincoln certificate application.

During cross-examination of witness Greenberg, a comparison the Lincoln and Rolling Hills certificate applications was discussed. Greenberg acknowledged that Empire had copied portions of Duke's Lincoln application verbatim. Under its Waste Water Treatment System description, Duke stated that Lincoln's treated waste water was to be released directly into Killian Creek. In copying the Lincoln application for the corresponding section of the Rolling Hills application, Empire omitted this statement and no means of discharge was identified. Upon cross-examination, witness Greenberg could not explain Empire's method of treated waste water discharge.

Empire contends that it did not include much of the equipment-specific information in its proposal because it is proposing to sell Duke capacity, not a plant. The Commission notes that Empire is proposing to sell capacity from a single power plant with no alternative generating resources to provide replacement power. Empire's proposal is not the same as a capacity purchase from a generating system which can provide capacity from multiple sources. If Empire's single power plant is unreliable or more costly than projected, Empire has no replacement power options. Complete information on the equipment comprising the plant should be part of a proposal in order for Duke to determine the expected reliability of the plant to meet customers' load requirements.

The Commission concludes that the record shows that Empire essentially provided a standard Westinghouse combustion turbine proposal to Duke without significant site-specific information including necessary balance-of-plant information. The technical scope of information and level of detail did not meet the requirements established by other utilities in their purchased power solicitations. The balance-of-plant information furnished was incomplete, and the limited information provided was very general with little or no detail. Empire did provide balance-of-plant information with its subsequent application to the Commission for a Certificate of Public Convenience and Necessity for Rolling Hills, but Empire acknowledged it copied that information from an earlier Duke application. Further, as previously discussed, there were numerous changes in Empire's proposal. Empire submitted several changes and options to Duke with regard to output, heat rate, interconnect cost, site, and pricing. All of these issues should have been confirmed and incorporated prior to submittal to Duke.

The Commission concludes that Empire's proposal was not complete, detailed and sufficient. The Commission has previously concluded that the proposal was not one of reasonably available purchased power. The first issue identified by the Commission--whether Empire made a proposal of reasonably available purchased power that was complete, detailed and sufficient to perform an assessment--is therefore answered no. Based on Duke's preliminary evaluation of the proposal, no full assessment was required. Nonetheless, Duke did perform assessments of the proposal, and the Commission has considered them.

EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDINGS OF FACT NOS. 10-15

These findings concern the issue of whether Duke made a detailed assessment of Empire's proposal using reasonable methods and assumptions.

Witness Greenberg testified that as a result of Empire's Request for Production of Documents, Empire learned that Duke did conduct a detailed assessment of Empire's proposal, as shown by Exhibit SLG-3. Witness Greenberg acknowledged that he reviewed Duke's technical assessments and that Duke conducted economic comparisons between Empire's proposal and Duke's least cost supply-side option (Duke's Lincoln County project) on three occasions. Each time, Duke examined Empire's proposal as proposed and as modified by Duke. Witness Greenberg discounted Duke's modifications to Empire's proposal, other than heat rate and fuel cost. He agreed that it was appropriate to assume equal fuel costs and equal heat rates and to exclude initial fuel costs. In general, Empire alleges that Duke used unreasonable methods and assumptions in its assessments of the Empire proposal. Further, Empire claims that Duke's notes and memoranda demonstrate that Duke acted in bad faith.

Witness Greenberg specifically addressed Duke's concerns and modifications. For example, he did not agree with Duke's modification to Empire's O&M costs. He stated that for maintenance and variable O&M, Empire complied with Westinghouse specifications, recommendations, and proposals. He also testified that the actual O&M costs would be passed through to Duke.

In response to Duke's concern with the CTs' startup time, witness Greenberg testified that the emergency startup time of 10 minutes for spinning reserve purposes was confirmed by Westinghouse on September 25, 1990. He also stated that the spinning reserve classification was inappropriate and unnecessary.

Witness Greenberg defended the proposed one-person staff by noting that staffing of peaking plants is usually done according to utility preference. He stated that, intuitively, a facility that is capable of remote start and only runs about 100 hours per year, usually during peak periods, does not need to be staffed by more than one person 8,760 hours per year.

Witness Greenberg also responded to Duke's concern about the proposed maintenance program by explaining that the timing of maintenance intervals depends on the mode of equipment operation which would be dictated by Duke. He indicated that Empire's costs were based on manufacturer's recommendations and are consistent with industry practice.

Empire's witness Greenberg noted that there may be additional cost factors related to the impact of environmental permit restrictions when both Rolling Hills and Duke's least cost supply-side alternative receive final air permits. Witness Greenberg argued that the cost of environmental permit restrictions would further accentuate the economic advantage of Empire's proposal.

Witness Greenberg testified that Duke mistakenly used annual variable cost data and added it to a monthly fixed cost in Duke's September and November economic analyses. He also testified that Duke improperly calculated Empire's fixed O&M cost at three times its actual value in the November analysis.

During cross-examination, witness Greenberg stated that the $75,000 tax figure submitted by Empire was not for the entire facility but only for a portion of the facility. He stated that the rest of the taxes were taken care of in other parts of the pricing and spreadsheets. Witness Greenberg also testified that he did not know what the tax would be on a $122 million facility. Witness Greenberg agreed that the tax rate times $122 million would be a ballpark estimate of taxes and that this would be annual property tax of about $750,000 per year.

Witness Greenberg claimed that transmission losses would likely be less at the Empire location than at Duke's Lincoln location, effectively increasing the cost advantage of Empire's proposal.

Witness Greenberg testified that the purchase of capacity from Empire at a different site and on a different model of equipment would actually increase Duke's reliability. He also stated that the location of the project in the northeast portion of Duke's service territory was beneficial.

Witness Greenberg testified to Empire's belief that Duke acted in bad faith and alleged that Duke's notes and memoranda, contained in Exhibit SLG-3, clearly

showed bad faith and unreasonableness in Duke's actions. Empire offered specific Duke documents to ddmonstrate bad faith. One document presented as Empire Cross-Examination Exhibit Number 3 was a list of options for dealing with the proposal which was discussed at an internal Duke meeting. The document listed various "pros and cons" of the options.

Finally, witness Greenberg contended that Duke's assessments were unreasonable because Duke failed to request additional information. Empire expressed its intention to cooperate with Duke in providing all of the information requested by Duke as quickly as possible.

Witness Reinke and witness McMeekin testified that Duke made detailed assessments of Empire's initial proposal and updated the assessments twice to incorporate updated or modified information submitted by Empire. Duke used reasonable methods and assumptions in making all assessments, based on Duke's experience in the power generation business and information from other industry sources.

Witness Reinke testified that Duke acted in good faith in its dealings with Empire. The fact that Duke did not enter into a contract with Empire does not demonstrate bad faith. Witness Reinke stated that Empire has taken selected documents out of context to try to establish bad faith. Witness Reinke and witness McMeekin both testified during cross-examination that Empire Cross-Examination Exhibit Number 3, Duke's discussion of options, was the range or spectrum of thoughts or potential consequences that Duke saw as a result of evaluating the Empire proposal. Discussion of the options is not an example of bad faith.

Witness Reinke also noted that Duke spent significant time and resources examining Empire's proposal. Duke conducted two technical assessments and three economic assessments of Empire's proposal. This was done even though Empire had no significant experience and apparently no net worth. Witness Reinke was of the opinion that under the circumstances Duke did more than could be expected.

Witness McMeekin described the assessments which Duke conducted. In order to determine if the offer was in the best interests of Duke's customers, Duke performed an assessment which included consideration of many criteria, including cost, benefits, risks, uncertainties, and reliability. Duke performed technical evaluations and economic analyses on the Empire proposal and supplemental information during the period from August 1990 through January 1991. Duke determined that there were significant technical problems associated with Empire's proposal and that Empire lacked experience in the development and construction of generating plants. These technical problems and Empire's lack of experience raised significant concerns with respect to the reliability of Empire's proposal. Additionally, the economic analyses of Empire's proposal demonstrated that Empire offered no cost advantage. Therefore, Duke concluded that it could not prudently rely on Empire for reliable cost effective peaking power.

Duke's Technical Assessment of Empire's Original Proposal

Witness McMeekin described the technical assessment made on Empire's original proposal and air permit application in August 1990. He indicated that

the scope of Duke's technical evaluation was necessarily limited to the information provided by Empire which was incomplete in many respects. Duke identified the following areas of concern:

1. Questionable rating of the Westinghouse turbines;
2. Higher capital cost than Lincoln;
3. Startup time on the Westinghouse turbines which did not meet spinning reserve requirements for the Duke system;
4. Reliability of on-site wells as a water source without thorough study and testing;
5. No air quality modeling or Best Available Control Technology analysis;
6. Empire's proposed air permit application which was based on unlimited hours of operation without selective catalytic reduction, use of 0.3% sulfur oil, and emission parameters based on natural gas, rather than fuel oil;
7. Potential delays associated with late initiation of licensing process by Empire;
8. Unrealistic fuel plan demonstrating a lack of understanding of natural gas availability;
9. Maintenance/inspection intervals based on manufacturer's recommendations which were not consistent with Duke's survey of industry practice;
10. Unacceptable staffing by one operator with no mention of maintenance staffing or philosophy;
11. Noise level guarantees which were potential licensing issues;
12. Inconsistencies and problems within the construction schedule; and
13. Empire's lack of experience.

Witness McMeekin testified that Duke had concerns with the output rating of the proposed Westinghouse CTs. Comparisons between the proposal Westinghouse made to Duke in 1988 and those submitted by Empire show substantial differences. While Empire stated that the unit is capable of 100 MW at 95 degrees F on natural gas, Westinghouse proposed to Duke the same model machine as capable of a noticeably lower output at 97 degrees F. Duke modified the output for purposes of its economic analysis.

Witness McMeekin responded to witness Greenberg's testimony that sufficient data was provided for Duke to confirm Empire's output, thus making the output modification used by Duke in its economic analysis inappropriate. Empire stated that the increase in capacity above that proposed by Westinghouse to Duke in 1988 was due to use of a higher water injection-to-fuel ratio used by Westinghouse to achieve lower NOx emissions. Witness McMeekin testified that Empire failed to

provide Duke with either the proposed NOx emission level or the water injection-to-fuel ratio in its initial proposal. Also, the water injection-to-fuel ratio correction curve provided by Empire was the same as previously provided to Duke by Westinghouse in 1988 and terminated at a maximum water injection-to-fuel ratio less than the value used by Empire. Thus, the parameters required to identify the basis of the increase in output were not provided to Duke. Also, the technical information supplied by Empire implied that a higher water injection-to-fuel ratio was not used. Duke maintained that it was justified in making the output modification under those circumstances.

Witness McMeekin testified that there were implications from an increase in output on the W501D5 turbine above the output provided by Westinghouse to Duke in 1988. At the outset of determining the need for CTs on the Duke system, Duke determined that high reliability was paramount given the expected service. As such, Duke concentrated on filling this need with field-proven equipment. Duke suspected that Empire's assertion that the increase in output resulted from a higher water injection rate did not represent the total scope of change. Duke learned that the firing temperature on the W501D5 had been increased twice in recent years. Higher firing temperatures could have a significant bearing on material performance from the standpoint of material failure and could also lead to more frequent maintenance inspections. Thus, both reliability and cost consideration issues were raised by Empire's proposed use of W501D5 turbines at higher outputs, especially for peaking service. Duke noted that turbine vendor warranties are for a limited time and that the owner assumes the financial risk if a turbine modification results in problems following expiration of the warranty.

Witness McMeekin compared the cost/kw of the Empire proposal with the Lincoln plant in its technical evaluation. Duke made comparisons of the capital cost including interest during construction between the Lincoln and Empire projects. On an equal basis the comparisons showed that Lincoln had a 4% lower capital cost per kw than the Empire project. This comparison was based on the capital costs proposed by Empire which Duke claims have been understated.

Witness McMeekin also testified that Duke had concerns with the proposed startup time for the turbines planned by Empire. Empire's original proposal included a startup time of 30 minutes which does not meet spinning reserve requirements for a 10-minute startup. Duke decided in 1988 that the specifications for the Lincoln combustion turbine equipment would include a 10-minute startup to meet spinning reserve requirements and that decision has not changed. Witness Reinke discussed the requirements for spinning reserve. "Spinning reserve" is excess generating capacity which must be available to respond to the load fluctuations that naturally occur on a power system. There is a continuous effort to match fluctuations in system load with system generation in order to maintain a balance. The system must also be able to make up quickly for the loss of a generating unit forced out of service. Spinning reserve requirements are from the North American Electric Reliability Council Operating Guide and from contractual obligations. He further stated that a 10-minute startup requirement provides significant economies associated with being able to use combustion turbine units to provide spinning reserve.

Witness McMeekin testified that Duke had concerns with Empire's proposed water source. The Empire proposal stated that water for plant operations would be from on-site wells. Duke's concern was the reliability of on-site wells as

a water source without thorough study and testing. Without a geotechnical evaluation and on-site testing, the provision of such a large volume of water from wells would be risky in both the long and short term. Also, there was no discussion regarding storage of any untreated water in the proposal.

In regard to air quality, witness McMeekin testified that the original proposal by Empire did not include sufficient detail to assess Empire's ability to license the project. The proposal did not include a discussion of any modeling to evaluate compliance with air quality standards.

Witness McMeekin testified that Empire's proposed air permit application which was subsequently submitted to Duke on September 6, 1990, was based on unlimited hours of operation without selective catalytic reduction, use of 0.3% sulfur oil and emissions parameters based on natural gas. Witness McMeekin testified that these were not reasonable criteria. Although witness Greenberg testified that Empire was aware of the need to utilize both natural gas and fuel oil as a fuel source for the turbine, the preliminary air permit application gave no indication of this. Further, witness Greenberg testified that the preliminary air permit application provided to Duke on September 12, 1990, was based on 100% oil. Duke did not receive a preliminary air permit application on September 12. Duke noted that Empire stated in a September 12, 1990 letter its intention to file the application that day, but to date Empire apparently has not formally filed an application for a Prevention of Significant Deterioration (PSD) permit. These positions by Empire further served to demonstrate its lack of understanding regarding combustion turbine licensing requirements.

Witness McMeekin testified that Duke also had concerns with Empire's original proposal related to fuel source. He testified that the fuel plan submitted by Empire demonstrated a lack of understanding of natural gas availability. The proposal stated that there would be sufficient pipeline capacity under normal operating conditions to supply the turbines with natural gas. Empire's fuel plan ignored the fact that natural gas would not be available during extreme winter conditions to accommodate Duke's needs for peaking power. Also, Empire's cash flow for the project was based on the use of natural gas as the sole fuel, which is unrealistic.

Witness McMeekin testified that Duke had concerns during the original technical evaluation with regard to Empire's proposed operation and maintenance. He stated that the proposed maintenance and inspection intervals were considered inadequate. Duke's opinion was based on its own experience and industry information on in-service CT units. Empire made no mention of maintenance staffing or philosophy other than the maintenance intervals.

Duke also had concerns with Empire's proposal to have only one on-site operator. While it is possible for one person to operate the units, one person cannot adequately keep the plant operational over an extended time. Witness McMeekin noted that the staffing issue had not been resolved. Although Empire proposed a staff of five in its October proposal, witness Greenberg's testimony defended the original proposal as consistent with industry practice. In McMeekin Exhibit 5 Duke showed that staffing at representative combustion turbine facilities, which were referenced by witness Greenberg, was no less than two people per plant and averaged more than one person per unit. McMeekin testified

that Empire does not appear to understand that no relationship exists between remote start and staffing levels, and that this staffing issue demonstrates the inexperience of Empire and the problems of relying on turbine vendor recommendations.

Witness McMeekin testified that the schedule contained in the proposal had several problems. The Siting section and the Schedule section of the proposal showed different construction durations. Also, the schedule had activity conflicts such that construction would not have been supported.

Witness McMeekin testified that one of Duke's major concerns during the technical review was Empire's lack of experience. This lack of experience was obvious from the proposal. Empire's proposal demonstrated little knowledge of combustion turbine licensing, siting, design, construction, and operation. Empire's inexperience was confirmed through information provided at Duke's request on Empire's experience to date. The whole of its power plant development experience consists of a 10-MW cogeneration facility which is still under construction. By its own admission, Empire had no other experience and has never produced any power anywhere.

Witness McMeekin testified that the conclusion of the technical evaluation was that Empire's proposal had significant technical deficiencies and that its capital cost was higher than the Lincoln project. Based on this evaluation, Duke determined that there was a substantial risk that Empire lacked the capability to execute its proposal given its low level of understanding and the large number of issues which had not been addressed. Duke concluded that it could not prudently rely on Empire for peaking power in the time frame proposed by Empire. Witness McMeekin stated that Duke did not seek additional technical information in order to refine its analysis. Empire failed the initial assessment, and therefore no further assessment was necessary.

Duke's Economic Assessment of Empire's Original Proposal

In regard to Duke's economic assessment of the original proposal, witness McMeekin testified that Duke analyzed the proposal at capacity factors of 1% and 5% (because the original proposal utilized an unrealistic 20% capacity factor) for one combustion turbine and three combustion turbines. The original assessment was completed in September 1990. The analysis considered capital costs, fixed and variable operating and maintenance (O&M) costs, transmission costs, and fuel costs. In addition to evaluating the Empire project as originally proposed, Duke made certain modifications to the information provided by Empire. These modifications included a reduction in summer capacity, adjustment of heat rate to reflect comparable conditions, and changes to the O&M costs (including fuel cost).

Witness McMeekin testified that Duke modified the output to be consistent with the proprietary information presented to Duke by Westinghouse in 1988. Duke later learned that Westinghouse had increased its rating; however, without in-service experience Duke was concerned that this increased output might affect reliability and maintenance. Thus, witness McMeekin testified that the modified output value was appropriate.

Witness McMeekin testified that Duke modified the heat rate to reflect a higher heating value of fuel instead of the lower heating value. The Empire heat

rate was based on 95 degrees F while Duke's was 97 degrees F. The heat rates provided by Empire were not cycling-adjusted so the effect of short-term run duration was not considered. CTs are used for short-term runs, and the heat rate needs to reflect frequent cycling. Duke replaced Empire's proposed heat rate with a cycling-adjusted heat rate based on higher heating value.

Witness McMeekin also described the modification to Empire's proposed O&M costs. Witness McMeekin noted that Empire did not originally offer to guarantee its O&M and fuel costs. Empire proposed to pass through all of these costs. Therefore, Duke needed to assess the true costs of O&M and fuel. Empire's proposed O&M costs were based on vendor recommendations. Duke modified the O&M costs based on industry practice. Duke's opinion, based on in-house experience and industry information, was that vendor recommendations are frequently overly optimistic.

Witness McMeekin testified that Duke's economic assessment showed that the Empire proposal offered no cost advantage. However, he indicated that Duke's economic assessment was not the primary reason Duke did not accept Empire's offer. The conclusions drawn from the technical assessment of the proposal and Empire's modifications led Duke to conclude that Empire had very little experience in the power generating business. Duke concluded that Empire's proposal was not a viable alternative based on the technical assessment, Empire's lack of experience, and the economic assessment.

Duke's Assessments of Empire's Supplemental Proposal

Witness McMeekin testified that Empire provided a supplemental proposal in October 1990 and Duke updated its original assessments. Witness McMeekin testified that although Empire addressed some of the issues that had been identified, Duke still had significant concerns about the proposal. The Person County water source and staffing were addressed satisfactorily. All other issues remained a concern. Empire's lack of experience remained a major concern.

Empire reduced its Person County site size in the supplemental proposal from 200 to 56 acres due to sale of the remaining property. Empire claimed this would not cause a noise problem, giving as an example a 500-MW facility located on 50 acres. Witness McMeekin testified that the referenced facility was enclosed, which would result in lower sound levels at the property boundary but at a much higher cost for construction and operation. Duke still had concerns regarding noise based on the supplemental proposal. Duke felt that it was very likely that the 59 dBA noise level guaranteed by Empire at the facility perimeter would result in unfavorable community reaction. Duke did not consider this satisfactory.

Witness McMeekin testified that Empire's supplemental proposal of October 1990 addressed, in part, Duke's concern with Empire's fuel source. Empire provided information that natural gas would be available in the summer months. However, there was no mention of the need to depend on fuel oil for non-summer operation and no adjustment of the proposed operational costs to reflect the use of fuel oil.

Witness McMeekin testified that Empire's proposed startup time was changed in the supplemental proposal. Empire included a table in its supplemental proposal which listed the cold start as 29.5 minutes and the emergency start as

19.5 minutes for the Westinghouse 501D5. The revised startup time still did not meet the 10-minute spinning reserve requirement. Empire also included a letter from Westinghouse which stated that the turbines could be started "in approximately 10 minutes" but with the note that frequency of recommended inspections and maintenance would be significantly impacted. The impact of each 19.5-minute start was shown as the equivalent of 400 operating hours, i.e., equivalent to almost one year's operation, which would have a significant impact on cost of maintenance. Witness McMeekin testified that the impact of an approximate 10-minute start was not included; however, the implication relative to the 19.5-minute start was that it would indeed be most severe.

The supplemental proposal did not change the basic conclusion that it was not prudent for Duke to rely on Empire for peaking power in the time frame included in its proposal. Witness McMeekin stated that the review of the supplemental proposal continued to show no cost advantage in purchasing electricity from Empire as compared to Duke's proposed Lincoln project.

Duke's Assessment of Empire's Life Cycle Cost Analysis

Witness McMeekin also testified that Duke reviewed Empire's Life Cycle Cost Analysis presented to Duke in January 1991 in which Empire claimed a savings of $100 million. He stated that Duke performed its own economic analysis using Empire's methodology. Duke modified several parameters to correct errors in Empire's analysis and to place the analysis on a comparable basis. Witness Reinke testified that the results of this analysis were communicated to Empire in a meeting on January 21, 1991. This evaluation concluded that the Empire project was not a viable, least cost alternative to Duke's Lincoln project.

Witness McMeekin described the modifications Duke made to the Life Cycle Cost Analysis. Witness McMeekin testified that Duke modified the summer capacity, discount rate, capital costs, facility life, variable O&M, and heat rate. He noted that Empire based its comparison on the cost parameters provided by Duke to the Commission in the Lincoln certificate proceeding pursuant to Rule R8-61(b) and that these costs were an anticipated upper bound and were not on the same basis as the Empire proposal. Witness McMeekin stated that the Rolling Hills capacity and the Lincoln capacity were adjusted to be comparable to account for operation and temperature differences. Witness McMeekin testified that Duke used a discount rate of 9.77% for both projects. He also noted that the capital cost used by Empire for Duke was not comparable in that it contained the costs for initial filling of the fuel oil tanks. Furthermore, Empire's interconnect costs appeared to be substantially underestimated and the cost of upgrading Duke's transmission system to accommodate the additional load was totally omitted. He noted that the facility life basis for Duke as stated in Rule R8-61(b) information was 20 years versus the 25-year life incorrectly stated by Empire.

Witness McMeekin described Duke's concern with variable O&M costs applied to Duke and Empire in the Life Cycle Cost Analysis submitted by Empire. Empire's analysis utilized the variable O&M costs for Duke as shown in Duke's R8-61(b) filing which were based on industry practice while Empire's projected O&M costs were based on vendor recommendations. The variable O&M estimate presented in the Rule R8-61(b) filing was not based on vendor recommendations and cannot be used for comparison with estimates based on vendor recommendations. Duke's opinion, based on in-house experience and industry information, was that vendor

recommendations are frequently overly optimistic. Therefore, Duke equalized variable O&M for both Empire and Lincoln at the R8-61(b) filing level. Witness Greenberg agreed in his testimony that Westinghouse's and GE's recommended variable O&M were roughly comparable.

Witness McMeekin testified that Duke had a concern with heat rates used by Empire in its Life Cycle Cost Analysis. The heat rates used by Empire for Duke and Empire units were neither cycling adjusted nor at the same temperature.

In regard to Duke's assessment of Empire's January 1991 Life Cycle Cost Analysis, witness McMeekin concluded that the analysis continued to show that there was no cost advantage to purchasing electricity from Empire.

Other Issues Pertaining to Duke's Assessments of Empire's Proposal

Witness McMeekin acknowleged that Duke made certain errors in its September and November analyses. He said that Duke treated an annual cost component as a monthly component in the September and November analyses. In the November analysis, Duke interpreted the fixed O&M costs identified by Empire in the October supplement as per-unit cost. The information provided by Empire was unclear. In the original proposal, fixed O&M was provided on a per-unit basis. The October supplement did not specify that the O&M cost was on a total plant basis and not a per-unit basis. The January analysis did not contain the referenced errors but showed no cost advantage to the Empire project. Witness McMeekin also testified that if these errors in the September and November assessments were corrected, the conclusion would not change. The error in the September analysis favored Empire while the errors in the November analysis favored Duke. Adjustments for these errors showed the same relative results; when placed on a comparable basis, the Empire project offered no cost advantage.

Witness McMeekin testified that Empire's claimed savings of $100 million was the result of Empire's assumptions relating to O&M costs and fuel. Even using numbers agreed upon by Duke and Empire, the capital cost of Lincoln is lower than Empire's. Witness McMeekin noted that in its July and October proposals, the capital cost was the only cost that Empire was not going to pass through to Duke. Witness McMeekin noted that witness Greenberg admitted that the fuel costs of the two facilities should be equal. Witness Greenberg also admitted that the manufacturer's recommended maintenance and variable O&M for the proposed machines at the two facilities are roughly equal. Therefore, by Empire's own admission, one would expect that the projected fuel and O&M cost of the two facilities would be roughly equal. Witness McMeekin testified that Empire manipulated these numbers to produce a $100 million "savings," none of which it proposed to guarantee.

Witness Reinke stated that Empire is an inexperienced company proposing essentially the same type of project as Duke's Lincoln project. Regardless of who builds and owns the capacity, the operating requirements to meet the anticipated peaking demands of Duke's customers are the same. Since Duke's economic analysis showed that substantial cost savings from Empire's proposal did not exist, purchasing capacity from Empire instead of building capacity offered no advantage to Duke's customers to offset the additional risks and reliability concerns associated with purchasing power from an inexperienced developer.

Witness McMeekin explained the significance of location for a CT project. Duke conducted an extensive study of potential combustion turbine sites, including the northeast portion of Duke's service territory. The Lincoln site was selected as a result of this siting study. Witness Reinke did not agree with Empire's contention that its project would provide Duke with needed diversity. Duke has 163 generating units in 39 locations in its service area. With this degree of existing diversity, it is much more important that the focus be on equipment reliability rather than location.

With regard to transmission losses, witness Reinke testified that losses are inherent in the transfer of power. Kilowatt-hour losses for peaking facilities are considerably less than for base-load facilities. Witness Reinke stated that Empire's project would have little effect on system losses. Mr. Reinke stated that locating a generating facility in the northeast portion of Duke's territory would tend to reduce flows on the interconnection with Carolina Power & Light Company (CP&L) in the Durham area; however, it is not a necessary requirement that flow on this interconnection be reduced. The interconnection with CP&L in Durham has sufficient capacity to accommodate a wide range of contingencies on both systems.

Empire claimed in its complaint that Duke refused "to hold additional discussions with Empire, a NUG that was shown to Duke to be cost justified" and claimed that therefore "Duke has violated its agreement with the Public Staff to increase its non-utility generation efforts (an agreement embodied in the Commission's March 26, 1991 Order in Docket No. E-7, Sub 461)." Witness McMeekin and witness Reinke testified that Duke reviewed and evaluated Empire's analysis using reasonable methods and assumptions, and concluded that there was no cost advantage. The facts that Duke continued a dialogue with Empire about its project, held discussions with Empire, and made several assessments of Empire's project show that Duke acted in accordance with its agreement with the Public Staff. Additionally, Duke expressed an interest in continuing discussions with Empire regarding capacity needs beyond Lincoln.

Commission Conclusions

The Commission concludes that Duke made detailed assessments of Empire's proposal and that Duke used reasonable methods and assumptions in its assessments.

In its technical assessments, Duke identified numerous shortcomings, only a few of which Empire satisfactorily addressed. Duke questioned Empire's output rating of the Westinghouse turbines. While Duke acknowledged that it later learned that the units were capable of the higher output, Duke continued to question the impact of the higher output on reliability and O&M costs. Duke was concerned that the start-up time for the Westinghouse turbines proposed by Empire did not meet Duke's spinning reserve requirements. Duke appropriately included this requirement for its supply-side option. Duke also expressed concerns about the reliability of on-site wells as a water source. Empire attempted to reassure Duke; however, Empire has not drilled any test wells and provided no proof that adequate water was available on the site. Duke noted that Empire had not obtained or applied for an air permit. Empire stated that it was in the process of completing the application and that there was adequate time. In a September 1990 letter to Duke, Empire stated its intention to file the air permit application immediately, but it has not been filed to date. Duke questioned the

maintenance and inspection intervals that Empire proposed. Empire proposed the manufacturer's recommendations and Duke disagreed based on its knowledge and industry feedback. Duke also questioned Empire's staffing level in the original proposal. Empire subsequently modified its staffing level; however, Empire provided testimony to support its original staffing level. Duke identified noise as a potential issue, based on its experience in licensing other generating facilities. One of Duke's major concerns was Empire's lack of experience. Empire noted its willingness to guarantee all aspects of the project, contending that inexperience was a moot point. However, no amount of guarantee can produce the capacity that Duke will need if the developer cannot complete the project on time. Experience is an appropriate and reasonable consideration, and Empire's lack of experience was a major factor in Duke's decision.

Duke performed three economic assessments of Empire's proposal. In each assessment, Duke compared Empire's Rolling Hills project with Duke's Lincoln project, after modifying certain aspects of the Rolling Hills project to place it on a comparable basis. Empire disagreed with Duke's modifications. In its September and November economic assessments, Duke modified Empire's proposed output, heat rate, and O&M costs. Duke witness McMeekin stated that the output adjustment was appropriate for units in peaking service. Both parties agreed that the heat rates should be the same, and it has been admitted that both Westinghouse's and General Electric's O&M recommendations are comparable. Duke's modifications were appropriate to ensure a fair and reasonable comparison of the projects. The conclusion of Duke's economic analyses was that there was no cost advantage to Empire's project. Duke acknowledged errors in its September and November economic analyses but noted that corrected analyses yielded the same relative results and conclusions. Duke later reviewed a Life Cycle Cost Analysis provided by Empire in which Empire claimed a $100 million savings for Duke's customers. Duke made certain modifications to the analysis and concluded once again that there was no cost advantage to Empire's project. Duke's modifications were made to ensure that cost comparisons were on a consistent basis, and Empire failed to demonstrate during the proceeding that these modifications were inappropriate. The Commission also recognizes that significant transmission system upgrade costs were not included in the comparison. The Commission concludes that the $100 million savings that Empire claimed does not exist.

The record shows that Duke went to great lengths to analyze Empire's proposal and that Duke discussed the results of the analyses with Empire. Empire continued to make changes to its proposal, which Duke in turn analyzed. Duke's assessments showed significant deficiencies in the proposaland no cost advantage. The Commission concludes that Duke used reasonable methods and assumptions and did not arbitrarily deny the proposal. Any assumptions Duke was required to make were the result of the proposal being incomplete and, in any event, were reasonable assumptions. Duke's modifications were reasonable. Having reviewed the record in its entirety, the Commission finds no evidence of bad faith by Duke.

EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDING OF FACT NO. 16

Rule R8-58(e) requires each electric utility to "assess on an ongoing basis the potential benefits of reasonably available purchased power resources" and to "discuss its overall assessment of its purchased power resources, including

. . . independent power producers . . . , and provide details of the methods and assumptions used in the assessment of those purchased power resources having a significant impact on its least cost integrated resource plan."

Witness Greenberg testified that Duke violated Rule R8-58(e) by not providing its assessments of Empire's proposal to the Commission. He also testified that Duke did not provide its assessments to Empire until after the complaint was filed and discovery was conducted. However, he stated that in September 1990 a Duke representative told him the general areas in which Empire's proposal was deficient.

Witness Reinke testified that Duke discussed its overall assessment of purchased power resources, including Empire's proposal, in its 1991 short-term action plan filed with the Commission. It is Duke's position that since all of its assessments showed that Empire's proposal had no significant impact on the least cost plan, Rule R8-58(e) did not require a discussion of the details of the methods and assumptions used in the assessments. Witness Reinke testified that Duke did not provide a detailed assessment of Empire's proposal to either Empire or the Commission; however, Duke discussed its concerns with Empire on September 18, 1990, on November 20, 1990, on January 9, 1991, on January 21, 1991, on January 31, 1991, and again on June 27, 1991.

The Public Staff, in its post-hearing brief, argued that Duke's interpretation of Rule R8-58(e)--"[i]f we assess it and reject it, then it has no significant impact and therefore the details of the assessment need not be reported"--is wrong. The Public Staff argued that the purpose of the reporting requirement is to give the Commission an opportunity to review the assessments and that the "significant impact language clearly is meant as a limit on the number of projects the assessment of which has to be reported in detail." The Public Staff argued that Empire's proposal had a potential significant impact on Duke's least cost plan and that Duke violated Rule R8-58(e) by failing to provide details of its assessments in its least cost filings. The Public Staff asked the Commission to clarify the terms "reasonably available" and "significant impact" and to require Duke to establish an evaluation process by which it can analyze future proposals for purchased power resources.

The Commission concludes that our previous findings and discussions adequately resolve the two issues which were identified as the focus of the present complaint proceeding. The issues raised by the Public Staff, dealing with interpretation of Rule R8-58(e) and with the appropriate evaluation process by which utilities should assess future purchased power proposals, are more appropriately raised in the context of the Commission's pending least cost integrated resource planning docket, Docket No. E-100, Sub 64.

IT IS, THEREFORE, ORDERED that the complaint of Empire Power Company filed against Duke Power Company on April 4, 1992, should be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of May 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioner Duncan concurs by separate opinion.

Commissioner Duncan, concurring.

While I agree with the majority's ultimate decision in this case, I am not entirely comfortable with the route it takes to reach that point. I therefore write separate to express those concerns.

As the majority opinion points out, the Commission's consideration in this hearing was limited to two issues: (1) whether Empire made a proposal to Duke of reasonably available purchased power that would have a significant impact on Duke's least cost integrated resource plan, and whether such proposal was complete, detailed and sufficient for Duke to perform a detailed assessment thereof and (2) whether Duke arbitrarily denied the proposal without making any detailed assessment thereof using reasonable methods or assumptions, or, if such assessment was made, whether Duke has refused to provide the assessment.

I do not believe the Commission's conclusion that Empire's proposal was not complete, detailed and sufficient for assessment is either justified by the record or necessary to the result. It is undisputed that Duke had no standards in place by which to evaluate the sufficiency of independent power producer (IPP) proposals, and, apparently, no formal procurement procedures for handling proposals with respect to purchased power. There was, therefore, no objective criteria either to guide Empire in putting together its submission or to serve as a standard for determining completeness. Empire could reasonably have thought, as do I, that indicating its willingness to supply whatever remaining material was necessary was the appropriate way to handle the ambiguity created by Duke's own absence of such procedures. Instead, the majority chooses to interpret Empire's offer to work within Duke's standardless framework as a sign of weakness rather than flexibility, and conspicuously declines to comment on Duke's failure to even attempt to obtain the information that it now says was necessary.

Not only do I think this conclusion arguably wrong, it seems to me clearly unnecessary. The fact remains that Duke did manage to perform not one but five assessments without the information that it claims, after the fact, was so critical, and without making any effort to obtain that information from Empire. In fact, the record reflects that Empire did not even learn of Duke's assessments until Duke responded to a request for production of documents during discovery. I would therefore have concluded that it was unnecessary to reach this issue, because Duke was entitled to prevail on the second. I think it is supportable from the record that Duke did not deny the proposal arbitrarily, because it had legitimate concerns about reliability and Empire's lack of experience.

Having agreed with the result, however, I do want to make it clear that I am not convinced that Duke acted in the good faith with which the majority wishes to credit it. I am particularly concerned about three things, two of which also concerned the Public Staff: (1) Duke's failure either to discuss Empire's proposal with the Commission or its deficiencies with Empire; (2) a pattern of conduct, including a written memorandum, indicating Duke's intent to discourage proposals by IPP's; and (3) the timing of Duke's communications with Empire (with the final rejection of Empire coming, as the Public Staff points out, within days after the proposed orders in Duke's Lincoln certificate docket were filed) which strongly suggests that Duke merely wished to string Empire along until it could no longer intervene in the Lincoln certificate docket.

I hope that Duke understands that although perhaps justified here by the legitimacy of the concerns regarding Empire's inexperience, this is a course of conduct which I, at least, would not like to see repeated.

Allyson K. Duncan

DOCKET NO. E-7, SUB 495

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Warren Lambert, 312 North Buchanan Boulevard, Apartment 302, Durham, North Carolina 27701 Complainant v. Duke Power Company Respondent	RECOMMENDED ORDER DISMISSING COMPLAINT

HEARD IN: Council Chambers, City Hall, Durham, North Carolina, April 30, 1992

BEFORE: Laurence A. Cobb, Hearing Commissioner

APPEARANCES:

For the Complainant:

Warren Lambert, PRO SE, 312 North Buchanan, Apt. 302, Durham, North Carolina 27701

For Duke Power Company:

Karol Mack, Attorney at Law, Duke Power Company, 422 S. Church Street, Charlotte, North Carolina 28242

BY THE HEARING COMMISSIONER COBB: On December 17, 1991, Warren Lambert filed a Complaint in this docket against Duke Power Company. Duke filed Answer and Motion to Dismiss on January 21, 1992. On April 20, 1992, the Commission issued Order Denying Motion, and the matter was heard at the time and place indicated above. The Complainant testified himself. Duke presented the testimony of Norman Glenn, Supervisor of Accounts and Services in the Durham office.

Based upon the testimony, exhibits, and the entire record in this proceeding, the Hearing Commissioner makes the following:

FINDINGS OF FACT

1. On July 10, 1991, Warren Lambert applied to Duke for service at 312 North Buchanan Boulevard, Apartment 302, Durham, North Carolina. Mr. Lambert was

unable to establish credit by paying a $75.00 deposit or providing an acceptable guarantor or appropriate credit references. His application was placed in a "hold" file.

2. The Duke records indicated that service at 312 North Buchanan Boulevard, Apartment 302, was disconnected on February 1, 1991, and there was no customer of record after that date.

3. Mr. Lambert moved into the apartment on August 13, 1991, at which time the electricity was connected although Mr. Lambert had not established credit. Duke determined that service to the apartment had been reconnected by an unauthorized party at some time prior to November 21, 1991.

4. On November 21, 1991, service to the apartment was disconnected by Duke without prior notice to Mr. Lambert.

5. Beginning at approximately 4:15 p.m. on November 21, 1991, Mr. Lambert called Duke several times, indicated that he was handicapped, and made a proposal for payment.

6. Service to the apartment was reconnected at 6:09 p.m. on November 21, 1991, and when Mr. Lambert called around 6:50 p.m. he was advised of that fact and told that he would need to establish credit and pay the bill the following day.

7. On November 26, 1991, Social Services paid $169.20 on behalf of Mr. Lambert representing the $75.00 security deposit and $94.20 for the estimated unauthorized usage.

8. Mr. Lambert made numerous phone calls and sent faxes to President William S. Lee and others and complained that he received no response, inadequate responses, or rude responses.

9. Some responses to Mr. Lambert's calls could be characterized as rude, which is regrettable, but this was at least partially attributable to the abrasive manner in which Mr. Lambert pursued his complaints. No reasonable person would expect a chief executive officer who earned substantially in excess of two million dollars last year to respond personally to a complaint concerning disconnection of unauthorized electrical service.

10. At the time of the hearing in this matter, no payments had been made on Mr. Lambert's account since January 20, 1992. There was a balance of $123.30 due and owing. Duke continued service notwithstanding said balance pending disposition of this Complaint.

DISCUSSIONS OF EVIDENCE

After the taking of testimony in this proceeding, there is virtually no contested factual area. Mr. Lambert admitted that he had not paid the $75.00 deposit at the time his service was disconnected as had been claimed in his original Complaint. Duke did not deny receiving a stream of communications from Mr. Lambert, and Mr. Glenn admitted hanging up on Mr. Lambert during one of these

calls. While any rude or insulting response to a customer should be avoided, there is no evidence that the responses were so egregious as to justify the extraordinary relief requested by Mr. Lambert.

The uncontradicted evidence in this case is that Mr. Lambert was an unauthorized user of electricity at the time Duke disconnected the service on November 21, 1991. Therefore, there was no requirement that he be given notice prior to the disconnection. Duke went far beyond its duty owed to Mr. Lambert in restoring service on the same day of disconnection and in continuing service despite the long past due balance on his account.

Based upon the testimony, exhibits, and the entire record in this proceeding, the Hearing Commissioner makes the following:

CONCLUSIONS OF LAW

1. Warren Lambert was not a customer of Duke Power Company at the time the service was disconnected so the provisions of Rule R12-11 would not be applicable in this case.

2. Duke Power Company acted properly and in accordance with the provisions of Rule R8-20(b) in terminating the fraudulent use of current.

3. Warren Lambert's complaint is without merit and should be dismissed.

IT IS, THEREFORE, ORDERED that the Complaint filed by Warren Lambert be, and it is hereby, dismissed and Duke Power Company is authorized to discontinue service to him in accordance with the provisions of Rule R12-11 if his account is still unpaid.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of July 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-2, SUB 622

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Power & Light Company for Authority to Adjust and Increase Its Electric Rates and Charges Pursuant to N.C.G.S. §62-133.2 and NCUC Rule R8-55	)	ORDER APPROVING A NET FUEL CHARGE INCREASE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, August 4, 1992, at 10:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding, and Commissioners Julius A. Wright and Laurence A. Cobb

APPEARANCES:

For the Applicant:

Len S. Anthony, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

Robert W. Kaylor, Bode, Call & Green, Post Office Box 6338, Raleigh, North Carolina 27628-6338

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 North Carolina Department of Justice:

Ms. Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

For the Carolina Industrial Group for Fair Utility Rates-II:

Ralph McDonald, Attorney at Law, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602-1351

For the Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon, & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680

BY THE COMMISSION: On June 5, 1992, 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 Section 62-133.2 of the North Carolina General Statutes (N.C.G.S.) and Commission Rule R8-55. In its application, CP&L proposed an increment of 0.151 cents per kWh (0.156 cents per kWh including gross receipts tax) to the base factor of 1.276 cents per Kwh approved in CP&L's last general rate case, Docket No. E-2, Sub 537. The preliminary fuel factor recommended by the Company of 1.427 cents per Kwh was based on the adjusted historical 12-month test period ending March 31, 1992, and normalization of nuclear generation. The Company also requested a decrement of 0.075 cents per kWh (0.077 cents per kWh including gross receipts tax) for the Experience Modification Factor (EMF) to refund approximately $20 million (plus interest) of excess fuel revenues collected during the period April 1, 1991, to March 31, 1992. The Company proposed that the EMF rider be in effect for a fixed 12-month period. The net effect of the changes recommended by the Company results in an increase of 35 cents per 1000 kWh's usage.

On June 11, 1992, the Commission issued its Order Scheduling Hearing and Requiring Public Notice and establishing certain filing dates.

The Attorney General, the Carolina Industrial Group for Fair Utility Rates (CIGFUR II) and the Carolina Utility Customers Association, Inc. (CUCA) each filed timely notices to intervene which interventions were allowed by the Commission. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On July 16, 1992, Thomas S. Lam filed testimony to be used in evidence on behalf of the Public Staff.

On July 16, 1992, the Company filed the affidavits of publication showing that public notice had been given as required by the Commission Order.

The application came on for hearing as ordered on August 4, 1992, at 10:00 a.m. CP&L presented the testimony and exhibits of David R. Nevil, Manager - Rates & Energy Services Department. The Public Staff presented the testimony and exhibits of Thomas S. Lam, Engineer, Electric Division. No other witnesses appeared at the hearing. At the beginning of the hearing, CP&L advised the Commission that the difference between the fuel factor the Company had recommended and the fuel factor the Public Staff recommended resulted from the Public Staff's use of updated nuclear capacity factors and fossil fuel costs. Since the Company would have used these updated numbers had they been available at the time the Company prepared its application, the Company concurred with the Public Staff's proposed fuel factor. The Attorney General and CIGFUR also advised the Commission that they concurred with the Public Staff's proposed fuel factor.

CP&L was instructed to file a proposed Order with the Commission 15 days after the mailing of the hearing transcript. All other parties were provided an opportunity to comment on CP&L's proposed Order within five days thereafter. On September 8, 1992, CUCA filed a proposed Order in this docket. No other party filed any comments to CP&L's proposed Order.

On August 17, 1992, CP&L filed with the Commission revised Nevil Exhibit No. 3 and accompanying workpapers in Exhibit No. 7 supporting the 1.409 cents per kWh factor proposed by the Public Staff and adopted by the Company.

Based upon the Company's verified application, the testimony, and exhibits received into evidence at the hearing and the record as a whole, 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 (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 its Application filed pursuant to N.C.G.S. §62-133.2.

2. The test period for purposes of this proceeding is the 12-month period ended March 31, 1992.

3. CP&L's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

4. The test period per book system sales are 40,979,372,646 kWhs with NC retail kWhs sales totaling 26,431,929,407 kWhs.

5. The test period per book system generation resource is 46,227,197 MWHs and is broken down by type as follows:

	MWHs
Purchase - Cogeneration	2,936,180
Purchase - American Electric Power (AEP)	1,591,401
Purchase - Southeastern Power Authority (SEPA)	147,070
Purchase - Other	298,932
Hydro	814,351
Coal	20,134,461
IC	5,306
Nuclear	20,778,727
Off-System Sales	(479,231)
Total	46,227,197

6. The adjusted test period system sales of 41,887,894,921 kWhs results from adjustments to per book sales of a positive 756,705,633 kWhs for customer growth, a positive 208,902,506 kWhs associated with weather normalization and a negative 57,085,864 kWhs associated with normalization of SEPA and North Carolina Eastern Municipal Power Agency (Power Agency or NCEMPA) transactions.

7. The adjusted test period system generation for use in this proceeding is 47,224,464 MWHs.

8. The appropriate fuel prices for use in this proceeding are as follows:

   A. The coal fuel price is $18.91/MWH.
   B. The IC turbine fuel price is $126.18/MWH.
   C. The nuclear fuel price is $5.00/MWH.
   D. The fuel price for AEP purchase is $11.33/MWH.
   E. The fuel price for other purchases is $16.52/MWH.
   F. The fuel price for off-system sales is $17.85/MWH.

9. The system normalized nuclear capacity factor appropriate for use in this proceeding for billing purposes is 62.55 percent.

10. The adjusted test period fuel expense for use in this proceeding is $590,150,087.

11. The proper fuel factor for this proceeding is 1.409¢/kWh, excluding gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense overcollection is $17,899,218. The adjusted North Carolina jurisdictional test year sales are 26,740,217,150 kWh.

13. Interest expense at a 10 percent rate associated with the overcollection of test period fuel revenues amounts to $2,613,285.

14. The Company's Experience Modification Factor (EMF) is a decrement of .077 cents per kWh (including gross receipts tax the factor is .080 cents per kWh).

15. The Company's operation of its base load nuclear and fossil plants was reasonable and prudent during the test period. The MDCs used by the Company and Public Staff in this proceeding are appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for Finding of Fact No. 1 is essentially informational, procedural, and jurisdictional in nature and is not controversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

N.C.G.S. §62-133.2 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 a historical 12-month period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending March 31 as the test period for CP&L. All prefiled exhibits and testimony submitted by the Company in support of its application utilized the 12 months ended March 31, 1992, as the test year for purposes of this proceeding.

The test period proposed by the Company was not challenged by any party and the Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended March 31, 1992, adjusted for weather normalization, customer growth, generation mix, and normalization of SEPA and NCEMPA transactions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding can be found in the Company's application and the monthly fuel reports on file with this Commission. Commission Rule R8-52(b) requires each utility to file a Fuel Procurement Practice Report at least once every 10 years, as well as each time the utility's fuel procurement practices change. In its application, the Company indicated that the procedures relevant to the Company's procurement of fossil and nuclear fuels were filed in the Fuel Procurement Practices Report dated February 1987 filed in Docket No. E-100, Sub 47. In addition, the Company files monthly reports as to the Company's fuel costs pursuant to Rule R8-52(a) under its present procurement practices. No party offered any testimony contesting the Company's fuel procurement and power purchasing 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 Finding of Fact No. 4 can be found in the exhibits of Company witness Nevil. The Company has reported in its monthly fuel reports to the Commission that system meter level sales were 40,979,372,446 kWhs for the test period and North Carolina retail sales totaled 26,431,929,407 kWhs. This level of sales was not challenged by any party and was used as the basis for the test period adjustments.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding can be found in the workpapers of Company witness Nevil. The per books total system generation value of 46,227,197 MWHs (including Power Agency ownership) reflects the generation resources available to serve the CP&L customers. This generation level was adopted by the Public Staff and was not challenged by any other party.

The test period per book generation is broken down by type as follows:

	MWHs
Purchase - Cogeneration	2,936,180
Purchase - (AEP)	1,591,401
Purchase - (SEPA)	147,070
Purchase - Other	298,932
Hydro	814,351
Coal	20,134,461
IC	5,306
Nuclear	20,778,727
Off-System Sales	(479,231)
Total	46,227,197

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding is contained in the testimony and exhibits of Company witness Nevil and Public Staff witness Lam. The Company

calculated kWh adjustments for customer growth, normal weather, SEPA normalization, and Power Agency supplemental totaling a positive 908,522,275 kWhs.

The Company calculated a positive customer growth adjustment of 756,705,633 kWhs for the system and 291,481,636 kWhs for NC retail. The method employed by the Company in making this calculation utilizes the end-of-period number of customers. This method was used by the Company and adopted by this Commission in the past three fuel cases.

The Company calculated a weather normalization adjustment of 208,902,506 kWhs on a system basis and 16,806,107 kWhs for NC retail.

The Company calculated an adjustment of negative 38,909,690 kWhs for the normalization of kWh deliveries from the SEPA hydro project based on a 25-year history. These kWhs are delivered to the wholesale customers and Power Agency.

The Company's original filing showed a positive adjustment of 29,360,818 kWhs for Power Agency supplemental sales based on the nuclear capacity factors used by the Company. The Public Staff made a negative adjustment of 18,176,174 kWhs for the supplemental kWh sales to Power Agency because it used updated nuclear capacity factors. The Power Agency has ownership in three of the Company's nuclear units: Brunswick 1, Brunswick 2, and Harris 1. Adjustments to the ownership/supplemental kWhs for Power Agency are necessary each time the nuclear capacity factors are normalized to a level that is different from the test year actual performance. See Finding of Fact No. 9 on the normalization of nuclear generation. The Commission adopts the negative Power Agency supplemental sales adjustment of 18,176,174 kWhs proposed by the Public Staff and later implicitly adopted by CP&L based on the nuclear capacity factors proposed by the Public Staff.

The total of all the adjustments to kWh meter level sales is a positive 908,522,275 kWhs. When this adjustment is added to per book meter level kWh sales found appropriate in Finding of Fact No. 4, the result is a total adjusted kWh sales of 41,887,894,921. The Commission finds these kWh adjustments appropriate and consistent with the adjustments made in past cases.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding is contained in the testimony and exhibits of Company witness Nevil and Public Staff witness Lam.

The Company applied losses to the kWh adjustments calculated for customer growth and weather normalization and determined that these adjustments total 997,267 MWHs at the generation level. The adjusted generation level of 47,224,464 MWHs is determined by adding the adjustments to the per book values. The Commission notes that no party took issue with the adjustments calculated by the Company and finds that the proper level of adjusted generation is 47,224,464 MWHs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence and conclusions for this finding of fact is found in the testimony and exhibits of Company witness Nevil and Public Staff witness Lam.

The Company's initial fuel factor calculation utilized the burned fuel prices for coal and nuclear experienced in March 1992, the last month of the test period. The Company used September 1991 prices for Internal Combustion Turbines (IC) ratioed to reflect March 1992 burned prices. The prices for the AEP purchase, other purchases, and sales were based on test year average fuel costs. The prices utilized by the Company were:

Coal	18.91 $/MWH
IC	130.89 $/MWH
Nuclear	5.00 $/MWH
AEP Purchase	11.33 $/MWH
Other Purchases	16.52 $/MWH
Sales	17.85 $/MWH

The Public Staff calculated updated prices for coal and IC turbines using May 1992 data as follows: Coal = 187.06¢/MBTU and IC oil = 457.91¢/MBTU which translate into $18.91/MWH for coal and $126.18/MWH for ICs. The Staff adopted the Company's prices for nuclear, purchases and sales. Witness Lam recommended adoption of the May fossil prices because they represented the most recent fossil fuel prices available and they were more indicative of future prices.

CUCA, through cross-examination, questioned the use of September prices for IC turbine generation as initially proposed by the Company. Company witness Nevil indicated that the Company's IC turbines were rarely operated during the test period and September 1991 was the only month that a representative IC rate could be found. Witness Nevil further explained that the use of year-end prices had the effect of ratioing the September value to a representative March 1992 value. In its proposed Order, CUCA advocated the use of test period average burned fossil fuel costs so as to prevent a risk of "skewing" as the result of fossil fuel market fluctuations.

The Commission concludes that the prices for nuclear, purchases and sales as proposed by CP&L and adopted by the Public Staff are appropriate for use in this proceeding. The Commission further concludes that the May 1992 prices for coal and IC turbine generation proposed by the Public Staff are appropriate for use in this proceeding inasmuch as they represent the most recent prices available and are more indicative of future prices.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9, 10 & 11

The evidence supporting these findings is contained in the testimony and exhibits of Company witness Nevil and Public Staff witness Lam.

In Nevil Exhibit No. 3, the Company normalized the capacity factors for its nuclear units in accordance with Commission Rule R8-55(c)(1) by using the five-year North American Electric Reliability Council (NERC) Equipment Availability Report 1986-1990 average for boiling water reactors (BWRs) and pressurized water reactors (PWRs). The capacity factors of Brunswick Unit Nos. 1 and 2, both BWRs, were normalized at 54.98% and the capacity factors of the Robinson and Harris

Units, both PWRs, were normalized at 65.57%. The Company's normalization calculations resulted in a system nuclear capacity factor of 60.31% and produces a fuel factor of 1.427¢/kWh. The Public Staff used the same nuclear normalization methodology as the Company, however, the Public Staff used NERC data for the five-year period 1987-1991 which was published after the Company filed testimony. The updated data reflected an average BWR capacity factor of 57.39% and average PWR capacity factor of 67.64%. This data produces a weighted average system nuclear capacity factor of 62.55% for the CP&L system. CUCA, in its proposed Order, advocated the use of a 64.26% capacity factor which is the average of the most recent NERC five-year average and CP&L's most recent five-year system average nuclear capacity factor. CUCA states that the use of a higher factor in excess of that proposed by CP&L and the Public Staff is strengthened by actual fuel cost overrecoveries in past years.

The Commission must determine the appropriate level of nuclear generation as a basis for calculating a fuel factor. The Commission recognizes that the use of the Public Staff's and CP&L's methodology has at times resulted in the overrecovery of fuel cost. However, as explained by Public Staff witness Lam, such overrecoveries are usually the result of exceptionally good performance by the Company and have not been more than 5% above the Company's actual fuel cost. Thus, this methodology has produced very accurate results and has served the Commission, the Company and the ratepayers very well.

With the exception of CUCA, all parties concurred with the Public Staff's proposed capacity factor. The Commission concludes that the updated NERC five-year nuclear capacity factors of 57.39% for BWRs and 67.64% for PWRs as proposed by the Public Staff and adopted by the Company are appropriate for use in this proceeding. In so concluding, the Commission finds the testimony of CP&L and the Public Staff convincing. The Commission finds no evidence of unique, inherent factors of a type not reflected in the NERC five-year average which may impact the capacity factor used.

Public Staff witness Lam calculated a base fuel factor of 1.409¢/kWh using the most recent NERC five-year nuclear capacity factors and May fuel prices for coal and IC turbine generation. As mentioned earlier, all parties but CUCA recommended this fuel factor. No other party presented any evidence on this issue or recommended a different fuel factor or nuclear capacity factor.

Based on the evidence of record, the Commission concludes that a fuel factor of 1.409¢/kWh using a 62.55 percent nuclear capacity factor and May burned fuel cost for coal and IC turbines as proposed by the Public Staff and supported by the Company is just and reasonable and should be approved. This factor is 0.133¢/kWh higher than the base fuel factor of 1.276¢/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537. The calculation of the 1.409¢/kWh fuel factor is shown in the following table:

	MWH Gen	$/MWH	Fuel Cost
Coal	24,837,972	18.91	$469,686,051
Nuclear	16,835,302	5.00	84,176,510
IC	6,546	126.18	825,974
Hydro	722,425	-	-
Purchases: Co-Gen	3,254,438	-	54,046,337
AEP	1,601,800	11.33	18,148,394
SEPA	188,399	-	-
Other	368,764	16.52	6,091,981
Sales	(591,182)	17.85	(10,552,599)
Total Adjusted	47,224,464		$622,422,648
NCEMPA Adjustments:			
Nuclear Ownership			(11,158,515)
Coal Ownership			(24,979,335)
Harris Buyback			1,273,768
Mayo Buyback			2,591,521
Net Fuel Cost			$590,150,087
kWh for Fuel Factor			41,887,894,921
Fuel Factor (¢/kWh)			1.409

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 & 13

The evidence supporting these findings is contained in the testimony and exhibits of Company witness Nevil and Public Staff witness Lam.

Company witness Nevil testified that the Company overcollected its fuel expense by $17,899,218 during the test year from the fuel factors approved in the past two fuel cases, Docket Nos. E-2, Sub 579 and Sub 603. In Mr. Nevil's prefiled testimony, he calculated interest for this overcollection in accordance with NCUC Rule R8-55(c)(5) using both an 8% and a 10% interest rate and stipulated that the Company would use the interest rate approved by the Commission in the then-pending Duke Power fuel proceeding (Docket No. E-7, Sub 501). The Commission subsequently determined in its final order in Docket No. E-7, Sub 501 that a 10% interest rate was most appropriate. Public Staff witness Lam testified that he reviewed the Company's calculation of the EMF and agreed with the results. Both CP&L and the Public Staff calculated $2,613,285 in interest using the 10% interest rate.

The Company is proposing to refund the EMF and interest to the customers over a 12-month period using the adjusted kWh sales for the retail customers. The Company determined the adjusted NC retail kWh sales to be 26,740,217,150 kWhs.

The Commission concludes that the Company's calculation of the EMF plus 10% interest totaling $20,512,503 should be refunded to the customers over a 12-month

period and further notes that no party opposed the calculation. This refund should be in the form of a separate rider that will expire 12 months from the date of this order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding can be found in the direct testimony of Company witness Nevil and Public Staff witness Lam.

The Company is proposing a decrement of 0.077¢/kWh (0.080¢/kWh with gross receipts tax) to refund $20,512,503 of overrecovered fuel revenues (plus interest) experienced during the period April 1, 1991, through March 31, 1992. Public Staff witness Lam recommended an EMF decrement factor of .067¢/kWh and an interest factor decrement of .010¢/kWh which equals the Company's factor.

North Carolina General Statute 62-133.2(d) provides that the Commission "shall incorporate in its fuel cost determination under this subsection the experienced overrecovery or underrecovery 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 overrecovery or underrecovery 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."

No other party offered any evidence contesting the Company's calculations. The Commission concludes that the EMF decrement of 0.077¢/kWh (0.080¢/kWh with gross receipts tax) is appropriate for use in this proceeding. The EMF decrement shall remain in effect for a fixed 12-month period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding can be found in the Company's application and testimony of CP&L witness Nevil.

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 598 for calendar year 1991 and Docket No. E-2, Sub 618 for calendar year 1992. Witness Nevil testified that the Company met the standard for prudent operation as set forth in Commission Rule R8-55 based upon the test period actual nuclear capacity factor of 77.2 percent and the two-year average capacity factor of 69.49. No other party offered testimony challenging witness Nevil on this point. The Commission recognizes that the nuclear maximum dependable capacity ratings (MDCs) utilized by the Company in this proceeding is a change from the MDCs used in the Company's last fuel case, Docket E-2, Sub 603. The new MDCs are shown on Nevil Exhibit No. 5 and the changes were outlined in a Company report filed with the Commission on August 26, 1991. Since no party challenged the revised MDCs

after review of the report as ordered by this Commission in Docket No. E-2, Sub 603, the Commission finds that the nuclear MDCs utilized by the Company and Public Staff in calculating a fuel factor and determining a prudence standard are appropriate in this proceeding.

Based on the evidence, the Commission concludes that the operation of the Company's base load nuclear and fossil plants was reasonable and prudent during the test period.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after September 15, 1992, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.133¢/kWh increment (0.137¢/kWh including gross receipts tax) from the base fuel component approved in Docket No. E-2, Sub 537. Said increment shall remain in effect until changed by a subsequent Order of this Commission in a general rate case or fuel case.

2. That CP&L shall establish an EMF Rider as described herein to reflect a decrement of 0.077¢/kWh (0.080¢/kWh including gross receipts tax). The EMF is to remain in effect for a 12-month period beginning September 15, 1992.

3. That CP&L shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustment approved herein not later than five (5) working days from the date of this Order.

4. That CP&L shall notify its North Carolina retail customers of the fuel adjustments approved herein by including the "Notice to Customers of Net Rate Increase" attached as Appendix A as a bill insert with bills rendered during the Company's next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 11 day of September 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

DOCKET NO. E-2, SUB 622

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Power & Light Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. § 62-133.2 and NCUC Rule R8-55	))))	NOTICE TO CUSTOMERS OF NET RATE INCREASE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order on September 11, 1992, after public hearings, approving a fuel charge increase of approximately $3.4 million in the rates and charges paid by the retail customers of Carolina Power & Light Company in North Carolina. The net rate increase will be effective for service rendered on and after September 15, 1992. The rate increase was ordered by the Commission after review of CP&L's

fuel expense during the 12-month test period ended March 31, 1992, and represents actual changes experienced by the Company with respect to its reasonable cost of fuel and the fuel component of purchased power during the test period.

The Commission Order will result in a monthly net rate increase of $0.13 for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 11 day of September 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-7, SUB 487

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for Authority to Adjust and Increase Its Electric Rates and Charges	))))	ORDER DENYING MOTIONS FOR RECONSIDERATION

BY THE COMMISSION: On November 12, 1991, the Utilities Commission entered an Order in this docket granting Duke Power Company authority to increase its rates and charges for retail electric service provided to consumers in North Carolina by $100,072,000 on an annual basis.

On December 12, 1991, the Public Staff filed a motion for reconsideration whereby the Commission was requested to reconsider decisions set forth in the Order of November 12, 1991, related to the following issues: (1) annualization of Bad Creek accumulated deferred income taxes, (2) Bad Creek deferred cost amortization, and (3) depreciation.

On December 12, 1991, the Attorney General and the City of Durham jointly filed a motion to reconsider related to the three issues set forth in the Public Staff's motion. The Attorney General and the City of Durham also requested the Commission to schedule an oral argument to consider their motion for reconsideration.

On December 31, 1991, Duke filed a response in opposition to the Public Staff's motion for reconsideration.

Based upon a careful consideration of the entire record in this proceeding, the Commission concludes that the pending motions for reconsideration should be denied for the following reasons.

ANNUALIZATION OF THE BAD CREEK ACCUMULATED DEFERRED INCOME TAXES

The Commission has carefully considered Finding of Fact No. 69 and the evidence and conclusions set forth in support thereof and hereby reaffirms our decision to reject the adjustment proposed by the Public Staff to annualize the post-in-service date deferred taxes related to Duke's Bad Creek investment and thus deduct from rate base an amount of deferred income taxes that did not exist

in the test period or at the close of the hearing. The Commission first rejected the Public Staff's proposed adjustment in a general rate case for Duke Power Company in Docket No. E-7, Sub 373, decided on June 13, 1984. That same treatment was thereafter reaffirmed in the Company's next three general rate cases, including this docket. Thus, in each of the Company's last four general rate cases, the Commission used the Company's actual accumulated deferred income taxes (ADIT) as of the end of the historic test year and found that it was not appropriate to increase the Company's actual end of test period ADIT to reflect the inclusion in cost of service of a new generating unit. The positions taken by the Public Staff and the Company in this case are unchanged from the positions which both of those parties have consistently taken since 1984. There has been no change in the Internal Revenue Code or Internal Revenue Service (IRS) regulations which would require a different decision in this case. The Public Staff, whose current testimony on this issue is essentially identical to that offered in the previous rate cases, has presented no evidence of a compelling nature which causes the Commission to change the longstanding decision on the ADIT issue as it affects Duke. The fact that Duke and CP&L apparently disagree on this issue is not determinative in this case. The issue in question has never been litigated in the context of a CP&L general rate case because the adjustment has been voluntarily adopted by CP&L and concurred in by the Public Staff.

The Commission decided the ADIT issue primarily on the basis of our decisions in past Duke general rate cases, the fact that there has been no change in the applicable IRS code or regulations since prior proceedings, and the risk to Duke that the benefits associated with accelerated depreciation could be lost if the position advocated by the Public Staff is not correct. The testimony offered by Duke witness Stimart regarding the comparison between Duke and CP&L that "CP&L utilizes a completely different approach to updating the test period" was not a major or determining factor in our decision. The Commission would have reached the same decision even in the absence of such testimony because whether Duke and CP&L use the same approach to updating is not determinative of the ADIT issue. Accordingly, the Commission finds good cause to affirm Finding of Fact No. 69 and the evidence and conclusions set forth in support thereof in the Order entered in this docket on November 12, 1991.

In the alternative to requesting the Commission to reconsider the ADIT issue, the Public Staff requests the Commission to require Duke to seek a private letter ruling on the issue from the IRS. The Commission denied a similar request by the Public Staff by Order entered in Docket No. E-7, Sub 391, on January 7, 1986, stating that:

> "The Commission has carefully considered the tax matters that are the subject of the proposed private letter rulings from the IRS. In order to gain proper perspective, it should be noted that these matters were extensively investigated and reviewed during the public hearings in this docket. The Commission took great care and performed in-depth and prolonged analysis in determining the appropriate ratemaking treatment to be afforded these items. These determinations were set out in the Order of September 17, 1985, and were discussed therein. Based on the foregoing, and the reaffirmation that the decisions reached in the Order of September 17, 1985, were fair and reasonable to both Duke and its ratepayers, the Commission concludes that it would not be appropriate to order Duke to request the private letter rulings..."

Our denial of the Public Staff's motion for reconsideration regarding the private letter ruling on the ADIT issue was appealed to the North Carolina Supreme Court which held in State ex rel. Utilities Commission v. Eddleman, 320 N.C. 344 (1987) at 386:

> "The Public Staff does not seek review of the merits of its proposed adjustments, but appeals only the Commission's refusal to order Duke to seek private letter rulings with respect to these matters. We hold that the Commission acted properly in this instance. The General Assembly has given the Commission, not this Court, the duty and power to establish public utility rates. State ex rel. Utilities Comm. v. Westco Telephone Co., 266 N.C. 450, 146 S.E.2d 487 (1966). The Commission's subjective judgment concerning the need for a private letter ruling will not be disturbed simply because this Court's subjective judgment might have been different. See State ex rel. Utilities Comm. v. Virginia Electric & Power Co., 285 N.C. 398, 206 S.E.2d 283 (1974). Whether to seek such a ruling is a matter within the Commission's discretion, and appellant has failed to show any abuse of that discretion."

Accordingly, the Commission finds good cause to again deny the requests to require Duke to seek a private letter ruling from the IRS on the ADIT issue. The circumstances regarding this matter are the same today as they were in 1987. Absent some compelling change of circumstance, the Commission finds no need to request Duke to obtain a private letter ruling regarding this matter.

BAD CREEK DEFERRED COST AMORTIZATION

The Public Staff moves the Commission to reconsider Findings of Fact Nos. 104 and 105 in the Order issued in this docket on November 12, 1991, as well as the portion of the Evidence and Conclusions for Findings of Fact Nos. 80-114 which support Findings of Fact Nos. 104 and 105. Findings of Fact Nos. 104 and 105 read as follows:

> 104. The rate of return on common equity of 13.20% approved by the Commission to set rates in Docket No. E-7, Sub 408, as utilized by the Company, should be used to determine the maximum possible recoverable level of Bad Creek deferred costs.
>
> 105. The recoverable level of Bad Creek deferred costs should not be limited to the level of earnings attrition experienced by the Company during the period those costs were deferred.

On reconsideration, the Public Staff recommends that the rate of return on common equity set by the Commission in this rate case be used to determine the maximum possible recoverable level of Bad Creek deferred costs, and that the recoverable level of deferred costs be limited to the level of earnings attrition experienced by the Company during the deferral period, calculated by use of the rate of return on common equity set by the Commission in this case. The Attorney General and the City of Durham concur in that position.

The portion of the Evidence and Conclusions for Findings of Fact Nos. 80-114 which the Public Staff moves the Commission to reconsider reads as follows:

The Commission determines that the Public Staff adjustments, spoken to above, to the level of Bad Creek costs to be deferred as proposed by Duke are inappropriate. The proposed Public Staff adjustments are not only inconsistent with past Commission practices, but also inconsistent with how the Commission treats other deferred items, such as storm damage, the Catawba levelization, construction work in progress, etc. The Public Staff has presented no material basis for the Commission to change its practices. As witness Stimart testified, this would only provide utilities with an improper signal by penalizing actions which benefit customers. The Commission also rejects the recommendation of witness Baron. Witness Baron's recommendation is inconsistent with the Commission's past practices and would serve only to increase customer costs.

After carefully reviewing the record in this case, the Commission concludes that Findings of Fact Nos. 104 and 105 and the evidence and conclusions in support thereof are fully supported by the record and should be affirmed. The Company's request for deferral accounting did not specify the dollars to be deferred, or a particular ratemaking treatment to be used. The Commission's Order Allowing Requested Accounting Treatment only authorized deferred accounting, and did not decide the ratemaking treatment to be given such costs. The Commission gave all parties the opportunity to submit testimony on the appropriate level of costs to be deferred and the appropriate ratemaking treatment to be accorded such costs. The Company filed such testimony. The Company's direct testimony contained the deferred costs consisting of return and depreciation that the Company expected to incur based on the estimated in-service dates and cost of the plant. The Company filed updated estimates of those items based on the actual in-service dates and costs. The Company also proposed the ratemaking treatment to be accorded those costs. Specifically, the Company requested that the costs in question be amortized over three years and that the amortization be calculated on a levelized basis including a return on the unamortized costs. This was consistent with prior Commission decisions. All parties to the proceeding had an opportunity to challenge the Company's calculation of the costs in question and propose alternate amortization periods and methods. The Public Staff did in fact propose that the return component be calculated so as to impose the return on equity which they proposed in this proceeding. The Commission had alternate proposals before it and made a reasoned decision, which was supported by the evidence, to choose the proposal which conformed with past Commission practice, which has proven over the past 10 years to be a workable and acceptable accounting and ratemaking practice.

The allowed or authorized rate of return which was in effect for Duke Power Company until the Order Granting Partial Rate Increase was entered in this docket on November 12, 1991, was 13.2%. That rate of return is, without doubt, the appropriate return to allow on Bad Creek deferred costs precisely because it was the authorized return that was actually in effect during the period of time prior to inclusion of the Bad Creek plant in rate base. The allowed rate of return of 12.5% approved in this docket on November 12, 1991, should only be applied prospectively. It would be inappropriate and unfair to apply a 12.5% return retroactively to costs deferred prior to that date. The Public Staff's proposal would, in effect, deny Duke the ability to recover an appropriate return on costs actually incurred between the in-service date of the Bad Creek plant and the date such costs are reflected in rates. The Public Staff also contends that the Commission's conclusions are contrary to sound ratemaking principles regarding

earnings attrition. The Public Staff asserts that earnings attrition is the sole reason for any deferred cost recovery. That is an erroneous premise in this case. An underlying principle of utility accounting and ratemaking is the matching concept, together with a reasonable opportunity to recover prudently incurred costs. Clearly, the Commission's decision in this case is consistent with these long-recognized principles of ratemaking. Furthermore, even if an earnings attrition test was appropriate in this case, the applicable standard would be the 13.2% authorized return which was in effect until November 12, 1991, and not the Company's currently allowed return of 12.5%. Use of the 13.2% authorized return, rather than 12.5%, would in all likelihood render this issue moot since it appears that Duke would still be allowed to recover all of the Bad Creek deferred costs in question under an earnings attrition test using 13.2% as the standard.

The Commission does concede, however, that the Public Staff is correct in its assertion that storm damage costs do not typically have a deferred return component. The inclusion of that reference in the Order of November 11, 1991, was both inappropriate and unfortunate. However, the fact remains that the adjustment proposed by the Public Staff is inconsistent with how the Commission traditionally treats other deferred costs, such as the Catawba levelization and construction work in progress.

Accordingly, the motions for reconsideration regarding the amortization of Bad Creek deferred costs are hereby denied.

LEVEL OF DEPRECIATION RATES

The Public Staff, Attorney General, and the City of Durham have requested the Commission to reconsider Findings of Fact Nos. 26 through 39 concerning the Company's depreciation study and resulting depreciation rates. The Commission, in our conclusions regarding the appropriateness of the Company's proposed rates, stated that there is ". . .no compelling evidence showing that the rates utilized by the Company are unreasonable." The Public Staff asserts that depreciation rates are never reasonable or unreasonable and that depreciation rates are simply what they are. The Public Staff seems to ignore the Commission's stated conclusion in the Order of November 11, 1991, that Duke had presented evidence of the "thoroughness" of its depreciation study and the specific findings of fact set forth in the Order that the Iowa Curves and projection lives for each of the depreciation rates in question as proposed by Duke were, in effect, more appropriate than those advocated by the Public Staff. However, the most compelling evidence which led the Commission to reach that conclusion was contained in Duke witness Stimart's rebuttal testimony, including the comparative table set forth in that testimony, which clearly indicates that the depreciation rates proposed by the Public Staff would result in Duke generally having lower transmission, distribution, and general plant rates than those of the other South Atlantic utilities. This evidence was, in effect, determinative in causing the Commission to find that the preponderance of all the evidence supported the depreciation rates proposed by Duke and that Duke's proposed rates were more appropriate than those advocated by the Public Staff, particularly considering the fact that Duke itself proposed to significantly lower its depreciation rates in question by almost $14 million in this case. The fact that the Company's study produced a more reasonable end-result in comparison to the results reached by the Public Staff's study is evidence which tends to show the appropriateness of the Company's study.

Accordingly, the depreciation rates approved in the Order Granting Partial Rate Increase in this docket on November 12, 1991, are hereby reaffirmed and the motions for reconsideration on that issue are denied.

IT IS, THEREFORE, ORDERED that the motions for reconsideration filed in this docket by the Public Staff, Attorney General, and the City of Durham on December 12, 1991, be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-7, SUB 501

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company	)	ORDER APPROVING
Pursuant to G.S. 62-133.2 and NCUC	)	NET FUEL CHARGE
Rule R8-55 Relating to Fuel Charge	)	RATE DECREASE
Adjustments for Electric Utilities	)	

HEARD: Tuesday, May 5, 1992, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner J. A. Wright, Presiding, Chairman William W. Redman, Jr., Commissioners Sarah Lindsay Tate, Robert O. Wells, Charles H. Hughes, Laurence A. Cobb, and Allyson K. Duncan

APPEARANCES:

For Duke Power Company:

Karol P. Mack, Senior Attorney, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001; Robert W. Kaylor, Bode, Call & Green, Post Office Box 6338, Raleigh, North Carolina 27628-6338

For the Public Staff:

James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0510
For: The Using and Consuming Public

For the North Carolina Department of Justice:

Ted R. Williams, Associate Attorney General, Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

For Carolina Utility Customers Association, Inc. (CUCA):

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon, & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28655

BY THE COMMISSION: On March 6, 1992, Duke Power Company (Duke or the Company) filed an 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 1.1076¢/kWh (including nuclear fuel disposal costs and excluding gross receipts tax), which is an increase of .0044¢/kWh from the base fuel factor of 1.1032 kWh set in the Company's last general rate case, Docket No. E-7, Sub 487. The Company further adjusted the proposed factor by a decrement excluding gross receipts tax of .1428¢/kWh and .0171¢/kWh for the Experience Modification Factor (EMF) and EMF interest, respectively, for a net fuel factor of .9477¢/kWh. (.9792¢/kWh including gross receipt tax).

On March 13, 1992, the Commission issued an Order Scheduling Hearing and Requiring Public Notice and establishing certain filing dates.

The Attorney General and the Carolina Utility Customers Association, Inc. (CUCA), each filed timely notices to intervene which interventions were allowed by the Commission. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On April 16, 1992, the Public Staff filed testimony and exhibits of Michael C. Maness and Thomas S. Lam.

On April 28, 1992, the Company filed the affidavits of publication showing that public notice had been given as required by the Commission Order.

The case came on for hearing as ordered on May 5, 1992. Duke presented the testimony and exhibits of Candace A. Paton, Manager, Regulatory Accounting, Rates and Regulatory Affairs Department. The Public Staff presented the testimony and exhibits of Michael C. Maness, Supervisor of the Electric Section of the Accounting Division, and Thomas S. Lam, Engineer in the Electric Division. No other witnesses appeared at the hearing.

All parties to the proceeding were provided an opportunity to file proposed orders with the Commission.

Based upon the Company's verified application, the testimony and exhibits received into evidence at the hearing and the record as a whole, the Commission now makes the following

FINDINGS OF FACT

1. Duke Power Company is duly organized as a public utility company under the laws of the State of North Carolina and is subject to the jurisdiction of 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, 1991.

3. Duke's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

4. The test period per book system sales are 67,762,069 MWH.

5. The test period per book system generation is 74,166,997 MWH and is broken down by type as follows:

	MWH
Coal	26,455,235
Oil & Gas	6,752
Light Off	-
Nuclear	37,047,942
Hydro	1,961,359
Net Pumped Storage	-415,734
Purchased Power	662,213
Interchange	145,507
Catawba Contract Purchases	8,524,519
Catawba Interconnection Agreements	-245,243
Interchange	24,447
Total Generation	74,166,997

6. The system normalized nuclear capacity factor which is reasonable for use in this proceeding is 72.0% and its associated generation is 32,029,539 MWH.

7. The adjusted test period sales of 67,911,688 MWH results from an additional 449,280 MWH of customer growth, -14,979 MWH associated with weather normalization, and -284,682 MWH associated with the adjustment for Catawba retained generation added to test period system sales of 67,762,069 MWH.

8. The adjusted test period system generation for use in this proceeding is 74,512,138 MWH and is broken down by type as follows:

	MWH
Coal	32,305,820
Oil & Gas	29,870
Light Off	-
Nuclear	32,029,539
Hydro	1,711,300
Net Pumped Storage	-543,853
Purchased Power	662,213
Interchange	145,507
Catawba Contract Purchases	8,171,742
Total Generation	74,512,138

9. The appropriate fuel prices and fuel expenses for use in this proceeding are as follows:

A. The coal fuel price is $16.76/MWH.

B. The oil and gas fuel price is $81.96/MWH.

C. The appropriate Light Off fuel expense is $4,668,000.

D. The nuclear fuel price is $5.46/MWH.

E. The purchased power fuel price is $12.70/MWH.

F. The interchange fuel price is $21.33/MWH.

G. The Catawba Contract Purchase fuel price is $5.93/MWH.

10. The adjusted test period system fuel expense for use in this proceeding is $748,723,000.

11. The proper fuel factor for this proceeding is 1.1025¢/kWh, excluding gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense overcollection was $59,431,000. The adjusted North Carolina jurisdictional test year sales are 41,620,272 MWH.

13. The Company's Experience Modification Factor (EMF) is a decrement of .1428¢/kWh, excluding gross receipts tax.

14. Interest expenses associated with the overcollection of test period fuel revenues amount to $8,914,000, based upon a 10% annual interest rate.

15. The EMF interest decrement is .0214¢/kWh, excluding gross receipts tax.

16. The final fuel factor is .9383¢/kWh, excluding gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. 62-133.2(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 December 31 as the test period for Duke. The Company's filing was based on the 12 months ended December 31, 1991.

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 Duke's procurement of fossil and nuclear fuels were filed in Docket No. E-100, Sub 47, and remained in effect throughout the 12 months ended December 31, 1991. 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 - 6

The evidence for these findings of fact is found in the testimony of Company witness Paton and Public Staff witness Lam.

Company witness Paton testified that the test period per books system sales were 67,762,069 MWH and test period per book system generation was 74,166,997 MWH. Public Staff witness Lam accepted these levels of test period per book system sales and generation for use in his fuel computation. The test period per book generation is broken down by type as follows:

	MWH
Coal	26,455,235
Oil & Gas	6,752
Light Off	-
Nuclear	37,047,942
Hydro	1,961,359
Net Pumped Storage	-415,734
Purchased Power	662,213
Interchange	145,507
Catawba Contract Purchases	8,524,519
Catawba Interconnection Agreements	-245,243
Interchange	24,447
Total Generation	74,166,997

Ms. Paton testified that Duke achieved a system nuclear capacity factor of 79.8% for the test period. Ms. Paton normalized the system nuclear capacity factor to a level of 72%, which is the level the Commission adopted in Duke's last general rate case, Docket No. E-7, Sub 487. Mr. Lam in his prefiled testimony indicated that the system nuclear capacity factor of 79.8%, as achieved by the Company, was high and should be normalized to 70.59%, which is an average of the Company's latest 5-year average system nuclear capacity factor of 75.61% and the latest North American Electric Reliability Council's 5-year nuclear capacity factor for all PWR's of 65.57%. Mr. Lam revised his testimony on the stand and accepted Duke's 72% nuclear capacity factor which is the average of the Company's achieved nuclear capacity factors from 1983 through 1991. Mr. Lam also testified that a large portion of the overcollection of revenues occurred during the period of the test year when revenue was being collected based upon a 66% nuclear capacity factor.

The Attorney General in its Brief filed with the Commission in this docket advocates the use of a 75.61% nuclear capacity factor which is the latest 5-year average system nuclear capacity factor for Duke. The Attorney General states that the use of a 5-year average would be more consistent with the historical reference period of 5 years under NCUC Rule R8-55 than the 9-year period proposed by Duke and that the 75.61% factor would also be more consistent with the level of performance Duke has achieved in recent years.

CUCA, in its proposed order, advocates the use of a 74% nuclear capacity factor predicated on the use of the Company's most recent 5-year system average nuclear capacity factor adjusted downward to account for the fact that its 4-year system average factor is substantially above the NERC 5-year average and Duke's longer term system average nuclear capacity factor. Further, CUCA points out that the adoption of a 74% nuclear capacity factor is consistent with Duke's own projections and its long-term nuclear plant performance.

Based upon the agreement of the Company and the Public Staff as to the appropriate numbers, and noting the absence of evidence presented to the contrary, the Commission concludes that the test period level of per book sales and generation are reasonable and appropriate for use in this proceeding. As stated earlier, Duke's actual system nuclear capacity factor for the test period was approximately 80% while 72% is the average of the Company's achieved capacity factors from 1983 through 1991. Based upon past nuclear performance of the Duke system and national data, the Commission believes that Duke's nuclear performance during the test year should be normalized.

After careful consideration of the entire record in this proceeding, the Commission concludes that the 72% nuclear capacity factor proposed by Duke and the Public Staff is reasonable as a normalized capacity factor for determining the appropriate fuel costs for this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony of Company witness Paton and Public Staff witness Lam.

Witness Paton adjusted total per book test period sales by 149,619 MWH. This adjustment is the sum of adjustments for customer growth, weather, and Catawba retained generation of 449,280 MWH, -14,979 MWH, and -284,682 MWH, respectively. The level of Catawba retained generation is associated with the Company's normalized system nuclear capacity factor of 72%.

Witness Lam accepted Ms. Paton's adjustments for customer growth, weather, and Catawba retained generation.

The Commission concludes that the adjustments for customer growth of 449,280 MWH, weather of -14,979 MWH, and Catawba retained generation of -284,682 MWH as presented 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 an adjusted test period sales level of 67,911,688 MWH is both reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the testimony of Company witness Paton and Public Staff witness Lam.

Witness Paton presented an adjustment to per book generation, due to weather, customer growth, and a Catawba retained generation, based on a 72% normalized system nuclear capacity factor, of 345,141 MWH, to arrive at her adjusted generation level of 74,512,138 MWH.

Mr. Lam reviewed and accepted Ms. Paton's adjusted generation level of 74,512,138 MWH.

The Commission concludes, after finding Duke's and the Public Staff's recommended normalized system nuclear capacity factor of 72% reasonable and appropriate in Finding of Fact No. 6, and adjustments to sales reasonable and appropriate in Finding of Fact No. 7, that the Duke and Public Staff adjustment to generation of 345,141 MWH and adjusted generation level of 74,512,138 MWH are both reasonable and appropriate for use in this proceeding. The adjusted generation level is broken down by type as follows:

	MWH
Coal	32,305,820
Oil & Gas	29,870
Light Off	-
Nuclear	32,029,539
Hydro	1,711,300
Net Pumped Storage	-543,853
Purchased Power	662,213
Interchange	145,507
Catawba Contract Purchases	8,171,742
Total Generation	74,512,138

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 - 13

The evidence for these findings of fact is found in the testimony and exhibits of Company witness Paton and Public Staff witness Lam.

Witness Paton's testimony recommended fuel prices as follows: (1) coal price of $16.88/MWH; (2) oil and gas price of $68.36/MWH; (3) light-off fuel expense of $4,668,000; (4) nuclear fuel price of $5.46/MWH; (5) purchased power fuel price of $12.70/MWH; (6) interchange fuel price of $21.33/MWH; and (7) Catawba Contract purchase fuel price of $5.93/MWH.

Mr. Lam, in his testimony, accepted Ms. Paton's expense and fuel prices for light-off fuel expense, nuclear fuel price, purchased power fuel price, interchange fuel price, and Catawba Contract purchase fuel price, but rejected the fuel prices for the other types of generation. Mr. Lam recommended fuel prices as follows: (1) coal price of $16.76/MWH based on March 1992 burn price, and (2) oil and gas price of $81.96/MWH based on March 1992 burn price. Mr. Lam made these recommendations to obtain the most up-to-date prices on these fuels, and to more accurately reflect today's fuel prices. Mr. Lam stated that the use of test year prices for these two fuel categories considers the price of fuel from October 1990 in setting rates to be billed July 1992 through June 1993. In response to a question on the use of a single month's coal price, specifically March 1992, Mr. Lam explained that the burn price he utilized is actually a weighted price of coal for the last three or four months as opposed to the use of the test year average which has coal prices in it up to 20 months old at the time of billing.

The Attorney General takes the position that "standard ratemaking procedures" should be followed and that test year average fossil fuel costs should be used to calculate the fuel factor. CUCA also supports the use of test year fuel prices.

The Commission concludes that the Company's fuel expense and fuel prices accepted by the Public Staff and fossil fuel prices recommended by the Public Staff are reasonable and appropriate for use in this proceeding for the reasons stated by the Public Staff.

Accordingly, the Commission concludes that adjusted fuel test period expenses of $748,723,000 and the fuel factor of 1.1025¢/kWh, excluding gross receipts tax, are reasonable and appropriate for use in this proceeding. This approved base fuel factor is .0007¢/kWh lower than the current base fuel factor in effect of 1.1032¢/kWh, excluding gross receipts tax.

North Carolina General Statute 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."

Both Company witness Paton and Public Staff witness Lam testified that during the test year Duke over-recovered $59,431,000 in fuel revenues and that the adjusted North Carolina jurisdictional test year sales are 41,620,272 MWH. The $59,431,000 over-recovered fuel revenue is divided by the adjusted North Carolina jurisdictional sales of 41,620,272 MWH to arrive at an EMF decrement of .1428¢/kWh, excluding gross receipts tax. The Commission concludes that there being no controversy, the EMF decrement of .1428¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 AND 15

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Paton and Public Staff witness Maness.

Company witness Paton recommended that a rate of 8% be used to calculate interest on the refund of fuel overcollections approved in this proceeding. She testified that 8% is representative of current money costs and approximates the Company's current Allowance for Funds Used During Construction (AFUDC) rate. Ms. Paton testified that interest rates have declined to the current levels shown below for the following items:

Bank prime rate	6.5%
One-year CD	4.0%
Five-Year Treasury Bond	6.7%
Thirty-Year Treasury Bond	7.9%

Witness Paton also pointed out that there is no provision for interest to be calculated on an EMF increment when Duke or another electric utility is underrecovered on its fuel costs. Also, no utility has proposed an interest rate

other than 10% under G.S. 62-130(e) in a fuel proceeding and that G.S. 62-130(e) gives the Commission discretion in determining the appropriate rate of interest to be applied to refunds. Mr. Paton also stressed that current interest rates should be taken into account in setting the interest rate for refunds.

Public Staff witness Maness recommended that interest on the EMF refund continue to be calculated using a rate of 10%, the rate which has been consistently used by the Commission for all fuel refunds since the 1988 implementation of Commission Rule R8-55(c)(5) requiring interest on fuel refunds, and for the vast majority of other electric utility refunds since 1981, when G.S. 62-130(e) was enacted. (The enactment of G.S. 62-130(e) provided the Commission with the discretion to determine the just and reasonable rate to be applied to utility refunds, subject to a cap of 10% per annum.) The Attorney General and CUCA also support the use of a rate of 10%.

Mr. Maness set forth two basic reasons for this proposal. First, he testified that although certain interest rates have declined markedly in recent months, it cannot be assumed that the cost of capital of each ratepayer is as low as the rates set forth by Company witness Paton, or in fact even below 10%. Mr. Maness pointed out that many ratepayers are undoubtedly net debtors, with credit card debt, for example, at interest rates well in excess of 10%. According to Mr. Maness, the use of a 10% rate recognizes that the cost of capital of the Company's ratepayers is spread across a range of rates, and is not simply equivalent to the rate that could be earned on certain savings vehicles. Mr. Maness also testified that consideration should be given to the fact that these funds are being involuntarily withheld from the ratepayers, and that many people in the state cannot afford to invest any money. Second, Mr. Maness testified that if the Commission were to implement a policy allowing the interest rate on refunds to track some general level of interest rates in the economy, it would only be fair to track those rates when they were both high and low. However, since the Commission is prohibited by statute from requiring a rate greater than 10%, the inevitable result of such a policy would be the tracking of rates only when they were below 10%. When the tracked rates rose above 10%, the ratepayers would be denied the benefit of tracking. Mr. Maness testified that although certain interest rates are currently low, it is certainly possible, if not probable, that interest rates will again rise above 10%. For example, the bank prime rate cited by Ms. Paton was above 10% for 56 out of the 120 months in the 1982-1991 time frame, including as recently as the period November 1988 - January 1990. This recent spike followed a period when the rate dipped as low as 7.5% (March 1987).

With regard to the Company's comparison of its proposed rate to its AFUDC rate, Mr. Maness stated that the AFUDC rate is a net-of-tax rate. Thus, if the Commission were to determine that the ratepayers were entitled to an 8% after-tax rate of return on the basis that such a return was comparable to the AFUDC rate allowed the Company, a pre-tax interest payment of over 13% would be required to produce that 8% after-tax return for those business and corporate ratepayers who include utility refunds in taxable income.

The Commission has carefully considered the evidence presented on this matter and concludes that the just and reasonable rate to use in this case to calculate interest on the EMF refund is 10%. Since 1981, when G.S. 62-130(e) was enacted, the Commission has consistently used 10% to calculate interest on utility refunds. During that period, interest rates have moved up and down and

have generally been much higher than they are today. The Commission has specified use of a 10% rate notwithstanding the general level of interest rates in the economy on the theory that 10% provides for adequate compensation to ratepayers over the long term considering the fact that a policy of tracking the general level of interest rates in the economy would lead to the denial of fair compensation to ratepayers when those interest rates exceed the statutory cap of 10%. Accordingly, the Commission is of the opinion that 10% continues to be a just and reasonable rate.

Based upon its conclusion herein that the appropriate rate to be used to calculate interest on the EMF refund in this case is 10%, and on its conclusion set forth elsewhere in this Order regarding the test year fuel expense overcollection, the Commission concludes that the amount of interest expense to be added to the EMF refund totals $8,914,000. Based on the conclusion elsewhere in this Order regarding adjusted North Carolina jurisdictional MWH sales, the Commission concludes that the EMF interest decrement rider should be set at .0214¢/kWh, excluding gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Accordingly, the fuel calculation incorporating the conclusions reached herein result in a final net fuel factor of .9383¢/kWh, excluding gross receipts tax, as shown in the following table:

	Adjusted Generation (MWH)	Fuel Price $/MWH	Fuel Dollars (000s)
Coal	32,305,820	16.76	$541,446
Oil and Gas	29,870	81.96	2,448
Light-Off			4,668
Nuclear	32,029,539	5.46	174,849
Hydro	1,711,300		
Net Pumped Storage	-543,853		
Purchased Power	662,213	12.70	8,411
Interchange	145,507	21.33	3,103
Catawba Contract Purchases (including NFDC)	8,171,742	5.93	48,458
TOTAL	74,512,138		$783,383
Less: Intersystem Sales	-2,144,854		-34,660
Line Loss	-4,455,596		
System MWH Sales & Fuel Cost	67,911,688		$748,723
Fuel Factor ¢/kWh			1.1025
EMF ¢/kWh			-.1428
EMF Interest ¢/kWh			-.0214
FINAL FUEL FACTOR ¢/kWh			.9383

IT IS, THEREFORE, ORDERED as follows:

1. That effective for service rendered on and after July 1, 1992, Duke shall adjust the base fuel cost approved in Docket No. E-7, Sub 487, in its North Carolina retail rates by an amount equal to a .0007¢/kWh decrease (excluding gross receipts tax) and further that Duke shall adjust the resultant approved

fuel cost by decrements of .1428¢/kWh and .0214¢/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, 1992.

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 Decrease" 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 23rd day of June 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

DOCKET NO. E-7, SUB 501

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Duke Power Company Pursuant to	) NOTICE TO
G.S. 62-133.2 and NCUC Rule R8-55 Relating to	) CUSTOMERS OF
Fuel Charge Adjustments for Electric Utilities	) NET RATE DECREASE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an order on June 23, 1992, after public hearings, approving a fuel charge net rate decrease of approximately $28,700,000 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, 1992. The rate decrease was ordered by the Commission after review of Duke's fuel expense during the 12-month period ended December 31, 1991, 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 decrease of approximately 69¢ for each 1,000 kWh of usage per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Docket No. G-9, Sub 309

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Piedmont Natural Gas Company, Inc., for an Adjustment of its Rates and Charges) ORDER CORRECTING RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 21, 1992, at 9:30 a.m.

BEFORE: Commissioner Laurence A. Cobb, Presiding; Chairman William W. Redman; and Commissioner Robert O. Wells

APPEARANCES:

For The Applicant:

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

For The Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520

For The Attorney General of North Carolina:

Karen E. Long and Margaret A. Force, Assistant Attorneys General, N.C. Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602.

BY THE COMMISSION: On December 21, 1990, Piedmont Natural Gas Company, Inc. (Piedmont) filed an application in the above captioned docket for a general increase in its rates and charges. On January 18, 1991, the Commission declared the application to be a general rate case under G.S. § 62-137, suspended the proposed rate increase and set the application for hearing. Following a hearing, the Commission issued the July 22, 1991 Order authorizing Piedmont to increase its rates and charges by $9,664,433 annually.

The July 22, 1991 Order authorized Piedmont to charge rates sufficient to produce $322,561,713 in annual revenues prior to adjustment for a change in the benchmark cost of gas and $271,871,214 in annual revenues after the change in the benchmark cost of gas. The July 22, 1991 Order was based in part upon a Stipulation between Piedmont and the Public Staff dated May 7, 1991, which resolved a number of issues raised by the Public Staff in its prefiled testimony and exhibits. The Commission approved the specific rates set forth in Late Filed Schedule V Revised Corrected in order to provide the additional revenues authorized.

On June 19, 1992, Piedmont filed a Petition with the Commission alleging that an error in the computer program used to design the rates set forth in the Schedule caused the rates to produce only $318,779,164 in annual revenues prior to the adjustment for a change in the benchmark cost of gas and $268,088,665 in annual revenues after the change in the benchmark cost of gas. Piedmont attached to its Petition the testimony and exhibits of Ann H. Boggs.

On June 29, 1992, the Commission issued its Order Setting Hearing on Petition setting the Petition for hearing on Tuesday, July 21, 1992, at 9:30 a.m. in the Commission Hearing Room 2115, Second Floor, Dobbs Building, Raleigh, North Carolina. Intervenors were provided an opportunity to file testimony and exhibits on or before July 14, 1992, and Piedmont was provided an opportunity to file rebuttal testimony on or before July 17, 1992. A copy of the Commission's June 29, 1992 Order was served on all intervenors, and Piedmont was required to mail notice to all customers purchasing gas under Rate Schedules 102, 103 and 113. No party filed any testimony or exhibits with the Commission pursuant to the June 29, 1992 Order; however, the evidence shows that the Commission received a written complaint from a customer.

On July 21, 1992, the matter came on for hearing as scheduled and Piedmont presented the testimony and exhibits of witness Ann H. Boggs. No other party offered any evidence.

Based upon the verified petition, the testimony and exhibits received in evidence at the hearing and the record as a whole, the Commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS

1. That the Commission's Order Granting Partial Rate Increase dated July 22, 1991, authorized Piedmont to charge rates sufficient to produce $322,561,713 in annual revenues prior to adjustment for a change in the benchmark cost of gas and $271,871,214 in annual revenues after the change in the benchmark cost of gas.

2. That an error in the computer program used to design the approved rates caused the rates to produce only $318,779,164 in annual revenues prior to the adjustment for a change in the benchmark cost of gas and $268,088,665 in annual revenues after the change in the benchmark cost of gas.

3. That an error in the computer program caused the rates approved for Rate Schedules 102, 103 and 113 to fall $3,782,549 short of producing the annual revenues authorized by the Commission for these rate schedules.

4. That a rate increase of $0.01711 per therm in Rate Schedules 102, 103 and 113 will produce $3,782,549 of annual revenues based on rate case volumes.

5. That G.S. 62-80 authorizes the Commission "at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints" to "alter or amend any order or decision made by it."

6. That the Commission has provided the notice required by G.S. 62-80 and has afforded the public utility and other parties of record an opportunity to be heard as required by G.S. 62-80.

7. That Piedmont's rates for Rate Schedules 102, 103 and 113 should be increased by $0.01711 per therm effective August 1, 1992, to provide Piedmont the annual revenues intended by the Commission in its July 22, 1991 Order.

8. That the rates approved herein are just and reasonable, do not result in any unjust or unreasonable discrimination or preference between or within classes of customers and should be approved.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION NO. 1

The evidence supporting this finding is found in the Commission's July 22, 1991 Order Granting Partial Rate Increase.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS NOS. 2 - 4

The evidence supporting these findings is found in the testimony and exhibits of Ann H. Boggs. Witness Boggs testified that the $3,782,549 revenue deficiency results from an error in the computer program used to determine the revenues that will be produced from the sale of gas to customers under Rate Schedules 102 and 103 and the transportation of gas under Rate Schedule 113. Customers under Rate Schedules 102 and 103 purchase gas and customers under Rate Schedule 113 transport gas under block rates in which the rate decreases as usage increases. When the rates used by the Commission were designed, however, the computer program erroneously added each block to the previous blocks. Exhibit A to witness Boggs' testimony sets forth a calculation of the $3,782,549 error and the $0.01711 per therm increase required to correct for the error. No party offered any evidence to suggest that the error did not occur, that the amount of the error was other than $3,782,549 or that an increase of $0.01711 per therm would not correct for the error.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS NOS. 5 AND 6

North Carolina General Statutes 62-80 authorizes the Commission "at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints" to "alter or amend any order or decision made by it." The Commission has previously used this statute to correct mistakes in its general rate orders, and its authority to do so has been upheld on appeal. *See, Utilities Commission v. Public Service Company of North Carolina*, 59 N.C. App. 448 (1982).

On June 29, 1992, the Commission issued its Order Setting Hearing on Petition setting the Petition for hearing on Tuesday, July 21, 1992, at 9:30 a.m. in the Commission Hearing Room 2115, Second Floor, Dobbs Building, Raleigh, North Carolina. Intervenors were provided an opportunity to file testimony and exhibits on or before July 14, 1992, and Piedmont was provided an opportunity to file rebuttal testimony on or before July 17, 1992. A copy of the Commission's

June 29, 1992 Order was served on all intervenors, and Piedmont mailed notice to all customers purchasing gas under Rate Schedules 102, 103 and 113. No party filed any testimony or exhibits with the Commission pursuant to the June 29, 1992 Order.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS NOS. 7 and 8

The evidence in support of these findings and conclusions is found in the verified Petition, the testimony and exhibits of Ann H. Boggs and in the Commission's July 22, 1991 Order. Witness Boggs testified that the existing rates produce a shortfall of $3,782,549. Exhibit A to Witness Boggs' testimony shows that 22,103,731 dekatherms are sold and/or transported to Rate Schedules 102, 103 and 113. Dividing $3,782,549 by 22,103,731 dekatherms produces a per dekatherm increase of $0.1711 (a per therm increase of $0.01711).

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont is authorized to increase its rates to Rate Schedules 102, 103 and 113 by $0.01711 per therm effective August 1, 1992.

2. That Piedmont should file with the Commission within ten (10) days of the date of this order revised rate schedules setting forth the increase in rates approved herein.

3. That Piedmont shall provide a notice of the increase approved herein to customers purchasing and/or transporting gas under Rate Schedules 102, 103 and 113 in the form of a bill insert to be submitted to the Commission.

4. That this Order is intended to amend the July 22, 1991 Order as set forth herein effective August 1, 1992, and does not reconsider or amend that Order in any other respect.

ISSUED BY ORDER OF THE COMMISSION
This the 27th day of July, 1992.

North Carolina Utilities Commission
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. T-2876, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Hilco Transport, Inc., 1024 E. Mountain Street, Kernersville, North Carolina 27284 - Application for Common Carrier Authority	FINAL ORDER ON EXCEPTIONS GRANTING APPLICATION FOR COMMON CARRIER AUTHORITY

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, February 20, 1992, at 9:30 a.m.

BEFORE: Commissioner Robert O. Wells, Presiding; and Commissioners Sarah Lindsay Tate, Laurence A. Cobb, Charles H. Hughes, and Allyson K. Duncan

APPEARANCES:

For the Applicant:

Robert W. Kaylor, Patterson, Dilthey, Clay, Cranfill, Sumner & Hartzog, Attorneys at Law, Post Office Box 310, Raleigh, North Carolina 27602
For: Hilco Transport, Inc.

For the Protestants:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 1351, Raleigh, North Carolina 27602-1351
For: Eagle Transport Corporation and A. C. Widenhouse, Inc.

BY THE COMMISSION: On March 7, 1991, Hilco Transport, Inc. (Applicant) filed an application with the Commission for common carrier authority to transport Group 8, dry fertilizer and dry fertilizer materials; Group 14, dump truck operations; and Group 21, asphalt and asphalt cutback in bulk, hazardous waste and materials, chemical and chemical by products, soil, waste water, contaminated dirt and other materials, contaminated petroleum and petroleum products and other materials used or usable in connection with the disposal of hazardous or contaminated waste, and salt in bulk, statewide.

The Commission Calendar of Hearings dated March 27, 1991, set the application for hearing on May 7, 1991.

A Motion to Intervene and Protest was filed on April 4, 1991, on behalf of Howard Lisk, Inc. By Order dated April 9, 1991, Protestant was allowed to intervene in this proceeding.

On April 18, 1991, a Protest and Motion for Intervention was filed on behalf of Eagle Transport Corporation and A. C. Widenhouse, Inc. By Order dated April 22, 1991, the Protestants were allowed to intervene.

On May 2, 1991, Applicant filed an amendment to delete chemical and chemical by products and salt in bulk. By Order dated May 3, 1991, the amendment was allowed, and Howard Lisk, Inc., was allowed to withdraw as a Protestant Party.

Upon call of the matter for hearing on May 7, 1991, the Applicant and Protestants were present and represented by counsel. Applicant offered testimony in support of its application by Patricia Long Hill, Applicant's President; Walter Salmon, Jr., President, Thompson-Arthur Division of APAC-Carolina, Inc. (Thompson-Arthur); Thomas Edgar Elmore III, Manager of Marketing, Barrus Construction Company, Division of APAC-Carolina, Inc. (Barrus); and Oakley Herring, Southern Sales Manager, Central Oil Asphalt (Central). Protestants then offered in opposition to the application the testimony of James R. Edwards, General Manager, A. C. Widenhouse, Inc. (Widenhouse), and Barbara Duke, Traffic Manager, Eagle Transport Corporation (Eagle).

On July 2, 1991, a Recommended Order was entered in this docket by Hearing Examiner Barbara A. Sharpe denying the application for common carrier authority but granting the Applicant additional contract carrier authority to transport Group 21, asphalt and asphalt cutback in bulk, statewide, under contract with Barrus Construction Company.

On July 17, 1991, Applicant filed an exception to the Recommended Order and requested the Commission to schedule an oral argument to consider that exception.

Oral argument before the full Commission was conducted on August 29, 1991. At oral argument, Applicant requested in the alternative that the case be remanded for further evidence.

On September 19, 1991, the Commission remanded the case for further hearing on October 15, 1991, upon the following conclusions:

> The Commission finds good cause to grant the Applicant's alternative request and remand this case for further evidence. In so deciding, the Commission notes that at the conclusion of the hearing held before Hearing Examiner Sharpe on May 7, 1991, the Applicant requested the opportunity to take the testimony of Mr. Ray Phaff of Barnhill Contractors through deposition for incorporation into the record of this case. Counsel for the Applicant indicated that Mr. Phaff had been scheduled to testify on behalf of Hilco but was unable to do so because he was ill with the flu. The Protestants objected, and the motion was denied by the Hearing Examiner.
>
> The Commission concludes that the Applicant should be allowed to introduce Mr. Phaff's testimony as well as any other relevant evidence on remand. Such evidence will, of course, be in addition to the record already compiled. During the remand hearing, it would be appropriate for the Applicant to renew its request for judicial notice of Docket No. T-2876, Sub 3. The Hearing Examiner will then rule upon that motion.

Upon call of the application for further hearing on remand, the Applicant and Protestants were again present and represented by counsel. Applicant offered the testimony of Ms. Hill and the following shipper witnesses: Marvin Proctor, Vice President, S. T. Wooten Construction (Wooten); Jim Mangus, Vice President,

Dickerson Carolina (Dickerson); Thomas T. Carr, President, Highway Constructors, Inc. (Highway Constructors); and Carl A. Boggs, Jr., President, Boggs Vaughn Contracting, Inc. (Boggs).

On January 24, 1991, Hearing Examiner Sharpe entered a second Recommended Order in this docket again denying the application for common carrier authority but granting the Applicant additional contract carrier authority to transport Group 21, asphalt and asphalt cutback in bulk, statewide, under contracts with Barrus Construction Company, Highway Contractors, Inc., and Boggs Vaughn Contracting, Inc.

On February 6, 1992, the Applicant filed exceptions to the second Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

Oral argument on exceptions was thereafter presented to the Commission by counsel for the Applicant and the Protestants on February 20, 1992.

Based upon a careful consideration of the testimony and evidence presented at the hearings, the documents and exhibits received in evidence and judicially noticed (including Docket No. T-2876, Sub 3), and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. Applicant is a North Carolina corporation located in Kernersville, North Carolina. Patricia Long Hill is President and owns 60% of the stock. Her father, William H. Long, is Vice President and owns 40% of the stock.

2. Southern Oil/Tidewater Fuels, Inc. (Southern Oil) is headquartered in Wilmington and owned by Ms. Hill, Mr. Long, Ms. Hill's two brothers, and other unrelated parties. Southern Oil holds common carrier authority to transport liquid asphalt and petroleum and petroleum products, statewide. Mr. Long is President and Ms. Hill is Secretary/Treasurer of Southern Oil.

3. By the amended application, Applicant seeks statewide common carrier authority to transport Group 8, dry fertilizer and dry fertilizer materials; Group 14, dump truck operations; and Group 21, asphalt and asphalt cutback in bulk, hazardous waste and materials, soil, waste water, contaminated dirt and other materials, contaminated petroleum and petroleum products and other materials used or usable in connection with the disposal of hazardous or contaminated waste.

4. Applicant is an authorized carrier operating under Certificate/ Permit No. CP-14 which authorizes, inter alia, statewide transportation as a contract carrier of asphalt and asphalt cutback in bulk under continuing contracts with Amoco Oil Company; Thompson-Arthur; Riley Paving, Inc.; Triangle Paving, Inc.; Carl Rose & Sons, Inc.; and James R. Vannoy & Sons Construction Co., Inc. and as a common carrier of petroleum and petroleum products in bulk in tank trucks.

5. Applicant is a woman-owned business enterprise (WBE) certified as a disadvantaged business enterprise (DBE) eligible for participation in federally-assisted and state-funded programs administered by the North Carolina Department of Transportation (NCDOT).

6. Federal law requires that contractors who are awarded federal highway contracts by NCDOT must make good faith efforts to use minority contractors for certain percentages of the total contracts. In addition to the federal laws requiring use of minority contractors, there are state laws which require contractors who are awarded state-funded highway contracts by NCDOT to use minority contractors for certain percentages of the total contracts. However, in view of the Supreme Court's decision in City of Richmond v. J. A. Croson Co., 488 U.S. 469 (1989), there are concerns about the legality of NCDOT's current minority goals programs for state-funded projects. On August 26, 1991, the Attorney General's office sent a memorandum to NCDOT Secretary Thomas J. Harrelson recommending that pending further investigation NCDOT place a moratorium on the rejection of bids for state-funded projects for failure to comply with goals or good faith effort requirements, while allowing voluntary aspects of the programs to remain in effect.

7. Paving contracts may have several components, including supplying the asphalt, transporting the asphalt, the paving itself, and adjusting the utilities. Minority participation is not required in every component of the contract. Typically, the paving contractors do all the paving and use minority contractors for transportation or the incidental components of the total contract.

8. Applicant operates a fleet of equipment suitable for the transportation of the commodities involved in this amended application and also employs 16 full-time employees.

9. Applicant has substantial assets which exceed its liabilities and has the resources with which to acquire additional rolling equipment as necessary to provide adequate and continuing service to the public.

10. Applicant's gross revenues in 1990 were approximately $2.4 million.

11. Thompson-Arthur is a highway contractor headquartered in Greensboro. Applicant is transporting asphalt and asphalt cutback for Thompson-Arthur under contract carrier authority which helps Thompson-Arthur meet NCDOT goals with respect to the use of minority and women-owned businesses. Thompson-Arthur is satisfied with Applicant's service and does not expect the service provided to it by the Applicant to change if this application is granted.

12. Barrus is a highway contractor headquartered in Kinston. Barrus bids on NCDOT projects and is familiar with the goals for hiring minority and women-owned businesses. Barrus actively seeks participation by certified DBEs, but often still has difficulty meeting the goals, especially for projects involving resurfacing of highways. Barrus' primary carrier of asphalt and asphalt cutback is PAC Transport (PAC). PAC is providing generally good service. Barrus has negotiated a contract with the Applicant and desires to use its transportation services.

13. Central is a manufacturer of water-based emulsions used for bituminous surfacing treatment. It has three plants in North Carolina from which transportation is needed to road sites. Central's plants are located in Wilmington, Greensboro, and Swannanoa. Applicant was authorized to serve Central as a contract carrier of asphalt and asphalt cutback but was not doing so at the time of the first hearing. Subsequent to the first hearing, Applicant amended its authority in Docket No. T-2876, Sub 3, to delete Central as a contracting shipper.

14. At the time of the May 7, 1991 hearing, Applicant had entered into a contract with and was hauling asphalt for Riley Paving, Wilmington, North Carolina, without authority to do so.

15. At the time of the May 7, 1991 hearing, Applicant had entered into a contract with and was hauling asphalt for Triangle Paving, Burlington, North Carolina, without authority to do so.

16. Prior to May 7, 1991 Applicant had mistakenly assumed that its contract carrier authority allowed it to serve any seven shippers without applying to the Commission to add additional shippers, up to seven, to its existing contract authority. At the conclusion of the hearing, Applicant was ordered to cease and desist from any further transportation for any companies for which it has no authority to serve.

17. Wooten is a highway contractor headquartered in Wilson, North Carolina. Wooten bids on state and federally funded NCDOT projects and is familiar with the goals for hiring minority and women-owned businesses. Wooten would use or certainly entertain using the Applicant if this application for common carrier authority is granted. Wooten currently receives service from Widenhouse, Eagle, PAC, and Whitehurst. Wooten has used Southern Oil in the past but has not used them recently. Wooten is receiving the service it needs from its present carriers and is experiencing no problems other than occasional routine problems.

18. Dickerson is a highway contractor with offices in Wilmington, North Carolina, and bids on state and federally funded NCDOT projects with established goals for hiring of minority and women-owned businesses. Dickerson uses Southern Oil for all of its asphalt transportation over which it has control of the selection of the carrier. The service provided by Southern Oil is very good. Dickerson is aware that Widenhouse has recently been certified as a DBE. Dickerson has not utilized Widenhouse to fulfill DBE goals but plans to use them in the future in their asphalt operation in Charlotte. Dickerson would consider using Applicant if this application for statewide common carrier authority is granted.

19. Highway Constructors is headquartered in Marston, North Carolina. Highway Constructors bids on NCDOT projects and is familiar with the goals for hiring minority and women-owned businesses established by NCDOT and the federal government. Highway Constructors currently uses PAC, Widenhouse, and Southern Oil to haul liquid asphalt to various projects within the state. Highway Constructors entered into contracts with Applicant to haul liquid asphalt on three separate NCDOT projects. Applicant subcontracted this hauling to Southern Oil. Highway Constructors would use the Applicant for asphalt transportation if the application for common carrier authority is granted.

20. Boggs is headquartered in Monroe, North Carolina. Boggs bids on NCDOT projects and is familiar with the goals for hiring minority and women-owned businesses. Boggs currently used Southern Oil and Widenhouse to accomplish its asphalt transportation to various projects within the state. Boggs has also entered into contracts with Applicant to haul liquid asphalt on NCDOT funded projects. Applicant subcontracted this hauling to Southern Oil. Boggs would use the Applicant for asphalt transportation if the application for common carrier authority is granted.

21. Widenhouse is an authorized common carrier operating under Certificate No. C-400 which authorizes, inter alia, transportation of liquid asphalt, in bulk in tank trucks, statewide. Widenhouse maintains a fleet of 66 power units and 142 trailers at terminals located at Wilmington and Concord. Eighty-five percent of this equipment is used for asphalt transportation. Widenhouse asserts that it has experienced a recent decline in asphalt business in the Raleigh area because of DBEs.

22. Eagle is an authorized common carrier operating under Certificate No. C-296 which authorizes, inter alia, transportation of liquid asphalt in bulk, statewide. Eagle operates a fleet of 125 tractors and 150 trailers. It has eight asphalt tanks, six of which are located in North Carolina, and maintains terminals at Selma, Greensboro, and Charlotte. Eagle asserts that its asphalt business in the Raleigh area has declined during the last year due to DBEs.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

This application for a common carrier certificate is governed by G.S. 62-262(e) which imposes upon the Applicant the burden of proving the following to the satisfaction of this Commission:

1. That the public convenience and necessity require the proposed service in addition to existing authorized transportation service; 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.

Consideration of the first statutory criterion requires definition of "public convenience and necessity". Utilities Commission v. Queen City Coach Co., 4 N.C. App. 116, 123-124, and 166 S.E.2d 441 (1969), defines the phrase as follows:

> "(1) Our Supreme Court has said many times that what constitutes 'public convenience and necessity' is primarily an administrative question with a number of imponderables to be taken into consideration, e.g., whether there is a substantial public need for the service; whether the existing carriers can reasonably meet this need, and whether it would endanger or impair the operations of existing carriers contrary to the public interest. Utilities Commission v. Trucking Co., 223 N.C. 687, 28 S.E. 2d 201; Utilities

Commission v. Ray, 236 N.C. 692, 73 S.E.2d 870; Utilities Commission v. Coach Co., and Utilities Commission v. Greyhound Corp., 260 N.C. 43, 132 S.E.2d 249.

"(2) We are not inadvertent to the fact that the factors denominated as imponderables, to wit: whether the existing carriers can reasonably meet the need for the service and whether the granting of the application would endanger or impair the operations of existing carriers contrary to the public interest, are not solely determinative of the right of the Commission to grant the application. Both are directed to the question of public convenience and necessity. Utilities Commission v. Coach Co., 233 N.C. 119, 63 S.E.2d 113. Nevertheless, if the proposed operation under the certificate sought would seriously endanger or impair the operations of existing carriers contrary to the public interest, the certificate should not be issued. Utilities Commission v. Coach Co., supra."

Considering first the threshold question of whether there is a public demand and need for the proposed service, it is clear that there is a need for the service Applicant can offer as a WBE and DBE to shippers throughout the State who contract with the North Carolina Department of Transportation for highway construction projects. The testimony of Applicant establishes that there is a need for shippers to contract with businesses such as Hilco to fulfill the goals established by the North Carolina Department of Transportation with respect to minority enterprises. The Hearing Examiner, in her two Recommended Orders, denied the Applicant's request for common carrier authority and, instead, granted additional contract carrier authority. The effect of the Recommended Orders, if affirmed, would be to authorize the Applicant to provide contract carrier services to nine shippers. Commission Rule R2-10(c) provides that contract carrier authority will not be granted to a motor carrier proposing to serve more than seven shippers and existing permits will not be amended to allow service to a total of more than seven shippers unless the Commission, in its discretion, finds that the public interest so requires.

In view of the fact that Hilco now has contracts with nine shippers, the Commission concludes that it is appropriate to authorize common carrier authority for the Applicant in lieu of granting additional contract carrier authority. The existence of nine contracts plus the testimony offered by other supporting shippers not currently under contract (Central, Wooten, and Dickerson) clearly demonstrates the generalized existence of a public demand and need for the service in question in addition to the existing authorized transportation service which is sufficient to support a grant of common carrier authority. To require the Applicant to continually file new applications for additional contract carrier authority each time new shippers desire service would not serve the public interest and would be overly burdensome to the Applicant and the shipping public. That being the case, a grant of common carrier authority is appropriate. The mere existence of nine shippers willing to sign contracts for the Applicant's services along with the evidence offered by non-contract shippers is prima facie evidence of a public demand and need for Hilco's services as a common carrier sufficient to meet the statutory requirement. It would not be in the public

interest to cling to contract carrier authority in this case when to do so would require Hilco to continually file new applications for additional authority. A grant of common carrier authority is justified under the facts of this case and will serve, rather than impede, the public interest and the needs of the shipping public.

Consideration of the public convenience and necessity also requires the Commission to determine whether the proposed operation would impair the operations of the Protestants and other existing carriers contrary to the public interest. There is no evidence in this record to support a finding that the service proposed by the Applicant would have a ruinous competitive effect upon authorized carriers. Protestant Eagle Transport offered testimony indicating a total inventory of approximately 125 tractors and 150 trailers with only six asphalt tanks located in North Carolina dedicated solely to the hauling of asphalt. Eagle Transportation obtained common carrier authority for asphalt product in 1989 and in 1990 only had roughly $230,000 in revenues with respect to hauling of asphalt product. Protestant Widenhouse offered testimony that normal entry into the asphalt market by selected haulers might not be detrimental to Widenhouse but that the type of service being offered by Applicant would be detrimental. The crux of Protestant Widenhouse's argument was that a certified minority business would be able to contract with shippers doing business with the North Carolina Department of Transportation to the exclusion of other authorized common carriers, such as Protestant Widenhouse. However, the record demonstrates that Protestant Widenhouse itself now qualifies as a disadvantaged business enterprise. Furthermore, the witnesses for both Thompson-Arthur and Central testified to an unwillingness or an inability on the part of the Protestant Widenhouse to haul for them in 1989.

The mere fact that a grant of operating authority to the Applicant would authorize it to compete with the Protestants as a common carrier rather than as a contract carrier is certainly not sufficient to establish that such competition would be harmful or ruinous. "There is no public policy condemning competition as such in the field of public utilities." Utilities Commission v. Queen City Coach Company, 261 N.C. 384, 134 S.E.2d 689 (1964). That being the case, the Commission concludes that the public convenience and necessity require the proposed service in addition to existing authorized transportation services.

With respect to the Applicant's fitness and ability to provide the proposed service, Hilco has experience in the transportation of asphalt and also has the necessary equipment. At the second hearing on May 7, 1991, Applicant testified to transporting asphalt for two shippers not included in its present contract carrier authority. This was done due to an erroneous assumption that it could transport for any seven shippers under its current contract carrier authority. This transportation was performed out of ignorance rather than willful acts to evade the regulations. At the second hearing on October 15, 1991, Ms. Hill testified she had previously obtained contracts with Highway Constructors and Boggs for asphalt transportation. Having no authority to provide this service, Ms. Hill subcontracted this hauling to Southern Oil and received a fee of 6% of the invoice. Ms. Hill testified that she did this not to evade any regulations but to fulfill the contract obligations so that contractors would receive credit for using a DBE. The Commission is permitted but not compelled to find that

Applicant's unlawful operations render it unfit. In light of the record as a whole, particularly the explanations regarding these matters offered by the Applicant, the Commission concludes that Hilco is fit, willing, and able to properly perform the proposed services as a common carrier.

The Commission further concludes that based upon the financial information submitted with the application, the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

The common carrier authority granted by this Order has been limited to the transportation of Group 21, asphalt and asphalt cutback, in bulk, statewide in view of the Applicant's failure to offer any evidence in support of its request for the other authority requested pursuant to its amended application.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Hilco Transport, Inc., for a certificate of public convenience and necessity is hereby granted in accordance with Exhibit B attached hereto and made a part hereof.

2. That, to the extent it has not already done so, Hilco Transport, Inc., shall file with the North Carolina Division of Motor Vehicles, Motor Carrier Regulatory Unit, Enforcement Section, evidence of the required liability insurance, list of equipment, designation of process agent, and shall file with the North Carolina Utilities Commission, Transportation Rates Division, Public Staff, a tariff of rates and charges, and shall otherwise comply with the Rules and Regulations of the Commission.

3. That unless the Applicant complies with the requirements set forth in Ordering Paragraph 2 above and begins operating as herein authorized within thirty (30) days after the effective date of this Order, unless such time is extended by the Commission upon request for such extension, the operating authority granted herein will cease.

4. That the Applicant shall continue to maintain its books and records in such a manner that all 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 to the Transportation Rates Division, Public Staff, North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of March 1992.

NORTH CARDLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Chairman William W. Redman, Jr., and Commissioner Julius A. Wright did not participate.

DOCKET NO. T-2876, SUB 2

HILCO TRANSPORT, INC.
1024 E. Mountain Street
Kernersville, North Carolina 27284

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of Group 21, asphalt and asphalt cutback, in bulk, statewide.

DOCKET NO. T-3584

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Charles Mitchell Powell, d/b/a Powell Trucking, Post Office Box 176, Cerro Gordo, North Carolina 28430 - Application for Sale and Transfer of Certificate No. C-10 from Colonial Motor Freight Line, Inc., Uwaharrie Road, High Point, North Carolina 27263	ORDER SUSTAINING EXCEPTION AND REMANDING TO EXAMINER

HEARD: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 18, 1992, at 3:00 p.m.

BEFORE: William W. Redman, Chairman, Presiding; Commissioners Sarah Lindsay Tate, Robert O. Wells, Charles H. Hughes, Laurence A. Cobb, and Allyson Duncan

APPEARANCES:

For the Applicant:

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

For the Protestants:

David H. Permar and Michelle Bradshaw, Hatch, Little & Bunn, Attorneys at Law, Post Office Box 527, Raleigh, North Carolina 27603
For: Burton Lines, Inc.; Cargocare Transportation Company, Inc.; Epes Transport System, Inc.; Forbes Transfer Company, Inc.; Smith Transfer Company, Inc.; and Vance Trucking Company, Inc.

BY THE COMMISSION: On November 12, 1991, Charles Mitchell Powell, d/b/a Powell Trucking (Applicant), filed an application in this docket seeking authority to purchase and transfer Certificate No. C-10 from Colonial Motor Freight Line, Inc.

A protest and motion for intervention was filed on December 12, 1991. On February 17, 1992, intervention was allowed for Burton Lines, Inc.; Cargocare Transportation Company, Inc.; Epes Transport System, Inc.; Forbes Transfer Company, Inc.; Smith Transfer Company, Inc.; and Vance Trucking Company, Inc. (Protestants).

A hearing was held before a Hearing Examiner on March 11, 1992, at which time both the Applicant and the Protestants appeared and offered testimony.

The Hearing Examiner issued his Recommended Order Denying Application for Transfer on April 29, 1992.

On May 26, 1992, the Applicant filed Exception. Oral argument was held before the Commission at the time and place set forth above. On the basis of the oral argument, the Commission concludes that certain reasoning in the Recommended Order is in error and that the Exception must be sustained.

The Hearing Examiner stated the issue as whether the franchise of Colonial Motor Freight Line, Inc. (Colonial) had become dormant such that it could not be transferred to the Applicant. The Hearing Examiner concluded that Colonial's certificate was dormant and could not be transferred. The Hearing Examiner found that Colonial ceased all operations in October 1988, that it requested an authorized suspension of operations in a letter filed on February 26, 1990, and that the Commission issued an Order on March 1, 1990, granting an authorized suspension for a year. On February 26, 1991, the Commission granted another authorized suspension and on March 5, 1992, the Commission granted a third authorized suspension, this one lasting until September 1, 1992. The Hearing Examiner noted that there was a gap of approximately 16 months between the time Colonial ceased operations and the time it requested the first authorized suspension of operations from the Commission. Authorized suspensions were granted, but the Hearing Examiner concluded that Colonial's "untimely requests are not sufficient to rescue the franchise from dormancy . . . The subsequent authorized suspensions, to the extent they have meaning, only cover periods subsequent to 1990 and do not cover the yawning gap of unauthorized suspension between October 1988 and March 1, 1990." The Hearing Examiner recognized that "the Commission may give consideration 'to other factors affecting the performance of such service' in making a determination of dormancy," but he concluded, "There is no indication of physical disability or any other factor that would explain or mitigate the nearly 16-month gap."

The Commission disagrees with the Hearing Examiner as to the effect of the three Commission Orders granting Colonial authorized suspensions of operations. The Commission interprets its March 1, 1990 Order authorizing suspension of operations as applying retroactively to the time Colonial ceased operations in October 1988. Otherwise, the Order is left essentially meaningless. Commission Orders are presumed to have meaning and to be just and reasonable. The Commission concludes that Colonial's certificate was rescued from dormancy by the authorized suspensions granted by the Commission. It was not necessary to "explain or mitigate" the 16-month gap at the hearing on transfer; the Applicant was entitled to rely upon the authorized suspensions. Colonial's suspension of service was therefore "approved by the Commission" and Colonial's certificate is subject to transfer if the other criteria in G. S. 62-111(e) are met. The Hearing Examiner, given his conclusion on dormancy, did not consider the other criteria. The Commission will remand this case to the Hearing Examiner for a further Recommended Order, on the basis of the existing record, as to the other criteria for transfer.

The Commission also believes that it would be appropriate to initiate a rulemaking proceeding to examine the manner in which authorized suspensions of operations are sought and granted. That matter will be dealt with by separate order.

IT IS, THEREFORE, ORDERED as follows:

1. That the Exception filed in this docket by the Applicant on May 26, 1992, should be, and the same hereby is, sustained;

2. That the Recommended Order Denying Application for Transfer dated April 29, 1992, should be, and the same hereby is, reversed to the extent provided herein; and

3. That this docket is remanded to the Hearing Examiner for entry of a further Recommended Order on the existing record.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of June 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. T-3584

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Charles Mitchell Powell, d/b/a Powell Trucking, Post Office Box 176, Cerro Gordo, North Carolina, 28430 - Application for Sale and Transfer of Certificate No. C-10 from Colonial Motor Freight Line, Inc., Uwaharrie Road, High Point, North Carolina 27263	FINAL ORDER OVERRULNG EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER ON REMAND

BY THE COMMISSION: On June 30, 1992, Hearing Examiner Long entered a Recommended Order on Remand in this docket approving the application for sale and transfer of Certificate No. C-10 from Colonial Motor Freight Line, Inc., to Charles Mitchell Powell, d/b/a Powell Trucking. On July 14, 1992, the Protestants in this proceeding filed certain exceptions to the Recommended Order. The Commission has carefully reviewed the entire record in this docket, including the testimony and exhibits offered by the parties, the Recommended Order, and the exceptions filed by the Protestants. On the basis of the entire record, the Commission finds good cause to deny the exceptions and affirm the Recommended Order. The findings of fact, conclusions and decretal paragraphs set forth in the Recommended Order are all fully supported by the record.

IT IS, THEREFORE, ORDERED as follows:

1. That the Recommended Order on Remand entered in this docket on June 30, 1992, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the exceptions filed by the Protestants with respect to the Recommended Order on Remand be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of August 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

TELEPHONE - CERTIFICATES

DOCKET NO. P-261

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of United Telephone Technologies, Inc., for a Certificate of Public Convenience and Necessity to Aggregate and Resell Telephone Service	))))	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ASSESSING PENALTY

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Thursday, January 9, 1992, at 9:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; Commissioners Laurence A. Cobb and Allyson K. Duncan

APPEARANCES:

For the Applicant:

Nancy Bentson Essex and Marvin D. Musselwhite, Jr., Attorneys at Law, Poyner and Spruill, Post Office Box 10096, Raleigh, North Carolina 27605-0096
For: United Telephone Technologies, Inc.

For the Intervenor:

Wade H. Hargrove, Attorney at Law, Post Office Box 1151, Raleigh, North Carolina 27602, and Gene V. Coker, Attorney for AT&T, 1200 Peachtree Street, N.E., Suite 4074 - 4th Floor, Atlanta, Georgia 30309
For: AT&T Communications of the Southern States, Inc.

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

BY THE COMMISSION: On July 31, 1991, United Telephone Technologies (hereinafter UTT, the Applicant, or the Company) filed an application for a certificate of public convenience and necessity to aggregate and resell telephone service.

On October 18, 1991, the Public Staff filed a motion for UTT to cease and desist from providing or offering to provide intrastate telecommunications services to maintain records of North Carolina intrastate revenues paid by its customers, and to provide an accounting to the Commission of such revenues, and to inform UTT of the penalties for failure to abide by such order. Further, that the Commission inform AT&T Communication of the Southern States, Inc.

(hereinafter AT&T), that UTT may be providing intrastate service without benefit of a certificate of public convenience and necessity and that AT&T should institute measures in compliance with their tariffs regarding the illegal use of their services.

On November 8, 1991, UTT filed a motion to postpone the Public Staff's motion to cease and desist.

On November 11, 1991, UTT filed an amended application for a certificate of public convenience and necessity. On November 21, UTT filed its first amendment to its amended application.

On December 18, 1991, UTT filed a motion for hearing by the Commission to which the Public Staff responded on December 19, 1991.

On December 20, 1991, the Commission issued an Order setting a hearing on the application and the Public Staff's motion to cease and desist and set requirements for the Applicant's prefiled testimony.

On January 3, 1992, the Public Staff filed a motion for the Commission to take judicial notice of certain official files.

On January 3, 1992, UTT submitted prefiled testimony and an accounting of some amounts billed for intrastate telephone service.

At the outset of the hearing, counsel for AT&T of the Southern States, Inc., filed a motion to intervene, and showed the Commission that the Public Staff subpoena had been served on AT&T January 8, 1992. Without objection, the intervention was allowed. Also without objection, the Commission took judicial notice of the certain official files as requested by the Public Staff in its motion, the names of which are incorporated by reference from the Public Staff motion.

The Applicant presented the testimony and exhibits of the following witnesses: William P. Egerton, Executive Vice-President of UTT, and Donald Liverman, Jr., President and owner of UTT.

The Public Staff presented the testimony of Bobby R. Smith, Manager in the Government Affairs Organization of AT&T, whose responsibilities include regulatory matters in the State of North Carolina. Mr. Smith had been subpoenaed by the Public Staff.

On February 10, 1992, the Applicant filed a "Motion to Allow Stipulation into Evidence", which motion was not opposed by AT&T or the Public Staff. The attached stipulation essentially provided some incremental detail to facts already in evidence.

Following the hearing, proposed orders were timely filed by the Applicant and the Public Staff.

Based upon the verified application, the testimony and exhibits received into evidence at the hearings, judicial notice of certain official Commission files and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. UTT is a Virginia Corporation authorized to do business within the State of North Carolina with its principal offices and place of business in Chesapeake, Virginia.

2. UTT seeks a certificate of public convenience and necessity authorizing it to provide intrastate, interLATA long-distance telecommunications services as a reseller in North Carolina. UTT is a reseller that directly provides interstate long-distance telecommunications services in North Carolina using circuits, switching equipment, and services obtained from others.

3. The interLATA long-distance telecommunications services proposed by UTT on a resale basis are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. UTT has revised its proposed tariffs, which reflect only services provided through the resale of AT&T's Distributed Network Services (DNS or Value Plus Calling Plan), to comply with the Commission's rules and regulations.

5. UTT has stated it is willing to abide by the applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

6. UTT owns no circuits or switches nor does it directly control the network of its underlying interexchange carrier. The underlying interexchange carrier maintains control over the routing of calls and can ascertain the amount of intraLATA minutes of use completed over unauthorized facilities pursuant to the Commission's compensation plan.

7. UTT has met the requirement that resellers are responsible for the payment of compensation to the local exchange companies for intraLATA calls completed over unauthorized facilities by UTT customers by obtaining a letter of commitment from the underlying carrier, who has agreed to pay such compensation for incidental unauthorized intraLATA traffic.

8. UTT has been operating within the State of North Carolina since January 1991 without a certificate of public convenience and necessity to provide intrastate telephone service.

9. The four AT&T services which UTT has been reselling in North Carolina and the approximate dates it began offering each service are:

a. Multi-Location Calling Plan (MLCP), which provides outbound calling, was begun approximately January 3, 1991.
b. Revenue Volume Pricing Plan (RVPP), which provides inbound calling, was begun in late May 1991.
c. Customer Specific Term Plan (CSTP), which provides inbound calling, was begun in late May 1991.
d. Distributed Network Services (DNS), which provides outbound calling, was begun approximately October 1, 1991.

10. AT&T's MLCP plan permits customers using its All PRO WATS, MEGACOM, and WATS-One Line Access services to receive discounted usage rates for a monthly charge. All PRO WATS, MEGACOM, and WATS-One Line Access services are offerings of AT&T which have interstate and intrastate components.

11. AT&T's RVPP plan permits customers to combine the usage from multiple locations of its MEGACOM 800 and Readyline 800 services to receive discounts based upon the volume of all the locations included in the plan. MEGACOM 800 and Readyline 800 services are offerings of AT&T which have interstate and intrastate components.

12. AT&T's CSTP plan permits customers to combine the usage from multiple locations of its MEGACOM 800 and Readyline 800 services to receive discounts based upon the volume of all the locations included in the plan. MEGACOM 800 and Readyline 800 services are offerings of AT&T which have interstate and intrastate components.

13. UTT has provided to the Commission an accounting of the charges incurred for intrastate calls by customers of its services associated with AT&T's DNS service. This accounting covers the period from when UTT began reselling DNS service in October 1991, up to and including November 1991. The charges total $10,180.94.

14. UTT is the customer of record for AT&T's DNS service and is reselling this service to its customers.

15. UTT is an aggregator of AT&T's services used pursuant to the MLCP, RVPP, and CSTP plans.

16. UTT is fit, capable, and technically and financially qualified to render interLATA long-distance telecommunications services as a public utility in the State of North Carolina.

17. All aggregators of telecommunications services are resellers for purposes of this case.

18. AT&T determines the discount given to UTT for the services associated with the CSTP and RVPP plans based on the aggregate of both the interstate and intrastate volume, and then applies the total discount credited to the interstate portion of UTT's service.

19. Under AT&T's tariff approved by the Federal Communications Commission (FCC), UTT could provide the billing for its end-users signed up for the CSTP, MLCP, and RVPP plans.

20. UTT is ultimately responsible to AT&T for payment of charges for interstate and intrastate calls made by UTT's customers using services associated with the CSTP, MLCP, and RVPP plans.

21. UTT is the intrastate provider of service to end-users who use services associated with AT&T's MLCP, CSTP, and RVPP plans.

22. There are mitigating factors in this case such that the appropriate sanction against UTT should be a penalty of $5,000. UTT must pay the penalty as a condition to receiving its certificate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-15

The evidence supporting these findings of fact is contained in the verified application, the Commission files and records regarding this proceeding, and the testimony of the witnesses. These findings are not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence supporting this finding of fact is contained in the verified application, the Commission files and records regarding this proceeding, and the testimony of the witnesses. The manner in which UTT operates differs from that of the traditional resale carrier. UTT owns no switching or transmission facilities to complete calls. Instead, the company relies upon AT&T to provide the network facilities. Customers of UTT are connected to AT&T's network. Thus, UTT relies upon the technical capabilities of AT&T to provide the services it has proposed to offer.

Because UTT owns no switching or transmission facilities, its operations require very little in the way of investment in fixed assets, which is evidenced by reviewing its balance sheet for July 1991. In addition, the testimony of UTT President Liverman was that approximately $400,000 had been invested in the company and that in October 1991 the company began to have a positive cash flow. Therefore, UTT does have the financial capability to provide the services it has proposed to offer.

Subsequent to filing its amended application, UTT has made great strides in coming to an understanding of Commission rules and regulations and AT&T's tariffs. One example of this is the stipulation filed by UTT on February 10, 1992, which shows the effort made by UTT to provide the Commission with a complete record in this proceeding. This stipulation also shows a willingness by UTT to become proficient in its understanding of AT&T's tariffs. Thus, UTT meets the overall fitness requirement for applicants.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Smith. In addition, past orders of this Commission have drawn no distinction between aggregators and resellers for purposes of determining appropriate application of the laws of North Carolina and the rules of this Commission.

The Applicant has sought in this hearing to differentiate between aggregators and resellers. If there is a difference, it is without meaning in this proceeding. Aggregators are resellers. The Order issued in Docket No. P-100, Sub 72 on February 22, 1985 applies to "aggregators" as it does to other

resellers.[2] The fact that the Applicant expressed confusion about possible differences between aggregators and resellers does not render the Applicant exempt from the requirements of the laws of North Carolina or this Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-20

The evidence supporting these findings of fact is found in the testimony of Public Staff witness Smith. (See Public Staff Cross-Examination Exhibit 24). With the MLCP plan, international usage may be combined with the interstate and intrastate usage in determining the level of the discount to be credited to the interstate portion of the bill. The Applicant offered no evidence to the contrary. Indeed, the Applicant acknowledged that it knew that the RVPP and CSTP discounts were determined by the total inter/intrastate usage.

Public Staff witness Smith testified that UTT could provide the billing for its end-users or permit AT&T to bill the end-users. In addition, the stipulation filed by the Applicant on February 10, 1992, makes this fact clear. Whether AT&T or UTT bills the end-user for any of the services under the CSTP, MLCP, or RVPP plans is irrelevant to a determination of who is the intrastate provider for each of these services, since, contractually, either AT&T or UTT can provide this billing service. (For example, see Public Staff Cross-Examination Exhibits 22 and 23).

Mr. Smith pointed out that certain forms used are solely for the purpose of giving AT&T the authority needed to transfer service for the end-user to UTT for interstate and intrastate services. Any customer of UTT that signs up for any services offered under the CSTP, MLCP, or RVPP plans gets the intrastate add-on component automatically. There are only two exceptions: 1) if an end-user did not make any intrastate calls, the end-user would have no intrastate bill; 2) if a particular end-user of the MLCP plan also subscribed to PRO WATS North Carolina, that subscriber would have no intrastate billing associated with the MLCP plan. The evidence clearly shows that once UTT buys the CSTP, MLCP, and RVPP plans and resells it to the end-user, AT&T looks to UTT as the customer for both interstate and intrastate service under those tariffs. In addition, once UTT has resold those services, UTT is the agent for the end-user for purposes of ordering changes and maintenance of telecommunications for the end-user. And finally, the only difference between DNS and the CSTP, MLCP, and RVPP plans is that UTT has the option of having AT&T bill the end-user for the services offered under the MLCP, CSTP, and RVPP plans, while under DNS, AT&T will only bill UTT for the service.

The evidence indicates that UTT is ultimately responsible for payment of the interstate and intrastate billing for UTT's customers.

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[2] See also Public Staff Cross-Examination Exhibit 20, which is a data response from AT&T to the Public Staff. According to witness Bobby R. Smith of AT&T, who signed the response, the answers apply equally to resellers and aggregators.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

G.S. 62-3(23)a.6. defines a telecommunications public utility as "a person...now or hereafter owning or operating in this state equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph or any other means of transmission, where such service is offered to the public for compensation." This statute is broadly written and has been construed in many previous cases to apply to switchless resellers. It is also evident, in light of the findings made above, that UTT also falls under this statute as to the disputed services.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 22

The two main questions in this case are (1) whether UTT is a public utility with respect to the disputed services and, (2) if so, what the appropriate sanction is, if any, that should be applied against UTT. The Commission has found that UTT is a public utility with respect to the disputed services and DNS service. However, the Commission also believes that the appropriate sanction, given the specific circumstances of this case, is a penalty and that there are mitigating circumstances to be considered in this regard.

Although the Commission has in fact found that UTT is a public utility as to the provision of the MLCP, RVPP, and CSTP services, at the same time, the Commission recognizes that the arguments of UTT regarding its non-utility status are at least colorable and its position appears to have been taken and maintained in good faith. The Commission further believes that a refund process in this instance would be inordinately complex.

The specific configuration of services that UTT is offering in the MLCP, RVPP, and CSTP is not the usual configuration with which the Commission has been accustomed to dealing with respect to resellers. These configurations present cases of first impression. For example, whereas the more common case has been for the reseller to purchase the bulk discount tariff directly from the underlying carrier and bill the end-user, here the end-user was in fact billed by the underlying carrier and UTT received its compensation from the end-users by a more indirect route. While, for the reasons stated above, these factors make no difference as far as the Commission's finding UTT to be a public utility in these instances, the Commission does believe that UTT's arguments to the contrary are far from frivolous and constitute at least colorable arguments for the opposite conclusion.

Second, the Commission believes that UTT has essentially been acting in good faith throughout these proceedings. While UTT could perhaps have been better acquainted with the Commission's rules and the subtleties of the tariffs, UTT has made no deliberate attempt to avoid the Commission's rules and regulations. UTT attempted to determine its regulatory status, made contact with the Public Staff, and applied for the authority that it believed it needed.

Third, a refund process in this case as to the disputed services would be inordinately complex when viewed in the perspective of the unique aspects of this case. UTT, for instance, has testified that it would need to incur substantial expenses from AT&T just to obtain the data necessary simply to calculate the refund, a process that would cause further delay.

Because of the reasons stated above, the Commission does not believe that a refund is the appropriate sanction to be applied in this specific case and that there are substantial factors in mitigation. At the same time, the Commission does not believe that no sanction at all would be appropriate since UTT was indeed operating illegally.

G.S. 62-310(a) provides for a penalty of up to $1,000.00 per day for each offense. A maximum penalty applied to these circumstances would be very substantial. However, in view of the specific circumstances herein, the Commission believes that a penalty of $5,000 would be appropriate in this case. However, the Commission emphasizes that the lower amount of this penalty results from the fact that this is a case of first impression and there are other mitigating factors. Companies with similar configurations should be aware that theirs will not be cases of first impression and mitigating circumstances may not be found.

This Order, like all other Orders concerning resellers, makes its effectiveness contingent upon the performance of certain conditions by the Applicant. Relying on its position concerning its disputed services, UTT has continued to offer these services to the public. In view of this and in order to avoid possible disruption to customers and to allow UTT time to comply with the penalty provisions of this Order, the Commission is willing in this instance to grant interim operating authority for a period of up to 30 days. However, if the penalty is not paid, the interim operating authority shall automatically terminate and UTT will be deemed to be operating illegally as to the previously disputed services and as to any other services UTT may be offering.

As to the $10,180.94 in charges regarding the DNS or Value Plus Calling Plan that UTT reported in its January 3, 1992, accounting, the Commission relies on UTT's representation that UTT has notified its customers that they will not be required to pay any amount for intrastate telephone calls made prior to UTT receiving its certificate and, if any customers have inadvertently paid, UTT will refund these amounts as soon as it is aware of such payment.

CONCLUSIONS

Based upon the foregoing findings of fact, evidence and conclusions, and the entire record in this proceeding, the Commission concludes that UTT should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long-distance telecommunications services as a reseller and public utility in North Carolina and that UTT NCUC Tariff No. I, as amended, should be approved, subject to the following terms and conditions:

A. UTT shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the Order Authorizing Intrastate Long-Distance Competitors entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders, except for the requirement that UTT determine the monthly quantity for intrastate access minutes of use. The special condition under which UTT operates and provides long-distance telecommunications services is such that all charges for access minutes of use are paid for by the underlying interexchange carrier. The Commission concludes that UTT should be granted a

waiver of the requirement regarding the determination of monthly access minutes of use as long as UTT continues to operate in a manner in which its underlying interexchange carrier pays for all access minutes of use.

B. UTT shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to all applicable provisions of the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes full intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges. Because of the special circumstances regarding the manner in which UTT provides service, in order to comply with the requirement, UTT previously provided a letter from its underlying carrier indicating that any intraLATA calls completed by UTT customers over unauthorized facilities will be accounted for and compensation paid for by the underlying interexchange carrier in its monthly payments to the local exchange companies.

The Commission has received a letter from AT&T Communications of the Southern States, Inc., dated December 13, 1991, in which AT&T indicates that compensation for any intraLATA calls completed over unauthorized facilities by UTT customers will be included and paid for by AT&T in its monthly reports to the local exchange companies. If UTT should ever change its underlying interexchange carrier, prior to converting service to such carrier, a similar letter regarding intraLATA compensation must be filed with the Commission in Docket No. P-261 prior to utilizing the interexchange carrier's services. Should UTT be unable to file such a letter, then UTT must file a plan detailing how the minutes of use for all unauthorized intraLATA calls will be determined to ensure payment of compensation to the local exchange companies.

C. UTT shall not construct or use any facilities designed to bypass the facilities of the local exchange telephone companies.

D. UTT shall not abandon or discontinue service under its interLATA certificate in North Carolina unless UTT has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. UTT shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

F. UTT shall pay a penalty to the Commission in the sum of $5,000 within 30 days of the issuance of this Order. Pending payment of this penalty, UTT shall be granted interim operating authority. If the penalty is not paid within 30 days, the interim operating authority is automatically canceled.

G. UTT should file further amendments to its UTT NCUC Tariff No. 1 to reflect the services it provides associated with AT&T's MLCP, RVPP, and CSTP plans, and any other such other services with an intrastate component.

IT IS, THEREFORE, ORDERED as follows:

1. That UTT be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long-distance telecommunications services as a reseller and public utility in North Carolina subject to the following terms and conditions:

A. UTT shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the Order Authorizing Intrastate Long-Distance Competitors entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders, except for the requirement that UTT determine the monthly quantity for intrastate access minutes of use. The special condition under which UTT operates and provides long-distance telecommunications services is such that all charges for access minutes of use are paid for by the underlying interexchange carrier. The Commission concludes that UTT should be granted a waiver of the requirement regarding the determination of monthly access minutes of use as long as UTT continues to operate in a manner in which its underlying interexchange carrier pays for all access minutes of use.

B. UTT shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to all applicable provisions of the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes full intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges. Because of the special circumstances regarding the manner in which UTT provides service, in order to comply with the requirement, UTT previously provided a letter from its underlying carrier indicating that any intraLATA calls completed by UTT customers over unauthorized facilities will be accounted for and compensation paid for by the underlying interexchange carrier in its monthly payments to the local exchange companies. If UTT should ever change its underlying interexchange carrier, prior to converting service to such carrier, a similar letter regarding intraLATA compensation must be filed with the Commission in Docket No. P-261 prior to utilizing the interexchange carrier's services. Should UTT be unable to file such a letter, then UTT must file a plan detailing how the minutes of use for all unauthorized intraLATA calls will be determined to ensure payment of compensation to the local exchange companies.

C. UTT shall not construct or use any facilities designed to bypass the facilities of the local exchange telephone companies.

D. UTT shall not abandon or discontinue service under its interLATA certificate in North Carolina unless UTT has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. UTT shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

F. UTT shall pay a penalty to the Commission in the sum of $5,000 within 30 days of the issuance of this Order. Pending payment of this penalty, UTT shall be granted interim operating authority; but, if the penalty is not paid within 30 days, the grant of interim operating authority shall automatically terminate.

2. Within thirty (30) days of the date of this Order, the President of UTT shall file with this Commission a certified statement that he fully intends to comply with each and every requirement of this Order, and that UTT is financially capable of complying with this Order.

3. That this Order shall constitute the certificate of public convenience and necessity granted to United Telephone Technologies, Inc., by the North Carolina Utilities Commission to provide interLATA long-distance telecommunications services as a reseller in North Carolina. This certificate shall become effective at such time as UTT complies with the penalty provision specified by decretal paragraph 1.F above.

4. That NCUC Tariff No. 1 filed by United Telephone Technologies, Inc., be revised to incorporate the services it provides associated with AT&T's MLCP, RVPP, and CSTP plans, and any other such other services with an intrastate component. Such revisions should be filed within fourteen (14) days of the date of this Order with the Commission and the Public Staff with approval of such tariffs subject to a further Order of this Commission.

ISSUED BY ORDER OF THE COMMISSION
This the 20th day of March 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. P-21, SUB 54

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Ellerbe Telephone Company	)	ORDER APPROVING
for an Adjustment of Its Rates and Charges	)	PARTIAL RATE INCREASE

HEARD: Tuesday, June 9, 1992, at 7:00 p.m. in the Conference Room, Town Hall, 116 Page Street, Ellerbe, North Carolina

Tuesday, June 16, 1992, at 9:30 a.m. in the Commission Hearing Room, Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Robert D. Wells, Presiding, and Commissioners Laurence A. Cobb and Charles H. Hughes

APPEARANCES:

For Ellerbe Telephone Company

F. Kent Burns and Daniel C. Higgins, Burns, Day & Presnell, P.A., Attorneys at Law, Post Office Box 10867, Raleigh, North Carolina 27605

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 AT&T Communications of the Southern States, Inc.

William A. Davis, II, Tharrington, Smith & Hargrove, Attorneys at Law, Post Office Box 1151, Raleigh, North Carolina 27602

BY THE COMMISSION: On January 31, 1992, Ellerbe Telephone Company (Ellerbe, Applicant or the Company) filed an application with the Commission seeking authority to adjust its rates and charges for telephone service in North Carolina. Ellerbe proposed to make the requested rate adjustments effective March 3, 1992.

On February 18, 1992, the Commission issued an Order Setting Investigation and Hearings, Suspending Proposed Rates, and Requiring Public Notice. This Order set this matter for hearing in Ellerbe on June 9th at 7:00 p.m. and in Raleigh on June 16th at 9:30 a.m.

On May 20, 1992, AT&T Communications of the Southern States, Inc. (AT&T), filed a petition with the Commission seeking leave to intervene in this case. By Order dated May 22, 1992, the Commission allowed AT&T's intervention.

The public hearing was held as scheduled in Ellerbe, North Carolina, on the evening of June 9, 1992. The following public witnesses testified at that hearing: C. B. Vuncannon, Jo Ann Rahb and Regina Thomas.

The case came on for hearing in chief before the Commission in Raleigh on Tuesday, June 16, 1992. At the start of the hearing, the Company and the Public Staff filed a stipulation whereby the Public Staff recommended and the Company agreed to an increase in annual revenues of $168,036 subject, however, to Commission approval. While the Public Staff and the Company agreed on the amount of increase in annual revenues that should be allowed by the Commission, they did not agree on the issue of rate design. The Company proposed that all of the rate increase be put on local service rates. The Public Staff recommended that the increase be derived by increasing both local service rates and intrastate interLATA switched access rates.

The prefiled testimony of Company witnesses James T. Bennett and Michael L. Theis and Public Staff witnesses Robert A. Goetz and Katherine A. Fernald were entered into the record without objection and without these witnesses having to take the stand. Herbert Long, Jr. testified for the Applicant in support of its Application. William J. Willis, Jr. and John T. Garrison, Jr. testified for the Public Staff on rate design. AT&T did not offer any witnesses.

Based on the foregoing, the evidence adduced at the hearings, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, Ellerbe Telephone Company, is a public utility as defined by G.S. 62-3(23), is subject to the jurisdiction of this Commission, and is properly before this Commission, pursuant to G.S. 62-133, for a determination of the justness and reasonableness of its proposed rates and charges.

2. By its application, the Company seeks rates to produce additional gross annual revenues of $239,700.

3. The test period consisting of the 12 months ended June 30, 1991, is representative and appropriate for use in this proceeding.

4. The overall quality of local exchange telephone service provided by Ellerbe is adequate.

5. The Applicant's reasonable original cost rate base used and useful in providing telephone service within the State of North Carolina is $2,239,806. The rate base consists of telephone plant in service of $3,282,362, a working capital allowance of $65,851 and investment in Rural Telephone Bank (RTB) stock of $72,900, reduced by accumulated depreciation of $1,096,040, accumulated deferred income taxes of $67,774 and an unamortized customer premises equipment (CPE) gain of $17,493.

6. The Applicant's operating revenues for the test year under present rates after accounting, pro forma and end-of-period adjustments are $999,129.

7. The Applicant's reasonable level of test year operating revenue deductions after accounting, pro forma and end-of-period adjustments is $926,021. This level of test year operating expenses includes $177,622 of actual investment currently consumed by previous use recovered by depreciation expense.

8. The capital structure and cost rates reasonable and appropriate for use in this proceeding are:

Item	Ratios	Cost Rates
Long-Term Debt	64.00%	6.35%
Common Equity	36.00%	12.50%

This combination of capital structure and cost rates yields an overall rate of return of 8.56%.

9. Based on the foregoing, the Applicant should be allowed to increase its annual level of gross operating revenues under present rates by $168,036. This increase will allow the Company a reasonable opportunity to earn the 12.5% rate of return on common equity which the Commission has found just and reasonable.

10. The $168,036 increase in Ellerbe's annual level of gross operating revenues should be obtained by increasing local service revenues.

11. The rates and charges contained in Appendix A, attached hereto, will produce the required local service revenues set forth above and are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2 AND 3

The evidence supporting these findings of fact is contained in the Company's verified application and the record as a whole. These findings are essentially informational, procedural and uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is contained in the testimony of the three public witnesses appearing at the hearing in Ellerbe, the Company, and Public Staff witness Goetz.

All three of the public witnesses testified that the quality of service provided by Ellerbe was good. One witness, however, stated that she wished Ellerbe had a larger calling scope and equal access, such that Ellerbe's customers could enjoy the service options and benefits offered by the larger neighboring telephone companies.

Public Staff witness Goetz testified that Ellerbe had met or exceeded the Commission's quality of service objectives in every category checked. He testified that the Company's overall quality of service was adequate.

Based upon the foregoing, the Commission concludes that the overall quality of service being provided by Ellerbe is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the testimony and exhibits of Company witness Theis and Public Staff witness Fernald. The amounts which the Company and the Public Staff presented as their initial recommendations on the appropriate level of rate base are shown in the following schedule.

Item	Company	Public Staff	Difference
Telephone plant in service	$ 3,360,100	$ 3,282,362	$ (77,738)
Accumulated depreciation	(1,257,000)	(1,096,040)	160,960
Net telephone plant	2,103,100	2,186,322	83,222
Working capital:			
Cash	68,500	61,398	(7,102)
Materials and supplies	25,000	21,391	(3,609)
Prepayments	24,700	23,086	(1,614)
Average tax accruals	(18,200)	(17,548)	652
Accrued profit sharing plan	-	(7,476)	(7,476)
Customer deposits	(15,000)	(15,000)	-
Total working capital	85,000	65,851	(19,149)
Accumulated deferred income tax	(54,500)	(67,774)	(13,274)
Investment in RTB stock	72,900	72,900	-
Unamortized CPE gain	(34,300)	(17,493)	16,807
Original cost rate base	$ 2,172,200	$ 2,239,806	$ 67,606

In the stipulation entered into the record at the hearing in Raleigh, the Company and the Public Staff agreed that the proper level of original cost rate base for use in this proceeding is $2,239,806. No other party offered any evidence as to the appropriate level of original cost rate base.

Based upon the foregoing, the Commission concludes that the Company's reasonable rate base used and useful for purposes of this proceeding is $2,239,806, which consists of the following components:

Item	Amount
Telephone plant in service	$ 3,282,362
Accumulated depreciation	(1,096,040)
Net telephone plant	2,186,322
Working capital:	
Cash	61,398
Materials and supplies	21,391
Prepayments	23,086
Average tax accruals	(17,548)
Accrued profit sharing plan	(7,476)
Customer deposits	(15,000)
Total working capital	65,851
Accumulated deferred income taxes	(67,774)
Investment in RTB stock	72,900
Unamortized CPE gain	(17,493)
Original cost rate base	$ 2,239,806

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Theis and Public Staff witnesses Fernald and Garrison. The amounts which the Company and the Public Staff presented as their initial recommendations on the appropriate level of end-of-period revenues are shown in the following schedule.

Item	Company	Public Staff	Difference
Local service	$ 285,100	$ 285,100	$ -
Network access	460,200	483,020	22,820
Long distance	99,400	99,400	-
Miscellaneous	125,460	131,969	6,509
Uncollectibles	(360)	(360)	-
Total operating revenues	$ 969,800	$ 999,129	$ 29,329

In the stipulation entered into the record at the hearing in Raleigh, the Company and the Public Staff agreed that the proper level of end-of-period operating revenues is $999,129. No other party offered any evidence as to the appropriate level of end-of-period revenues.

Based upon the foregoing, the Commission concludes that the appropriate level of operating revenues for the test year under present rates, for use in this proceeding is $999,129, which consists of the following components:

Item	Amount
Local service	$ 285,100
Network access	483,020
Long distance	99,400
Miscellaneous	131,969
Uncollectibles	(360)
Total operating revenues	$ 999,129

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is contained in the testimony and exhibits of Company witness Theis and Public Staff witness Fernald. The amounts which the Company and the Public Staff presented as their initial recommendations on the appropriate level of operating revenue deductions are shown in the following schedule.

Item	Company	Public Staff	Difference
Plant specific operations	$ 188,100	$ 173,245	$ (14,855)
Depreciation and amortization	199,300	177,622	(21,678)
Plant nonspecific operations	104,100	100,820	(3,280)
Customer operations	171,800	171,238	(562)
Corporate operations	300,500	290,472	(10,028)
Interest on customer deposits	1,000	1,000	-
Amortization of CPE gain	(11,400)	(8,575)	2,825
Gross receipts tax	9,193	9,193	-
Other taxes	17,907	17,742	(165)
State income tax	(8,000)	-	8,000
Federal income tax	(20,300)	(6,736)	13,564
Total operating revenue deductions	$ 952,200	$ 926,021	$ (26,179)

In the stipulation entered into the record at the hearing in Raleigh, the Company and the Public Staff agreed that the proper level of operating revenue deductions under present rates is $926,021. No other party offered any evidence as to the appropriate level of operating revenue deductions.

Based on the foregoing, the Commission concludes that the Company's overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $926,021, which consists of the following components:

Item	Amount
Plant specific operations	$ 173,245
Depreciation and amortization	177,622
Plant nonspecific operations	100,820
Customer operations	171,238
Corporate operations	290,472
Interest on customer deposits	1,000
Amortization of CPE gain	(8,575)
Gross receipts tax	9,193
Other taxes	17,742
State income tax	-
Federal income tax	(6,736)
Total operating revenue deductions	$ 926,021

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is contained in the testimony and exhibits of Company witness Theis and Public Staff witness Fernald. In the stipulation entered into the record, the Company and the Public Staff agreed that the appropriate capital structure and cost rates for use in this proceeding are as follows:

Item	Ratios	Cost Rates
Long-Term Debt	64.00%	6.35%
Common Equity	36.00%	12.50%

No other party offered any evidence as to the appropriate capital structure and cost rates.

Based on the foregoing, the Commission concludes that the capital structure and costs rates stipulated to by the Company and the Public Staff are reasonable and appropriate for use in this proceeding. This combination of capital structure and cost rates yields an overall return of 8.56%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Based upon the rate base, operating revenues, expenses, capital structure and rates of return as previously determined and set forth in this Order, the Commission finds that Ellerbe Telephone Company should be allowed an increase in its gross revenues of $168,036. This increase will allow the Company the opportunity to earn the 12.5% return on common equity, which the Commission finds to be reasonable.

The following schedules summarize the gross revenues and rate of return which the Company should have a reasonable opportunity to achieve based upon the determinations made herein:

SCHEDULE I
ELLERBE TELEPHONE COMPANY
DOCKET NO. P-21, SUB 54
STATEMENT OF NET OPERATING INCOME
Twelve Months Ended June 30, 1991

Item	Present Rates	Approved Increase	Approved Rates
Operating revenues:			
Local service	$ 285,100	$ 168,036	$ 453,136
Network access	483,020		483,020
Long distance	99,400		99,400
Miscellaneous	131,969		131,969
Uncollectibles	(360)	(351)	(711)
Total operating revenues	999,129	167,685	1,166,814
Operating revenue deductions:			
Plant specific operations	173,245		173,245
Depreciation and amortization	177,622		177,622
Plant nonspecific operations	100,820		100,820
Customer operations	171,238		171,238
Corporate operations	290,472		290,472
Interest on customer deposits	1,000		1,000
Amortization of CPE gain	(8,575)		(8,575)
Gross receipts tax	9,193	5,398	14,591
Other taxes	17,742	151	17,893
State income tax	-	10,751	10,751
Federal income tax	(6,736)	32,676	25,940
Total operating revenue deductions	926,021	48,976	974,997
Net operating income for return	$ 73,108	$ 118,709	$ 191,817

SCHEDULE II
ELLERBE TELEPHONE COMPANY
DOCKET NO. P-21, SUB 54
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended June 30, 1991

Item	Amount
Telephone plant in service	$ 3,282,362
Accumulated depreciation	(1,096,040)
Net telephone plant	2,186,322
Working capital:	
Cash	61,398
Materials and supplies	21,391
Prepayments	23,086
Average tax accruals	(17,548)
Accrued profit sharing plan	(7,476)
Customer deposits	(15,000)
Total working capital	65,851
Accumulated deferred income taxes	(67,774)
Investment in RTB stock	72,900
Unamortized CPE gain	(17,493)
Original cost rate base	$ 2,239,806
Rates of return:	
Present rates	3.26%
Proposed rates	8.56%

SCHEDULE III
ELLERBE TELEPHONE COMPANY
DOCKET NO. P-21, SUB 54
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended June 30, 1991

Item	Capitalization Ratio	Original Cost Rate Base	Embedded Cost	Net Operating Income
		Present Rates		
Long-term debt	64.00%	$ 1,433,476	6.35%	$ 91,026
Common equity	36.00%	806,330	(2.22%)	(17,918)
Total	100.00%	$ 2,239,806		$ 73,108
		Proposed Rates		
Long-term debt	64.00%	$ 1,433,476	6.35%	$ 91,026
Common equity	36.00%	806,330	12.50%	100,791
Total	100.00%	$ 2,239,806		$ 191,817

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Evidence for this finding of fact is found in the testimony of Company witness Long and Public Staff witness Garrison. The increase in annual revenues for Ellerbe has been previously found to be $168,036. Public Staff witness Garrison recommended that $65,527 of the additional revenue requirement be

obtained from interLATA access revenues with the balance coming from local service revenues, while Company witness Long recommended that the entire $168,036 additional revenue requirement be obtained from local service revenues.

Public Staff witness Garrison testified that the plant additions and network improvements which have increased Ellerbe's revenue requirement will benefit both local subscribers and interexchange carriers (ICs). For this reason, Mr. Garrison stated it was appropriate to increase the rates charged to ICs for interLATA access. As a result, Mr. Garrison recommended that both interLATA access revenues and local service revenues be increased to recover the additional revenue requirement. Company witness Long testified that Ellerbe's proposed rate design reflected the Company's desire to obtain the increased revenues from an assured source such as local service rather than from increased access charges.

The method employed by Public Staff witness Garrison to determine the increase to interLATA access revenues was based upon the percent of interLATA access revenues to the sum of local service revenues and interLATA access revenues. This percentage was then applied to the increased revenue requirement to determine the increase in interLATA access revenues. The remainder of the increased revenue requirement was recovered by increasing local service revenues.

On cross-examination, Mr. Garrison stated he was unable to determine how much of a benefit ICs would receive from Ellerbe's plant additions and network improvements. Mr. Garrison further testified that the reason for allocating the increased revenue requirement on the basis of revenues was that there was no way to arrive at a cost or usage basis for allocating Ellerbe's increased revenue requirement. Because Ellerbe's costs cannot be allocated to the various jurisdictions, such as local service and access service, Mr. Garrison was unable to obtain the increases in plant associated with providing access for use as the basis in his recommendation for allocating the increased revenue requirement.

The Commission concludes that all of the increase in rates in this proceeding should be placed on local rates for several reasons. First, given the fact that the Company's last increase in local service rates was in 1979, the Commission does not believe this increase is unreasonable. Second, while the Commission recognizes and appreciates the Public Staff's efforts to keep local service rates as low as possible, the evidence presented was not sufficient to indicate that the proposed increase in access rates is cost-justified nor quantifiable as to the "benefit" which the carriers would receive from the network improvements. Third, in our Order in Docket Nos. P-100, Subs 65 and 72 dated April 8, 1988, we promulgated an industry plan applicable to all local exchange companies for the depooling of interLATA access charges. The effect of the Public Staff's position would be to remove Ellerbe from that plan. On the basis of the record in this case, we are not prepared to depart from those procedures at this time.

Based on the foregoing, the Commission concludes that the $168,036 increase in Ellerbe's annual level of gross operating revenues should be obtained by increasing local service rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Evidence for this finding is found in the testimony of Company witness Bennett and Public Staff witness Willis. Through the prefiled testimony of Mr. Bennett, the Company proposed to essentially increase all of its currently filed local exchange tariff rates. The categories of services include Local Basic Exchange Access Lines, Miscellaneous Equipment and Services, Non-Recurring Services, Public Paystation Revenues and Volume Control Equipment for High Room Noise. Mr. Bennett testified that he proposed to increase charges for all miscellaneous services as much as possible without inhibiting demand for those services which included, but were not limited to, custom calling services, extension line mileage, additional directory listing, and consecutive line service. He stated that his request to substantially increase non-recurring charges were to cover the Company's cost and further that he would like to see these charges more in line with Southern Bell's charges. He further proposed to increase the local directory assistance charge from $.20 to $.50.

Public Staff witness Willis concurred in the Company's general approach to broadly distribute any increase in annual revenues granted by the Commission but made several specific recommendations on how the Company's and Public Staff's stipulated increase of $168,036 of annual revenue should be spread across the Company's rate structure. Mr. Willis' recommendations on individual services were not opposed by the Company. However, in the "Stipulation of Ellerbe Telephone Company and The Public Staff," the Company stated its position on rate design where it proposed that the additional revenues it requires be generated solely by increasing the local service rates. Thus, Ellerbe's recommendation would produce rates to generate an additional $65,527 in exchange access line revenues than provided by the rates proposed by Public Staff witness Willis.

It was Mr. Willis' belief that miscellaneous services, which traditionally provide significant contribution, have a limit as to how much they can be increased before sales will diminish. He recommended increasing the rates for these services to the highest rate level currently on file for one of the three contiguous operating telephone companies or otherwise to Ellerbe's proposed rate when it is less than the filed rates of the three contiguous telephone companies.

With respect to future sales of miscellaneous services, Mr. Willis recommended substituting ALLTEL's currently filed Subsequent Service Ordering charge which is somewhat less than Ellerbe's proposed charge. He indicated that ALLTEL's charge would permit Ellerbe to better market its discretionary miscellaneous services which requires the payment of the Subsequent Service Ordering Charge when orders for miscellaneous services follow an initial telephone installation.

Mr. Willis testified, and the Stipulation reflects agreement, that if all of the increase allowed herein is generated from local rates, then the residence access line charge would be $14.74, the business access line charge would be $36.85 and the PBX access line charge would be $64.48. We find and conclude that these increases are just and reasonable and necessary to produce the overall increase in operating revenues of $168,036 which we have previously found to be reasonable.

Based upon the preceding conclusions on rate design and other findings in this Order, the Commission finds that the rates and charges which are just and reasonable are the rates and charges itemized in Appendix A.

Due to the concern expressed by one of the public witnesses about the Company's policy on charging business rates, the Commission requests that the Company make every attempt to apply a more consistent approach to application of business rates.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Ellerbe Telephone Company, be, and hereby is, authorized to increase its local service rates and charges so as to produce an increase of $168,036 above the level of revenue that would have resulted from rates currently in effect, based on the test year level of operations.

2. That the Applicant is required to file modified tariff sheets prepared pursuant to this Order and to the guidelines contained in Appendix A within 10 days from the date of this Order.

3. That the Public Staff may file written comments concerning the Company's tariffs within five working days of the date on which they are filed pursuant to ordering paragraph 2 above.

4. That the Applicant shall give notice of the rate increase approved herein to each of its North Carolina customers during the next billing cycle following the filing and acceptance of the tariff sheets described in Ordering Paragraph No. 2 above. The Company shall submit its proposed customer notices to the Commission for approval prior to the notices being mailed out to the customers.

5. That the rates, charges, and regulations necessary to produce the annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs and customer notices filed pursuant to ordering paragraphs 2 and 4 above.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of August 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

DOCKET NO. P-21, SUB 54
ELLERBE TELEPHONE COMPANY
Local Service Revenues

Item	Test Year Revenue Present	Approved	Increase
Basic Exchange Revenues	$234,354.00	$299,305.44	$128,442.96
Misc. Equip. and Service	33,664.44	54,870.12	23,218.08
Non-Recurring Service	11,358.60	26,390.52	15,031.92
Pay Station Revenues	5,596.80	6,996.00	1,399.20
Total Local Service Revenue	$284,973.84	$ 387,562.08	$168,092.16

ELLERBE TELEPHONE COMPANY
Local Service Revenues

ACCESS LINE REVENUE

Class of Service Exchange	Quantity	Monthly Rates Present ($)	Approved ($)	Test Year Revenues Present ($)	Approved ($)
Residence Access Line	1,444	10.07	14.74	14,541.08	21,284.56
Business Access Line	159	19.79	36.85	3,146.61	5,859.15
Residence Vacation Access		5.04	7.37	0.00	
Business Vacation Access (1/2 B-1)		9.90	18.43	0.00	
Payphone Access Line-SemiPublic	10	20.29	37.35	202.90	373.50
Payphone Access Line-Public	6			0.00	
PBX Access Line	10	40.69	64.49	406.90	644.90
Key System Access	53	22.33	36.85	1,183.49	1,953.05
Vacation Payphone Access		10.15	18.43	0.00	
Sharing and Resale-Measured					
Individual Access Line		15.84	29.48	0.00	
Key Trunk		17.87	29.48	0.00	
PBX Trunk		32.56	51.59		
Sharing and Resale-Flat					
Individual Access Line		19.79	36.85		
Key Trunk		22.33	36.85		
PBX Trunk		40.69	64.49		
Customer Owned Coin Operated Tel.	4	12.13	29.48	48.52	117.92
				0.00	
				0.00	
Monthly Revenue				19,529.50	30,233.08
Annualized				12.00	12.00
Annual Revenue				234,354.00	362,796.96
REVENUE INCREASE					128,442.96

ELLERBE TELEPHONE COMPANY
Local Service Revenues

MISCELLANEOUS EQUIPMENT AND SERVICES

Description	Quantity	Present	Approved	Monthly Increase Per Unit (Prop. Rate Minus Pres)	Monthly Revenue Increase
Touch Tone-Residence	719	1.46	2.25	0.79	568.01
Touch Tone-Business	162	1.85	2.50	0.65	105.30
Touch Tone-PBX		3.64	4.08	0.44	0.00
Residence Call Waiting (CWT)	247	2.91	3.00	0.09	22.23
Business Call Waiting (CWT)	10	4.86	5.00	0.14	1.40
Res. 3 Way Call Waiting (3WC)	9	2.91	3.00	0.09	0.81
Bus. 3 Way Call Waiting (3WC)	0	3.89	3.99	0.10	0.00
Res. Short Speed Calling (SSC)	2	1.94	1.95	0.01	0.02
Bus. Short Speed Calling (SSC)	1	2.91	2.91	-0.00	0.15
Res. Long Speed Calling (LSC)	1	3.25	3.40	0.15	0.00
Bus. Long Speed Calling (LSC)	2	4.57	4.57	0.00	0.08
Res. Call Forwarding (CFW)	8	1.94	1.95	0.01	0.00
Bus. Call Forwarding (CFW)	16	2.91	2.91	0.00	
Res. CWT & 3 Way Calling			5.20		
Bus. CWT & 3 Way Calling			7.85		
Residence CWT & CFW	12	4.37	4.37	0.00	0.00
Business CWT & CFW			7.00		
Residence CWT & SSC	1	4.37	4.37	0.00	0.00
Business CWT & SSC			7.00		
Business 3WC & CFW			6.10		
Residence 3WC & CFW			4.35		
Residence CFW & SSC			3.50		
Business CFW & SSC			5.20		
Residence 3WC, CWT & CFW			6.35		
Business 3WC, CWT & CFW			9.59		
Business CFW, CWT & SSC			8.20		
Residence CFW, CWT & SSC	1	5.44	5.44	0.00	0.00
Business CFW, CWT & LSC			9.05		
Residence CFW, CWT & LSC	1	7.77	7.77	0.00	0.00
Residence Toll Denial	12	2.91	2.91	0.00	0.00
Business Toll Denial	9	3.89	3.89	0.00	0.00
Residence 3WC & SSC			5.24		
Business 3WC & SSC			6.10		
Business CWT, SSC & 3WC			9.30		
Residence CWT, SSC & 3WC			6.20		
Res. All Features W/O LSC TDN		7.29	7.29	0.00	0.00
Bus. All Features W/O LSC TDN		7.29	7.29	0.00	0.00
On Premise Mileage-Residence	29	0.68	1.00	0.32	9.28
On Premise Mileage-Business	27	0.68	1.00	0.32	8.64
Off Premise Mileage-Residence	6	1.21	2.50	1.29	7.74
Off Premise Mileage-Business	17	1.21	2.50	1.29	21.93
Amp. Equip. Hearing Impaired	1	0.58	0.68	0.10	0.10
Amp. Equip. High Noise Locations	3	1.21		0.00	-1.21
		Sub-Total			744.48

ELLERBE TELEPHONE COMPANY
Local Service Revenues

MISCELLANEOUS EQUIPMENT AND SERVICES (Continued) Description	Qty.	Present	Approved	Monthly Increase Per Unit (Prop. Rate Minus Pres)	Monthly Revenue Increase
Sub-Total From Previous Page					744.48
Tie Line Mileage		1.21	2.50	1.29	0.00
Rotary Line Service-Residence					
Rotary Line Service-Business	52		15.20		958.10
Semi-Booth Wall Mounted					
Semi-Booth Pedestal Mounted					
Standard Indoor/Outdoor Booth		1.46	29.02	27.56	0.00
Special Billing Numbering Plan		1.94	3.49	1.55	0.00
Data Access Arrangement		4.37	7.87	3.50	0.00
Local Private Line Service					
Between Terminations, Diff. Prem.					
First .25 Mile or Fraction Thereof		1.21	2.50	1.29	0.00
Each Addl. .25 or Fraction Thereof		1.21	2.50	1.29	0.00
Minimum Per Circuit		7.28	10.00	2.72	0.00
Additional Termination					
Each .25 or Fraction Thereof		1.21	2.50	1.29	0.00
Termination in the Same Building					
Each Two Point Channel		0.97	1.75	0.78	0.00
Each Termination in Excess of Two		0.73	1.25	0.52	0.00
		Sub-Total			1,702.58

ELLERBE TELEPHONE COMPANY
Local Service Revenues

MISCELLANEOUS EQUIPMENT AND SERVICES

Description	Qty.	Present	Approved	Monthly Increase Per Unit (Prop. Rate Minus Pres)	Monthly Revenue Increase
Sub-Total from Previous Page					1,534.88
Dual-Name Listing Residence		0.34	0.95	0.61	
Additional Listing-Residence		0.34	0.95	0.61	
Additional Listing-Business		0.34	1.15	0.81	
Foreign Listing-Residence		0.34	0.95	0.61	
Foreign Listing-Business		0.34	1.15	0.81	
Foreign Cross-Reference Listing-Res.		0.34	0.95	0.61	
Foreign Cross-Reference Listing-Bus.		0.34	1.15	0.81	
Foreign Alternate Listing-Residence		0.34	0.95	0.61	
Foreign Alternate Listing-Business		0.34	1.15	0.81	
Special Text-Per Line		0.34	1.15	0.81	
Cross Reference Listing-Residence		0.34	0.95	0.61	
Cross Reference Listing-Business		0.34	1.15	0.81	
Alternate Listing-Business		0.34	1.15	0.81	
Alternate Listing-Residence		0.34	1.15	0.81	
Cellular Mobile Customer Listing		0.34	1.15	0.81	
Sharing and Resale Client		1.15	1.15		
Local Directory Assistance:					
5 Free Calls Per Month @ .20/call	283	0.20		0.05	-56.60
3 Free Calls Per Month @ .25/call	499		0.25		124.75
Extra Directory Listing-Residence	13	0.34	0.95	0.61	7.93
Extra Directory Listing-Business	24	0.34	1.15	0.81	19.44
Private Directory Listing	258	1.17	1.70	0.53	136.74
Semi-Private Directory Listing		1.17	0.85	0.32	0.00
Monthly Revenue					1,934.84
Annualized					12.00
Annual Revenue					23,218.08

ELLERBE TELEPHONE COMPANY
Local Service Revenues

NON-RECURRING SERVICES

Description	Qty.	Present	Proposed	Test Year Revenues Present	Proposed
CURRENT					
Service Orders					
Initial-Revenues	22	11.66		256.52	0.00
Initial-Business	6	13.60		81.60	0.00
Subsequent-Residence	15	5.83		87.45	0.00
Subsequent-Business	3	7.77		23.31	0.00
Record		5.83		0.00	0.00
C.O. Work	45	2.91		130.95	0.00
Premise Visit-Residence	22	4.86		106.92	0.00
Premise Visit-Business	5	5.83		29.15	0.00
Re-Arrange Drop. O/S Wire A/O Prot.		2.91		0.00	0.00
Reconnect Fee-Residence	14	8.74		122.36	0.00
Reconnect Fee-Business	0	10.68		0.00	0.00
NSF Check Handling	5	10.00		50	0.00
Customer Trouble Maintenance					
Customer Prem. Visit, 2 Hrs. or Less	3	19.43		58.29	0.00
Each Additional Man-Hour		9.71		0.00	0.00
Test from Central Office Test Desk		9.71		0.00	0.00
Installation, Std. Indoor/Outdoor Booth		9.71		0.00	0.00
PROPOSED					
Service Orders					
Initial-Residence	22		33.00	0.00	726.00
Initial-Business	6		36.29	0.00	217.74
Subsequent-Residence	15		11.00	0.00	165.00
Subsequent-Business	3		15.00	0.00	45
Record-Residence			5.25	0.00	0.00
Record-Business			8.75	0.00	0.00
Access Line Connection-Residence	36		4.94	0.00	177.84
Access Line Connection-Business	9		5.44	0.00	48.96
Premise Visit-Residence	22		10.25	0.00	225.50
Premise Visit-Business	5		10.25	0.00	51.25
Reconnect Fee-Residence	14		15.94	0.00	223.16
Reconnect Fee-Business	0		20.44	0.00	0.00
Re-Arrange Drop. O/S Wire A/O Prot.					
Business			34.75		
Residence			30.75		
	Sub-Total			946.55	1,880.45

ELLERBE TELEPHONE COMPANY
Local Service Revenues

NON-RECURRING SERVICES

Description	Quantity	Present	Proposed	Test Year Revenues Present	Test Year Revenues Proposed
Sub-Total from Previous Page				946.55	1,880.45
PROPOSED (continued)					
Service Orders					
Customer Trouble Maintenance					
Customer Prem. Visit-1/2 Hr Or Less	3		31.75	0.00	95.25
Each Additional 1/4 Man Hour			9.50	0.00	0.00
Test From Central Office Test Desk			12.00	0.00	0.00
Extended Network Interface for COCOTS and Semi-Public Coin		0.00	51.54	0.00	0.00
Late Payment Charge	12,351.14	0.00	0.01	0.00	123.51
Installation Chg, Coin Tel. Svc. Booths				0.00	0.00
Standard Indoor/Outdoor Booth		0.00	166.94	0.00	0.00
Semi-Booth-Wall		0.00	83.47	0.00	0.00
Semi-Booth-Pedestal Mount		0.00	166.94	0.00	0.00
NSF Check Handling	5		20.00	0.00	100.00
Setup/Change in Hunting Arrangement			5.44	0.00	0.00
Data Access Arrangement					
	Monthly Revenue			946.55	2,199.21
	Annualized			12.00	12.00
	Annual Revenue			11,358.60	26,390.52
	Annual Revenue Increase				15,031.92

DOCKET NO. P-55, SUB 952
DOCKET NO. P-55, SUB 942

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 952 In the Matter of Triangle J Regional Calling Plans DOCKET NO. P-55, SUB 942 In the Matter of Tariff Filings by North State Telephone Company and Southern Bell Telephone and Telegraph Company for Implementing the Triad Calling Plan	)	ORDER CONCERNING TRIAD AND TRIANGLE REGIONAL CALLING PLANS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 22, 1991, and November 7, 1991

BEFORE: Commissioner Laurence A. Cobb, Presiding; Chairman William W. Redman, and Commissioners Sarah Lindsay Tate, Julius A. Wright, Robert O. Wells, Charles H. Hughes, and Allyson K. Duncan

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

David M. Falgoust, 4300 Southern Bell Center, Atlanta, Georgia 30375, and A. S. Povall, Jr., Post Office Box 30188, Charlotte, North Carolina 28230

For Carolina Telephone and Telegraph Company:

Dwight W. Allen, Assistant Vice President and General Counsel, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For GTE South, Incorporated, and Contel of North Carolina, Inc., d/b/a GTE North Carolina:

Joe W. Foster and Kimberly Caswell, GTE Telephone Operations - South Area, Post Office Box 110, MC7, Tampa, Florida 33601

For Mebane Home Telephone Company:

F. Kent Burns, Burns, Day & Presnell, P.A., Post Office Box 10867, Raleigh, North Carolina 27605

For North State Telephone Company:

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

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

Daniel W. Clark, Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602, and

Roger A. Briney, Senior Attorney, AT&T Communications, 1200 Peachtree Street, N.E., Room 4063, Atlanta, Georgia 30309

For MCI Telecommunications Corporation:

Ralph McDonald, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602, and

Martha McMillin, MCI Telecommunications Corporation, MCI Center, Three Ravinia Drive, Atlanta, Georgia 30346-2102

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

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

BY THE COMMISSION: On April 10, 1991, and May 15, 1991, the Commission issued Orders allowing the Triad Regional Calling Plan (TRCP) and the Triangle J Regional Calling Plan (TJRCP), respectively. (For convenience, the TJRCP and TRCP are referred to collectively as the TTRCPs). Both plans are expected to be implemented in 1992 and provide for seven-digit dialing among included exchanges and a common directory for each region. Charges for calls between included exchanges previously long-distance will be at a 50% discount off of current intraLATA toll charges.

On August 19, 1991, the Commission entered an Order requesting briefs and comments on the following legal issues:

1. The nature and extent, if any, of the issue of compulsory local measured service if the revenues are classified as local and recommendations for meeting such concerns.

2. The nature and extent, if any, of the issue of discrimination if the revenues are classified as local and recommendations for meeting such concerns.

3. The nature and extent, if any, of the issue of discrimination if revenues are classified as long distance and recommendations for meeting such concerns.

In addition, the Commission asked the parties "to propose reasonable criteria by which a community may apply for and receive a regional plan involving discount rates and other features such as are included in these dockets."

The Commission noted the existence of one factual issue--the impact of the plans on the intraLATA toll pool--and set that issue for a hearing to resolve "the single issue of the impact of these plans on the intraLATA toll pool on the assumption in the instance that the revenues are classified as local and in the second instance that they are classified as long distance."

The hearing was held on October 22, 1991, as ordered. The Commission allowed testimony from the following public witnesses: Allen Spalt, Eric Plow and Earl D. Wooten. Southern Bell Telephone and Telegraph Company (Southern Bell as Pool Administrator then offered the testimony and exhibits of Mr. B. A. Rudisill as the Operations Manager in charge of the administration of the intraLATA toll pool. Thereafter, Carolina Telephone and Telegraph Company (Carolina) offered the testimony of its witness, Mr. William Cheek. Because Southern Bell sought to offer rebuttal testimony, the hearing continued on November 7, 1991, for the sole purpose of entering the rebuttal testimony of Mr. B. A. Rudisill.

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

FINDINGS OF FACT

1. The TTRCP revenues should be treated as local on a provisional basis for the duration of the experimental plans.

2. Although the precise impact is not known, the apparent impact of the TTRCPs on the intraLATA toll pool is 2.46% if the revenues are classified as local and 2.58% if the revenues are classified as toll. A transitional plan should be submitted by Southern Bell to mitigate the impact on the intraLATA toll pool for review by the Commission.

3. It is not necessary for the Commission to determine whether the TTRCPs constitute compulsory measure service.

4. The TTRCPs are not unreasonably discriminatory as experiments.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The fundamental issue to be resolved before the other issues are decided is whether revenues from the regional calling plans should be classified as local or toll.

The Public Staff, Carolina Utility Customers Association, Inc. (CUCA), Southern Bell, GTE, Concord Telephone Company (Concord); and Central Telephone Company (Central all supported classifying the revenues as local. The primary

reasons cited were seven-digit dialing and combined white pages. Other reasons listed were that the plans are designed to meet local calling needs and are an alternative to traditional extended area service (EAS) plans. Carolina believed the designation placed on the revenues is not the critical issue and supported treatment of the revenues as local because of the impact on the toll pool (revenues would be reduced by 50% while expenses would continue to be 100%). Mebane Home and North State both opined that the revenues were neither local nor toll. Mebane Home believed they should be classified as local to avoid compromising statewide average rates and because of the impact of the toll pool; North State felt they should be included in the toll pool as an interim measure for the duration of the trial period. Star TMC indicated that the revenues do not fit the traditional form of local service offering. The Attorney General believed that in practical terms the Commission was treating the revenues as local

Supporting classification of the revenues as toll were AT&T, MCI, and TJCOG. They argued that the charges would continue to be usage-based dependent on length of call and distance, that the plans would insulate a substantial amount of short-haul traffic from competition, and that the type of calling fits the description of long distance defined by the General Assembly in G.S. 62-110(b).

The Commission believes that these revenues have aspects of both local and toll. However, the arguments in favor of treating the revenues as local appear to outweigh treating the revenues as toll. The Commission believes that this question should be resolved for the duration of the experimental plans by accounting for the revenues from the plans as local revenues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

In its Order, the Commission noted the existence of one factual issue--the impact of the plans on the intraLATA toll pool--and set that issue for a hearing to resolve "the single issue of the impact of these plans on the intraLATA toll pool on the assumption in the first instance that the revenues are classified as local and in the second instance that they are classified as long distance."

At the hearing, Mr. Rudisill testified that the impact of both plans upon the intraLATA toll pool with the revenues classified as is 2.46% and with the revenues classified as toll is 2.58%. However, Mr. Rudisill testified only generally regarding how Southern Bell's and North State's revenues and costs were derived, and no one testified to the validity of the revenues and costs attributable to GTE South, Central, and Carolina. Also, it appeared from Mr. Rudisill's testimony that some of the companies used different methods and different time periods.

The Commission does not believe the impact on the pool can be as precisely determined as stated by the witness. However, assuming that there is an impact under the present settlement arrangement, it appears that the impact would be less if the revenues and expenses were removed and treated as local than if treated as toll revenues and allowed to remain in the pool.

In his rebuttal testimony, witness Rudisill described a transitional plan which would mitigate the impact of the plans on the pool by changing the method of revenues distribution among the pool participants, while maintaining uniform toll rates. A report concerning the transitional plan was submitted on February

21, 1992, in Docket Nos. P-141, Sub 19; P-100, Sub 65; and P-100, Sub 72. A formal transitional plan should be submitted to the Commission at the earliest possible date for review.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The Orders allowing the TTRCPs acknowledged that there may be some dispute, if the revenues are classified as local, as to whether the Commission has approved a form of compulsory local measured service because the service would be measured and would become the only way to make those calls. The Commission noted the existence of optional local measured service experiments in Docket Nos. P-55, Sub 806 and P-7, Sub 679. The comments of the parties ranged from an emphatic insistence that classifications as local would constitute local measured service to an equally emphatic insistence that it would not.

One important argument was that the local classification of service under TTRCPs does not constitute compulsory local measured service because the usual definition of compulsory local measured service relates to the imposition of measured service in an area served by flat-rate service. Under the TTRCPs, subscribers retain their current flat-rate calling and continue to pay a measured rate at a 50% discount over an area previously subject to measured- rate toll. Consequently, the argument runs, the service under the TTRCPs does not constitute compulsory local measured service.

The issue presented here seems to be more of academic interest than practical significance, especially since the TTRCPs are experimental in nature. The Commission therefore concludes that it is not necessary at this time to decide this issue of classification.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The essence of the discrimination issue is that subscribers of the Triad/Triangle are receiving a benefit, discount rates, not available to subscribers in other parts of the State. Moreover, it is argued that nonbeneficiaries of the TTRCPs in other parts of the State are subsidizing the TTRCP subscribers through the intraLATA pooling mechanism.

The responses of the parties differed significantly. Some parties, such as Southern Bell and Central Telephone, argued that there were no significant discrimination concerns. The essential test of G.S. 62-140 is reasonability, they argued, and the TTRCPs are based on reasonable criteria related to the regional characteristics of the experimental areas. Moreover, subscribers are paying for an expanded calling scope with measured rates and G.S. 62-2(3) authorizes the Commission to promote "adequate, reliable, and economical utility service." Moreover, not all local service is the same with respect to size, access lines, or charges, and yet, this is not necessarily discriminatory. Other parties, notably Carolina Telephone, argued that the TTRCPs constitute unreasonable discrimination under G.S. 62-140 and that no distinguishing factors constituting substantial differences have been adduced to justify this discrimination.

The Commission believes that the TTRCPs as experiments are justified as being reasonable responses to widespread problems related to the existence of communities of interest across exchange boundaries within and across county

lines. Issues of equity and economics have induced this Commission--and others across the nation--to consider alternatives to traditional EAS. The purpose of the experiments is to gain the information and insight necessary for the Commission to make an informed public policy decision as to whether plans such as the TTRCPs have a place among future regular telephone company offerings. This furnishes a reasonable criterion for the instituting of these particular experiments.

IT IS, THEREFORE, ORDERED as follows:

1. That the TTRCP revenues be classified as local for the duration of the TTRCP experiments.

2. That a formal transitional plan be filed no later than Friday, May 1, 1992, for review by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET ND. W-198, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Wachovia Bank of North Carolina, N.A., Post Office Box 1767, Greenville, North Carolina 27834, Complainant v. Mercer Environmental Corporation, Respondent	ORDER REQUIRING RESPONDENT TO PROVIDE SEWAGE TREATMENT SERVICE TO CERTAIN PROPERTY OF COMPLAINANT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 8, 1992

BEFORE: Commissioner Allyson K. Duncan, Presiding; Chairman William W. Redman, Jr.; and Commissioners Laurence A. Cobb, Sarah Lindsay Tate; Charles H. Hughes; Robert O. Wells; and J. A. Wright

APPEARANCES:

For Wachovia Bank of North Carolina, N.A.:

W. Daniel Martin, III and William F. Hill, Ward and Smith, P.A., Post Office Bob 8088, Greenville, North Carolina 27835-8088

For Mercer Environmental Corporation:

John D. Warlick, Jr., Ellis, Hooper, Warlick, Morgan & Henry, Post Office Box 1006, Jacksonville, North Carolina 28541

For Martin Aragona, Sr.:

Martin Aragona, Sr., - Pro se, 410 Bluff Ridge, Jacksonville, North Carolina 28546, and Alexandria, Virginia

For CMS, Inc. of Jacksonville:

No appearance was made.

For Minnie Aragona:

No appearance was made.

8Y THE COMMISSION: On February 4, 1992, Wachovia Bank of North Carolina, N.A. ("Wachovia") filed with the North Carolina Utilities Commission (the "Commission") a verified complaint requesting the Commission to issue an Order requiring Mercer Environmental Corporation (the "Company") to provide water and sewer service to the tracts or parcels of land owned by Wachovia as described in Exhibit A attached to the complaint.

On February 5, 1992, the Commission issued an Order serving the complaint on the Company.

On February 18, 1992, the Company filed an Answer to the complaint which included a request to the Commission that Martin Aragona, Sr. ("Aragona") be made a party to the proceeding.

On February 27, 1992, the Commission issued an Order Serving the Answer.

On March 4, 1992, Wachovia filed a Motion before the Commission alleging that the Answer filed by the Company did not resolve the issues raised by the complaint and requesting a hearing.

On March 10, 1992, the Commission issued an Order serving the pleadings on Mr. Aragona.

On or about April 2, 1992, Mr. Aragona filed a Response to the complaint and answer.

By Order dated April 9, 1992, the Commission scheduled an oral argument for April 20, 1992, for the purpose of deciding whether the complaint should be set for investigation and hearing.

On or about April 13, 1992, Minnie Aragona sent a letter by facsimile to the Commission requesting that the Commission reschedule the oral argument originally set for April 20, 1992.

On April 15, 1992, the Commission issued an Order denying the request to reschedule oral argument.

On or about May 22, 1992, Wachovia filed a Motion before the Commission requesting the Commission to expedite its investigation and rendition of a decision in the matter.

By Order dated June 10, 1992, the Commission concluded that the request of Wachovia for a hearing should be allowed and set a hearing for July 8, 1992, at 9:30 a.m. The Order further invited Mr. Aragona, Minnie Aragona and CMS, Inc. of Jacksonville to intervene in this proceeding as parties of record.

On June 25, 1992, Mr. Aragona, Minnie Aragona, and CMS, Inc. of Jacksonville filed Petitions for Permission to Intervene as parties of record, and intervention by these parties was granted by Order of the Commission dated June 29, 1992.

The matter came on for hearing as scheduled. At the hearing, Wachovia presented as evidence the pleadings filed by the parties, the record of the previous oral argument held before the Commission on April 20, 1992, and additional exhibits offered upon the date of this hearing. The Company presented the testimony of Tommy Mercer, Jr. as well as certain exhibits. Mr. Aragona offered testimony and certain exhibits. Neither Minnie Aragona nor CMS, Inc. of Jacksonville appeared or offered any evidence at the hearing.

Based upon the pleadings of the parties, the record and matters form the oral argument before the Commission on April 20, 1992, the testimony presented at this hearing, the exhibits, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The Company has been granted a Certificate of Public Convenience and Necessity by the Commission to provide sewage treatment services to the using and consuming public within certain areas in Onslow County, North Carolina.

2. Wachovia is the owner in fee simple of TRACT III as described by the Trustee's Deed recorded in Book 1015, at Page 466 in the office of the Register of Deeds of Onslow County, North Carolina ("TRACT III").

3. TRACT III owned by Wachovia is located within the geographical franchise area served by the Company in Onslow County, North Carolina.

4. The sewage treatment facility (the "facility") owned and operated by the Company is permitted to treat and discharge a maximum of 120,000 gallons of effluent per day. The facility is currently treating and discharging approximately 85,000 gallons per day. The proposed use of TRACT III is for a day care facility which would generate an approximate daily flow of effluent in the amount of 750 gallons.

5. On or about the 26th day of April, 1985, the Company entered into a contract with Minnie Aragona, Martin Aragona, and others (the "contract"). The contract grants to Mr. Aragona the right to prevent service to the using and consuming public without his consent. The contract was neither submitted to nor approved by this Commission. The contract subsequently was assigned to NCNB National Bank of North Carolina. NCNB National Bank of North Carolina (now NationsBank of North Carolina) thereafter assigned the contract to Minnie Aragona.

6. Mr. Aragona has charged and attempted to charge the using and consuming public various sums of money in order to connect to and utilize the facility. Mr. Aragona is not a certificated utility company and has not obtained the consent of the Commission to impose charges upon the using and consuming public for connection to or utilization of the facility.

EVIDENCE FOR FINDING OF FACT NO. 1

Evidence supporting this finding of fact is contained in the records of the Commission, the complaint filed in this docket, and the admissions of the Company in its Answer filed in this docket.

EVIDENCE FOR FINDING OF FACT NO. 2

Wachovia alleged in its complaint that it was the owner of TRACT III, and that allegation was admitted by the Company in its Answer. A copy of the duly recorded Trustee's Deed was attached as an exhibit to the complaint.

EVIDENCE FOR FINDING OF FACT NO. 3

Evidence supporting Finding of Fact No. 3 is contained in the records of the Company on file with the Commission and was generally admitted in the Answer filed by the Company in this docket.

EVIDENCE FOR FINDING OF FACT NO. 4

L. T. Mercer, Jr., Vice President of the Company, testified that the capacity of the facility is 120,000 gallons per day. The actual usage of the facility as of this time is 90,000 gallons per day.

Wachovia Exhibit 1, a letter from the Division of Environmental Management, states that the facility is permitted to treat and discharge a maximum of 120,000 gallons per day and has discharged an average of 85,000 gallons per day for the past 12 months.

Mr. Mercer further testified that there was the physical capacity in the system to serve TRACT III owned by Wachovia.

In response to specific questions by the Commission, Mr. Mercer indicated that the Company had authorization to construct additional capacity to the facility which would permit a daily flow of 220,000 gallons per day. Understanding that the proposed use by Wachovia was a day care facility, the design criteria for that use would be 750 gallons per day. Based upon the calculations provided by Mr. Mercer and his testimony, if all of the other homes in Aragona Villa were utilizing the system together with the property owned by Wachovia, the daily use of the facility would be 105,000 gallons.

The Commission concludes, based upon this specific evidence, that the Company has adequate facilities to render service to TRACT III owned by Wachovia, and the intended use by Wachovia of TRACT III is not of a character that is likely to affect unfavorably service to other customers of the Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Mercer is required, by virtue of the certificate granted by this Commission, to serve all applicants for service within its franchised service area. The primary question before the Commission is whether the contract between Mr. Aragona and Mercer, executed in 1985, prevents Mercer from serving Wachovia through the sewage treatment facility.

Wachovia alleged, and the Company admitted, the execution of the 1985 contract. Both the Company in its Answer and Mr. Aragona in his Response admit that the contract was neither submitted to nor approved by the Commission at the time of this execution. There has been no other request of the Commission to approve the contract except as stated by Mr. Aragona in this docket. Upon questioning by the Commission, Mr. Mercer admitted that the contract was not in existence at the time the Company was granted its Certificate.

In his testimony, Mr. Aragona contends that the contract gave to him all of the capacity of the facility and that he was the owner of the available capacity of the facility. However, upon cross examination, Mr. Aragona was unable to

identify any provision of the contract which created the ownership of that capacity in himself or any other party.

Assuming, for the purposes of argument, that the contract did convey certain rights in and to the capacity of the facility to Mr. Aragona, the evidence is quite clear that Mr. Aragona no longer owns any such capacity. By document entitled Conditional Assignment of Contract Rights admitted into evidence as Mercer Exhibit No. 1, Mr. Aragona assigned all right, title, and interest in the contract to NCNB National Bank of North Carolina. Subsequently, as evidenced by Mercer Exhibit No. 2, NCNB National Bank of North Carolina assigned all of its rights, title, and interest in and to the Conditional Assignment of Contract Rights to Minnie Aragona. Minnie Aragona has not appeared before this Commission nor offered any evidence that she claims or owns any alleged rights in and to the capacity available in the Company's facility.

In any event, the Commission did not and does not now approve the contract. Consequently, the Commission concludes that any specific provisions of the contract which might purport to grant to Mr. Aragona the right to determine whether members of the using and consuming public have access to and utilization of the facility are invalid and unenforceable and are contrary to the general provisions of Chapter 62 of the General Statutes of North Carolina.

Therefore, Mercer shall provide sewage treatment utility services to TRACT III of the Wachovia property in accordance with its approved tariff and the provisions of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 6

Mr. Aragona admitted that he charged members of the using and consuming public for access to the facility and the capacity of the facility. He further admitted that he, Aragona, is not a licensed utility company, and that he has no authority from the Commission to impose any such fees. Such actions by Mr. Aragona are specifically prohibited by Chapter 62.

IT IS, THEREFORE, ORDERED as follows:

1. That Mercer Environmental Corporation shall provide sewage treatment utility services to TRACT III of the property owned by Wachovia in accordance with the tariff in effect for the Company as approved by this Commission and the provisions of this Order.

2. That the 1985 contract is not approved by this Commission. Further, that any provision of the contract which causes interference with the provision of sewage treatment utility services to members of the using and consuming public is contrary to the provisions of Chapter 62 of the General Statutes of North Carolina and will not be enforced by this Commission.

3. That Mr. Aragona immediately cease and desist from attempting to utilize provisions of the contract to interfere with the provision of utility

services to the using and consuming public and from collecting or attempting to collect sums from any members of the using and consuming public for access to or use of the facility or its capacity.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of November 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. W-883, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
William C. Phillips, Complainant
v.
Scotsdale Water & Sewer, Inc., Respondent

ORDER AFFIRMING RECOMMENDED ORDER AND DENYING EXCEPTIONS

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 31, 1991

BEFORE: Commissioner Robert O. Wells, Presiding; and Chairman William W. Redman, Jr., and Commissioners Sarah Lindsay Tate, Julius A. Wright, and Laurence A. Cobb

APPEARANCES:

For the Complainant:

William Curtis Phillips, Pro Se, 6200 Vicky Drive, Raleigh, North Carolina

For the Respondent:

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

BY THE COMMISSION: On September 26, 1991, Commission Hearing Examiner Wilson B. Partin, Jr., entered a Recommended Order in this docket denying and dismissing the complaint filed by Mr. William C. Phillips (Complainant) against Scotsdale Water & Sewer, Inc. (Respondent).

On October 11, 1991, the Complainant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order entered in this docket on October 16, 1991, the Commission scheduled an oral argument for Thursday, October 31, 1991, to consider the Complainant's exceptions.

Upon call of the matter for oral argument at the appointed time and place, the Complainant appeared pro se and the Respondent was represented by counsel. The parties then offered oral argument on the Complainant's exceptions.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

A careful consideration of the entire record in this proceeding leads the Commission to conclude that the Recommended Order should be affirmed and adopted as the Final Order of the Commission. Although there is confusion in the record as to whether Scotsdale should have followed the disconnection procedures set forth in Rule R7-20(c) or Rule R12-8, the Complainant violated Commission Rule R7-20(h) when he reconnected his own service without authority to do so on January 24, 1991. The fact that Mr. Phillips took matters into his own hands, instead of contacting the Commission or Public Staff for assistance, renders this matter moot and any possible deficiency or error in notice harmless. Therefore, the Commission finds good cause to deny the Complainant's exceptions.

IT IS, THEREFORE, ORDERED as follows:

1. That the Recommended Order entered in this docket on September 26, 1991, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the exceptions to the Recommended Order filed in this docket on October 11, 1991, by William C. Phillips be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of January 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-950, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of A. K. Parrish, Complainant v. Falls Utility Company and David M. Smoot, Respondents	ORDER FINDING VIOLATION AND APPROPRIATE PENALTY

HEARD: March 11, 1992, at 9:30 a.m., in Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Robert O. Wells, Presiding; and Commissioners Julius A. Wright and Charles H. Hughes

APPEARANCES:

For Falls Utility Company:

No Counsel

For the Public Staff:

A. W. Turner, Jr., Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

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

For the Commission Staff:

Wilson B. Partin, Jr., Deputy General Counsel, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510

BY THE COMMISSION: On September 24, 1991, A. K. Parrish, the Complainant in this docket, filed a letter with the Commission stating that he received a bill from David M. Smoot, President of Falls Utility Company ("Falls Utility" or "the Company"), which is in violation of the Commission's Orders of January 7 and February 22, 1991, in this docket. Attached to Mr. Parrish's letter of complaint was a letter from Mr. Smoot written on behalf of Falls Utility Company and demanding payment of $370.02 by Mr. Parrish.

On October 18, 1991, the Attorney General filed Motion in the Cause. In support of his Motion, the Attorney General cited the letter of Mr. Parrish filed September 24, 1991, and alleged that the Company's demand for payment to Mr. Parrish was in violation of the Commission's Orders in this docket, referred to above. The Attorney General requested that the Commission initiate a show cause proceeding against Falls Utility Company and Mr. Smoot in order to determine if the allegations raised by the Complainant in his September 24 letter are true and, if so, whether monetary penalties under G.S. 62-310 should be sought and/or other action taken.

Falls Utility Company did not file a reply to the Attorney General's Motion in the Cause filed October 18, 1991.

Upon consideration of the letter of Mr. Parrish filed September 24, 1991, and the Attorney General's October 18 Motion in the Cause, and the entire record in this docket including the Commission Orders of January 7 and February 22, 1991, the Commission on November 21, 1991, instituted a show cause proceeding

against Falls Utility and its President, David M. Smoot. The Order also provided that Falls Utility Company shall not disconnect service to the residence of Mr. Parrish nor shall Falls Utility or Mr. Smoot make any demands upon Mr. Parrish for past due water bills pending hearing and decision in this docket.

After several continuances, the case came on for hearing on March 11, 1992. The Commission Staff, the Public Staff-North Carolina Utilities Commission, and the Attorney General were present and represented by counsel. David Smoot, the sole owner and Chairman of the Board and President of Falls Utility Company, was present. However, neither Mr. Smoot nor the Company was represented by counsel. The Commission Staff presented the testimony of A.K. Parrish, the Complainant in this docket. David Smoot testified on behalf of Falls Utility Company.

At the close of the hearing, the Commission asked the Commission Staff and other parties to prepare a proposed order. The Commission Staff asked that the Commission consider an Order directing Mr. Smoot and Falls Utility not to attempt to bill Mr. Parrish pending the Commission's final decision in this case. Mr. Smoot voluntarily agreed not to attempt collection of any bills from Mr. Parrish, and the Commission Staff accepted this stipulation.

Proposed Orders were subsequently filed by the parties. On June 15, 1992, the Commission staff filed a response to Findings of Fact Nos. 1 and 2 in the proposed Order submitted by Falls Utility Company. In that response, Mr. Partin, who served as counsel for the Commission staff, requested the Commission to find that his participation in this docket violated neither G.S. 62-70(f) nor any rules of professional conduct. The Attorney General joined in that response. The Commission agrees with the Commission staff on this matter for the reasons set forth in the response of June 15, 1992.

Upon consideration of the entire record in this docket, including the Commission's Orders of January 7 and February 22, 1991, which are incorporated herein as if fully set out, the complaint letter of Mr. Parrish of September 24, 1991, and the testimony and exhibits presented at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Falls Utility Company was granted a certificate of public convenience and necessity to provide water and sewer service by Order issued on January 31, 1989, in Docket No. W-950. Mr. David Smoot is the President of Falls Utility Company. Allen Kent Parrish ("Complainant") lived in the Respondent's franchised territory and was a water and sewer customer of the Respondent during the events in this docket.

2. In the Application prepared by Falls Utility to acquire the water and sewer systems, its President David M. Smoot answered "Yes" to the following question: "4. Will regular billing be by written statement?"

3. This docket originally commenced during the summer of 1990, with the filing of a complaint by A. K. Parrish. Mr. Parrish alleged, in essence, that Falls Utility was not complying with its service regulations regarding billing of customers. The case came on for hearing before J. Daniel Long, Hearing Examiner, on November 30, 1990.

4. Hearing Examiner Long issued his Recommended Order in this case on January 7, 1991. Falls Utility filed Exceptions for review of the Recommended Order before the Full Commission. On February 22, 1991, the Commission affirmed the Recommended Order of Hearing Examiner Long. Falls Utility did not appeal or otherwise seek reconsideration of the February 22, 1991, Final Order of the Commission overruling exceptions and affirming the Recommended Order of January 7, 1991.

5. The Recommended Order, which was affirmed by the Commission, required in the ordering paragraph:

> "IT IS, THEREFORE, ORDERED that Complainant pay to the Respondent the sum of $132.15 in equal amounts over a five-month period added to the monthly bill, beginning with the next billing cycle, as complete satisfaction of sums owed in arrears for water and sewer service by the above-named water and sewer system [Falls Utility]."

6. On September 24, 1991, the Complainant Parrish filed a letter dated September 17, 1991, in this docket. Included in that letter were an undated paper writing and a postcard which the Complainant received from Falls Utility; the Complainant alleged that these were the only two utility bills that he has received from Falls Utility.

7. The undated paper writing from Falls Utility to Mr. Parrish stated as follows:

> "Dear Mr. Parrish:
>
> "As you know, at a hearing of the North Carolina Utilities Commission on November 30, 1990, I was authorized to bill you for November service on, beginning in December 1990 to the present. Since I still consider other monies to be owed by you and since I "also still an considering other legal remedies to retrieve those sums, I was waiting for final adjudication before sending you a bill. However, in fairness to other customers and to Falls Utility Company, I am forced to try to mitigate my damages at this time.
>
> "The Commission also later ruled that of the unpaid previous monies, you were liable for $132.15. In order to mitigate my damages, would you please remit the following:
>
> | | |
> |---|---|
> | "Water & sewer at $26.43/month for Nov. & Dec. 1990 Jan., Feb., Mar., Apr., May, June, & July 1991: | $237.87 |
> | "Portion of previously due amount already awarded by North Carolina Utilities Commission: | $132.15 |
> | "Total to be remitted: | $370.02" |

8. A subsequent undated postcard from Falls Utility to Mr. Parrish asked Mr. Parrish to send payment to Falls Utility "for water and sewer for August $26.43. If you have already sent the previously due amount of $370.02, please disregard this reminder. . . ."

9. A final postcard which was postmarked October 18, 1991, from Falls Utility to Mr. Parrish directed that Mr. Parrish send payment to Falls Utility for water and sewer service in September in the amount of $26.43. The card also stated: "The previously due amount remains in question."

10. Mr. Parrish sent a check dated September 17, 1991, to Falls Utility in the amount of $26.43. The check was marked "1st payment." As of the date of the hearing, this check had not been cashed by Falls Utility.

11. The Schedule of Rates for Falls Utility, which was approved by the Commission on January 31, 1989, fixes the flat monthly water rate at $12.76, and the flat monthly sewer rate at $13.67. The Schedule of Rates further provides:

"BILLS DUE: On billing date

"BILLS PAST DUE: 15 days after billing date

"BILLING FREQUENCY: Shall be monthly for service in arrears."

12. The first bills ever received by Mr. Parrish from Falls Utility were the letter and postcards described in Findings of Fact No 7, 8 and 9, above.

13. Mr. Parrish moved from the service area in October 1991 and is no longer a customer of Falls Utility.

CONCLUSIONS

I

Falls Utility Company violated the Commission Orders of January 7 and February 21, 1991.

Discussion

The Orders of the Commission required that "Complainant pay to the Respondent the sum of $132.15 in equal amounts over a five-month period added to the monthly bill, beginning with the next billing cycle, as complete satisfaction of sums owed in arrears for water and sewer service by [Falls Utility]."

Mr. Smoot contended that the Orders directed Mr. Parrish to pay and that his Company did not have an affirmative duty to send out monthly bills.

The Commission staff, the Attorney General, and the Public Staff all contended that under the Commission Orders, Falls Utility was required to bill Mr. Parrish by written monthly statements wherein, in addition to the monthly water and sewer charges, the utility was also to bill Mr. Parrish the sum of $132.15 in equal amounts over a five-month period in satisfaction of the amount in dispute in the original complaint.

The Commission agrees with the Commission staff, the Attorney General, and the Public Staff that Mr. Smoot was required by the Commission Orders and by its Schedule of Rates to bill Mr. Parrish and other customers monthly by a written billing statement setting forth the amount of water and sewer charges due. We also agree with these parties that Falls Utility was required to bill Mr. Parrish by written monthly statements the sum of $132.15 in equal amounts over a five-

month period added to the monthly bill, beginning with the next billing cycle, in complete satisfaction of the amounts in dispute in the original complaint.

In so deciding, the Commission first looks at the language of its Orders, particularly the Order of January 7, 1991, which set out the terms and conditions of payment. It is clear from an examination of the face of this Order that Mr. Parrish expected a monthly written statement from the Company and that the failure of the Company to respond to his repeated requests for such written billing led to the original complaint. In his conclusions, the Examiner noted that Mr. Parrish "also has a degree of equity on his side when he argues that the tariffs of both Falls and its predecessor provide that the Company is to bill him monthly."

The Schedule of Rates for Falls Utility Company, which was approved by the Commission in 1989, contemplates that billing shall be monthly by written billing statement to each customer. The Schedule of Rates uses terms, customary in the utility industry, which contemplate written monthly statements: "Billing Date", "Billing Frequency", and "15 days after billing date". The Commission has administratively interpreted this language over the years as requiring public utilities under its regulation to provide its customers with periodic written statements of account. Until the instant case came before the Commission, no utility had ever challenged the interpretation that it was required to provide periodic written billing statements to its customers. Furthermore, the Commission's conclusion is bolstered by an examination of the application for transfer which was filed by the previous owner of the water and sewer systems, Martha H. Mackie, and Falls Utility on October 24, 1988. The application form, which was signed by "David M. Smoot, President", elicited a substantial amount of information concerning the status, condition, and proposed operations of Falls Utility. In response to question 4 on page 2 of the application under the heading "Purchaser's Proposed Billing," Falls Utility answered "yes" to the following question: Will regular billing be by written statement?

The activities of Falls Utility Company subsequent to the Commission's Order becoming final in February 1991, and particularly the letter and postcards from Falls Utility to Mr. Parrish, clearly constitute a violation of the Commission's Orders and the Schedule of Rates of the Company. First, Falls Utility failed to begin the monthly billing of Mr. Parrish for water and sewer service rendered each month, as required by the Hearing Examiner's Order. Further, Falls Utility failed to bill the $132.15 in equal amounts over a five-month period added to the monthly bill, as required by the Commission's Order. Instead, Falls Utility made a one-time written billing of the $132.15 when the Company mailed the letter to Mr. Parrish set forth in Finding of Fact No. 7.

Further, the Commission concludes that the language of the letters in Finding of Fact No. 7, to the effect that "Since I still consider other monies to be owed by you and since I also still am considering other legal remedies to retrieve those sums. . . " is inconsistent with its Orders. The Commission Orders of January 7 and February 22, 1991, were an adjudication of the amount in dispute between Mr. Parrish and Falls Utility, which was the subject of the original complaint. The Order of January 7, 1991, stated that the sum of $132.15 was "complete satisfaction of sums owed in arrears for water and sewer service by [Falls Utility]." If Falls Utility had disagreed with the Commission's Orders, it had a right of appeal to the Court of Appeals under G. S. 62-90. Although granted an extension of time to give notice of appeal, Falls Utility

failed to give notice of appeal in a timely manner. Therefore, any attempt to collect these other monies would be a direct violation of the Commission's Orders.

The genesis of this complaint docket was the failure of Falls Utility Company to provide a monthly written billing statement to Mr. Parrish, as repeatedly requested by Mr. Parrish. The Commission's Orders noted this failure and required that the complaint be resolved in a manner consistent with monthly written billing requirements envisioned in the Company's Schedule of Rates.

II

Having found that Falls Utility violated the Commission's Orders in this docket, the Commission now concludes as follows:

A. A penalty of $250.00 on Falls Utility Company for violation of the Orders of January 7 and February 21, 1991, is appropriate in this case.

B. Since the Complainant has mailed to the Company a check in the amount of $26.43, the payment of this sum by Mr. Parrish shall constitute complete satisfaction of all sums owed in arrears in this docket.

C. If Falls Utility considers the obligation of providing monthly written statements to its customers to be burdensome, the Company may meet with the Public Staff and work out a solution which will be less burdensome to the Company, such as bi-monthly or quarterly billing.

Discussion

The Commission finds that a penalty in the amount of $250.00 is warranted in this case. The evidence in this proceeding clearly discloses that Falls Utility was on notice that the Complainant expected, and was entitled to, a monthly written statement of his account. Falls Utility failed to provide this written monthly statement and consequently Mr. Parrish instituted this complaint docket. The Commission's Orders of January 7 and February 21, 1991, together with the Company's Schedule of Rates, clearly imposed upon Falls Utility the obligation to provide a monthly written statement of water and sewer bills.

The Order also provided that the amount in dispute in the original complaint was to be satisfied by the payment of $132.15 in equal amounts over a five-month period added to the monthly bill. The Orders contemplated that the Company would bill this amount in five-monthly statements, and that Mr. Parrish was to pay this amount over a five-month period in addition to the monthly billing for water and sewer service. Falls Utility elected not to comply with the Commission's Orders but instead waited until August or September 1991 and sent a letter to Mr. Parrish demanding that the $132.15 be paid in one installment and also billing Mr. Parrish $237.87 for water and sewer service from December 1990 through July 1991. Further, the letter of Falls Utility, which is fully described in Finding of Fact No. 7, also stated that Falls Utility considered that the Commission's Orders were not to be the final word in resolution of the original complaint. The letter threatened to subject Mr. Parrish to further legal proceedings to "retrieve those sums, which Falls Utility still expected to be due and owing." In view of the failure of Falls Utility to comply with the Orders regarding the billing of the $132.15, the Commission concludes that the payment of Mr. Parrish

of $26.43 by check dated September 17, 1991, shall constitute a complete discharge of all sums in arrears in this docket.

The record in this proceeding makes clear that Mr. Parrish repeatedly requested monthly written billings from the Company. The Company chose not to provide such billing. Hence, this complaint proceeding has endured for more than two years, with considerable frustration and loss of time for Mr. Parrish. The Commission recognizes that Falls Utility is a small company. The Commission further recognizes that, except for Mr. Parrish, there has not been another complaint of billing problems from any customer. Although G.S. 62-310 authorizes penalties in an amount up to $1,000 for each offense, with each day the violation occurs to be a separate offense, we conclude that a total penalty of $250.00 is appropriate in this case. This penalty shall be paid to the Commission not later than 30 days from the date of this Order. If Falls Utility Company fails to voluntarily pay the penalty of $250.00 and does not appeal this Order to the North Carolina Court of Appeals pursuant to G.S. 62-90, the Commission Staff is hereby directed to recover said penalty of $250.00 in an action instituted in the Superior Court of Wake County pursuant to G.S. 62-310.

IT IS, THEREFORE, ORDERED as follows:

1. That Falls Utility Company violated the Commission's Orders of January 7 and February 21, 1991, in this docket, as more fully set forth above in the Findings of Fact and Conclusions.

2. That Falls Utility Company shall pay a penalty in the amount of $250.00 for its violation of the Orders in this docket. This penalty shall be paid to the Commission not later than 30 days from the date of this Order. If Falls Utility Company fails to voluntarily pay the penalty of $250.00 and does not appeal this Order to the North Carolina Court of Appeals pursuant to G.S. 62-90, the Commission Staff is hereby directed to recover said penalty of $250.00 in an action instituted in the Superior Court of Wake County pursuant to G.S. 62-310.

3. That the payment by Mr. Parrish of $26.43 by check dated September 17, 1991, shall constitute a complete discharge of all sums in arrears in this docket. Falls Utility and its President, Oavid M. Smoot, shall make no further effort to collect from A. K. Parrish the amounts that were in dispute and in arrears in this docket.

4. That Falls Utility Company may meet with the Public Staff, within the next 30 days, to consider alternative methods of written billing statements, instead of the monthly billing statement now required by the Company's Schedule of Rates, if the Company wishes a change from the current requirement of a monthly billing statement in its Schedule of Rates.

5. That the participation of Wilson B. Partin, Jr., in this docket as counsel for the Commission staff violated neither G.S. 62-70(f) nor any rules of professional conduct.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of August 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Cynthia S. Trinks, Deputy Clerk

DOCKET NO. W-218, SUB 81

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 Increase Rates for Water Utility Service in All Its Service Areas in North Carolina	)	ORDER APPROVING PARTIAL INCREASE IN RATES

HEARD IN:

City Hall, Council Chambers, 76 North Center Street, Hickory, North Carolina, on May 12, 1992, at 7:00 p.m.

Guilford County Courthouse, Courtroom 2A, No. 2 Governmental Plaza, Greensboro, North Carolina, on May 13, 1992, at 7:00 p.m.

Municipal Building, Council Chambers, 202 South Eighth Street, Morehead City, North Carolina, on May 14, 1992, at 7:00 p.m.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 30, 1992, at 9:30 a.m.

BEFORE: Commissioner Allyson K. Duncan, Presiding, Commissioner Robert O. Wells, and Commissioner Charles H. Hughes

APPEARANCES:

For the Applicant, Hydraulics, Ltd.:

William E. Grantmyre, Attorney at Law, P.O. Drawer 4889, Cary, North Carolina 27519

For the Using and Consuming Public:

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

BY THE COMMISSION: On February 4, 1992, Hydraulics, Ltd., (Hydraulics or Applicant), filed an application for a general rate increase. By Order issued on March 4, 1992, the Commission declared the application to be a general rate case, suspended the proposed rates, required public notice and scheduled hearings.

Public notice was given to the customers as evidenced by the Certificate of Service filed by the Applicant.

On April 30, 1992, the Applicant filed the prefiled testimony of Manuel Perkins, President, in support of its application.

On May 27, 1992, the Public Staff filed the prefiled testimonies of Ronald D. Brown, Utilities Engineer, Water Division and Kelly B. Dietz, Staff Accountant, Accounting Division, reporting the findings of the Public Staff audit and investigation and the Notice of Affidavit and Affidavit of Gary H. Strickland, Financial Analyst.

On May 12, 1992, the customer hearing was held in Hickory, North Carolina, and the following customers testified: From Jamestowne water system - John Barry, Marty Barry, Ed Puckett, Thomas Cansler, Frank Minton, Richard Savage and Richard Lippard; from Ponderosa water system - James Lacy.

The following public witnesses appeared and testified at the May 13, 1992, customer hearing in Greensboro, North Carolina: From Cross Creek - Bill Parrish; from Bon Aire - Michael Kelly and Martin Tilley; from Kynwood - T.J. Todd; from Greystone - Keith Shifflet; from Wright Beaver - Jasper Parham, Martha Parker and Kathy Miller; from Happy Valley - Betty Cole and from Shade Tree Acres - Worth Hopkins.

The hearing was held in Morehead City on May 14, 1992, for the purpose of receiving testimony from public witnesses and the following customers of Hydraulics testified: From Seagate - Gary Hill, Beverly Hill, Harry Taylor, Barbara Taylor, Sam Hill, and Loretta Hill.

On June 15, 1992, Hydraulics filed a Notice of Request to Cross Examine Gary H. Strickland, Financial Analyst, Public Staff.

On June 24, 1992, Hydraulics filed the rebuttal testimony of Manuel Perkins, President.

On June 24, 1992, Hydraulics filed a Motion to Amend the Applied for Tap Fee Schedule.

No public witnesses appeared at the Commission hearing in Raleigh, North Carolina, on June 30, 1992. Hydraulics presented the direct and rebuttal testimony with exhibits of Manuel Perkins, President. The Public Staff presented the testimony and exhibits of Kelly Dietz, Staff Accountant and Ronald Brown, Utilities Engineer. Hydraulics and the Public Staff filed a joint stipulation regarding the revenue requirement, rates, the net water plant in service, and refunds for four customers for tap fees.

Based upon the information contained in the Commission files, the verified application, the testimony of the witnesses, the stipulation and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. Hydraulics, Ltd., is a public utility as defined by G.S. 62-3(23) and, as such, is subject to the jurisdiction and regulation of the North Carolina Utilities Commission. Hydraulics is lawfully before the Commission seeking an increase in rates and charges pursuant to G.S. 62-133.

2. Hydraulics' monthly present rates, proposed rates and rates stipulated to by the Applicant and the Public Staff are as follows:

	Present Rates	Proposed Rates	Stipulated Rates
Base Monthly Charge - Zero Usage	$ 8.51	$ 9.00	$ 8.99
Usage Charge (per 1,000 gallons)	$ 2.41	$ 3.16	$ 2.82
Flat Rate Monthly - Unmetered	$18.00	$21.85	$20.00

3. The applied for tap fee tariff as amended by Hydraulics is reasonable and should be approved.

4. The overall level of service is adequate.

5. The Public Staff has conducted a complete investigation of Hydraulics' rate base, reasonable operating revenue deductions, and operating revenues.

6. The Public Staff and Hydraulics have stipulated that based upon the Public Staff's investigation, a revenue requirement of $917,270 is just and reasonable to provide a reasonable return to Hydraulics. Under Hydraulics' currently approved rates, the Company is receiving revenues of $815,444.

7. The Public Staff and Hydraulics have stipulated that, based upon the Public Staff's investigation, the net water plant in service is $252,451 comprised of:

Gross Plant in Service	$1,786,476
Accumulated Depreciation	(323,061)
Contributions in Aid of Construction	(1,210,964)
Net Water Plant in Service	$ 252,451

8. The test period established for use in this proceeding is the 12 months ending November 30, 1991.

9. The revenues from its water utility operations that Hydraulics should have the opportunity to generate under the rates agreed to by Hydraulics and the Public Staff are $917,270 composed of $906,543 for water service revenues and $15,459 of other revenues less $4,732 of uncollectibles.

10. The rates agreed to by the Public Staff and Hydraulics are just and reasonable and should be approved.

11. The rates contained in Appendix A attached hereto, will allow the Applicant an opportunity to generate the revenue requirement approved herein and are just and reasonable.

12. Hydraulics' collected $1,300 from four customers in excess of Hydraulics' approved tap fee schedule which shall be refunded.

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

These findings are based on the verified application, the Commission records in this docket, the prefiled testimony of Kelly Dietz, Public Staff Accountant and Ronald Brown, Public Staff Engineer, and the stipulation filed by the Public Staff and Hydraulics. These findings involve matters that are uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact is found in the prefiled rebuttal testimony of Hydraulics' Manuel Perkins and the prefiled testimony of Public Staff Engineer Ronald Brown. The Public Staff did not contest Hydraulics' motion for approval of tap fees at Hydraulics' actual cost for meters larger than 5/8" x 3/4" and the provision that there be no tap fees for Apple Hill, Staffordshire Estates and The Meadows where the developers prepaid Hydraulics for these taps as CIAC as evidenced by the developer contracts filed with Hydraulics' rebuttal testimony.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is found in the testimony of the customers testifying at the public hearings, the testimonies and exhibits of Hydraulics' witness Manuel Perkins and Public Staff Engineer Ronald Brown. Public hearings were held in Hickory, Greensboro, Morehead City and Raleigh. Twenty four of Hydraulics' 3,051 customers testified at the hearings about water quality, service and rates. Customers testifying represented ten of Hydraulics' 71 service areas.

Company witness Perkins testified relative to Hydraulics actions and plans for dealing with the service concerns testified to by the customers. The following summarizes the service concerns of the customers and the actions taken and plans of Hydraulics.

Hickory
Jamestowne/Ponderosa

Seven customers from Jamestowne testified on various service concerns. Their testimony was there were occasions of sediment in the water causing accumulation of sediment on fixtures and toilet tanks. Several Jamestowne customers also testified as to one occurrence of excessively high pressure. Two customers testified of occasional air in the water. Manuel Perkins testified the Company began treating in January, 1990, the Jamestowne water system with various polyphosphates which sequester the iron and manganese as the water leaves the well. He testified the polyphosphate also removes the rust and scale deposits which formed on the inside of the piping over the years. He testified a substantial amount of iron sediment had built up in the interiors of the lines over the past years and it was necessary for this sediment to be removed. He testified Hydraulics would continue using a polyphosphate to treat the iron and the water mains are being flushed weekly. Jamestowne customers Cansler and Savage testified they had noticed improvements in the water quality after Hydraulics took over the water system.

Manuel Perkins testified the incident of high pressure was caused by a malfunction in the control box at the well which occurred during an upgrading modifications to the hydropneumatic tank. He testified the control box was replaced and the problem was corrected. Manuel Perkins testified the air in the water occurred during water line breaks when the pumps then overpumped.

The customer from Ponderosa testified of low pressure and high chlorine taste and smell. Hydraulics introduced into evidence at the hearing results of two-day pressure test at the customer's house which showed the pressure ranging from 38 psi to a high of 58 psi. Mr. Perkins testified this pressure fully complies with the North Carolina Department of Environmental Health (DEH) requirements of minimum pressure of 30 psi. Manuel Perkins testified the Company is required to maintain at all times chlorine residual in the water and some customers have found chlorine taste or smell objectionable. He testified this could not be avoided in order meet the DEH requirements.

Greensboro
Cross Creek, Bon Aire, Shade Tree Acres,
Kynwood, Greystone, Wright Beaver and Happy Valley

The testimony of the customers from these subdivisions can be summarized as follows: the Cross Creek customer opposed the possible removal of existing hydrants and testified as to low pressure at his house.

The Bon Aire customers testified of water hardness concerns. The Shade Tree Acres customer expressed disappointment that meters had not been installed subsequent to the last rate case. The Kynwood customer testified of concerns on the water hardness. The Greystone customer testified as to what he believed to be uneven water pressure and hard water. The Wright Beaver customers testified as to certain outages. The customer from Happy Valley testified as to a water outage several years ago and what she considered to be slow response by the Company.

Company witness Manuel Perkins testified Hydraulics has submitted to DEH revised plans for the Cross Creek water system which will utilize a ground storage tank with the hydrants remaining in place. Manuel Perkins testified he is expecting DEH approval of this system redesign. The Company furnished a written letter from Wally Venrick, Chief, Public Water Supply Section, DEH, which rescinded the hydrant removal requirement in the prior DEH approval. Hydraulics also introduced into evidence a four day pressure reading from the home of the Cross Creek customer who testified showing the water pressure was consistently between 40 psi and 60 psi. The exhibit showed the water pressure at all times complied with the DEH minimum requirement of 30 psi.

Hydraulics witness Manuel Perkins testified that the Company has not installed meters at Shade Tree as it has been extremely difficult for the Company to locate the service lines. He testified there were no maps available for locating the water mains and services and many mains may be under the pavement.

Manuel Perkins testified the water analysis for Kynwood showed the total hardness at well No. 1 to be 66 mg/l and well No. 2 to be 50 mg/l. He testified these test results did not reflect hard water.

Manuel Perkins introduced into evidence a pressure recording chart taken from the house of the Greystone customer, Keith Shifflet, who testified in Greensboro. The chart showed the pressure to be very good ranging from 70 to 80 psi with the low of 62 psi. The pressure at all times greatly exceeded the DEH minimum of 30 psi. Manuel Perkins testified that water analyses from Greystone showed the well No. 1 had 86 mg/l and well No. 2 had 92 mg/l total hardness. He testified these test results showed that water hardness would not be a factor in having to replace water heating elements and there are no DEH requirements for water hardness.

Manuel Perkins testified that the outages complained of by the customers at Wright Beaver subdivision on three occasions in the summer of 1991 occurred when children cut off the breaker box which was installed on a pole outside the well house by the previous water system owner. He testified Hydraulics has constructed a pump house and the breaker box has been installed inside this new pump house. He testified the water outage in 1991 was caused by a broken water main which was repaired by Hydraulics' serviceman and service was restored.

Manuel Perkins testified that Hydraulics could not find in its records any extended outages at Happy Valley in the past three years. Hydraulics' records did show that on April 29, 1991, Happy Valley was out of water for most of the day due to the Company having to replace the submersible pump in the deep well which suddenly went out.

Morehead City
Seagate I

The customers at Seagate complained of poor water quality which among other things affected the taste of the coffee and tea and the Company's response in checking a meter.

Hydraulics introduced into evidence an inorganic water analysis dated August 8, 1990, showing all the DEH requirements are met at Seagate I. Manuel Perkins testified the problem with the water meter was caused when the meter company manufacturer erroneously installed a cubic foot register on a gallon meter. He testified the register had been replaced.

The Commission believes the Company has explained the reason for the service concerns raised by the customers and Hydraulics is actively taking steps to address the customer concerns. The Commission concludes the Company is providing adequate water utility service. Hydraulics should proceed to make all the necessary improvements and tests that Manuel Perkins testified the Company would do.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 THROUGH 11

These findings are based upon the verified application, the prefiled testimony, exhibits of the Public Staff witnesses Kelly Dietz and Ronald Brown, the prefiled and rebuttal testimonies of Manuel Perkins, and the stipulation filed by the Public Staff and Hydraulics.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 12

This finding is based upon the stipulation filed by the Public Staff and Hydraulics that Hydraulics shall refund a total of $1,300 to the four customers who paid for taps larger than 5/8" x 3/4".

IT IS, THEREFORE, ORDERED as follows:

1. That the schedule of rates attached hereto as Appendix A, is hereby approved and deemed to be filed with the Commission pursuant to G.S. 62-138. Said schedule of rates is hereby authorized to become effective for service rendered on and after the date of this order.

2. That a copy of the Notice to Customers attached hereto as Appendix B, shall be mailed or hand delivered to all affected customers by the Applicant in conjunction with the next regularly scheduled billing process.

3. That Hydraulics shall refund to the four customers who paid for the larger taps the combined total of $1,300 within 15 days of the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

SCHEDULE OF RATES
for
HYDRAULICS, LTD.
for providing water utility service in
ALL ITS SERVICE AREAS AS OF THE DATE OF THIS ORDER

Monthly Metered Rates:		
Base charge	(zero usage)	$8.99 minimum
Usage charge		$2.82 per 1,000 gallons
Monthly Unmetered Rates:		$20.00

Connection Charge:

Meter Fee - 5/8" x 3/4" meter - $500.00
Larger than 5/8" x 3/4" meter - Actual Cost of Installation

No connection charges shall be collected for Apple Hill, The Meadows and Staffordshire Estates water systems.

Main extension fee per single family dwelling - $625.00

(The full gross up will be added to these connection charges.)

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
If customer without authorization reconnects after the water service has been cut off by the utility for good cause	$50.00

Returned Check Charge: $15.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly 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, Sub 81, on this the 2nd day of July 1992.

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-218, SUB 81

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 Increase Rates for Water Utility Service in All Its Service Areas in North Carolina	))))))	NOTICE TO CUSTOMERS OF NEW RATES

BY THE COMMISSION: The North Carolina Utilities Commission has issued an order authorizing Hydraulics, Ltd., to charge increased rates for water service to all its water customers in North Carolina. The Commission issued its decision based upon the evidence presented at the public hearings held in this matter. The new approved rates are for service on and after the date of this Notice and are as follows:

Metered Rates:

Base monthly charge for zero usage	$8.99

Commodity charge per 1,000 gallons $2.82

Unmetered Rates: Monthly - $20.00

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-274, SUB 68

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Heater Utilities, Inc., Post Office Drawer 4889, Cary, North Carolina 27519, for Authority to Increase Rates for Water Utility Service in All Its Service Areas in North Carolina	ORDER APPROVING PARTIAL INCREASE IN RATES

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 7, 1992, at 7:00 p.m., and April 28, 1992, at 9:30 a.m.

BEFORE: Commissioner Robert O. Wells, Presiding, Commissioner Sarah Lindsay Tate and Commissioner Laurence A. Cobb

APPEARANCES:

For the Applicant:

Robert F. Page, Attorney at Law, Crisp, Davis, Schwentker, Page, Currin and Nichols, 4011 Westchase Blvd., Suite 400, Raleigh, North Carolina 27607

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: On November 27, 1991, Heater Utilities, Inc. (Heater or Applicant), filed an application for a general rate increase. By Order issued on December 19, 1991, the Commission declared the application to be a general rate case, suspended the proposed rates, required public notice and scheduled hearings.

On February 27, 1992, the Applicant and Public Staff filed a joint stipulation regarding the capital structure and cost of capital for use in this proceeding.

On March 16, 1992, the Applicant filed the prefiled testimonies of William E. Grantmyre, President; Jerry Tweed, Director of Regulatory Affairs; and Freda Hilburn, Director of Regulatory Accounting, in support of its application.

On March 30, 1992, the Public Staff filed the prefiled testimonies of Kenneth E. Rudder, Utilities Engineer, Water Division and Kris A. Hinton, Staff Accountant, Accounting Division, reporting the findings of the Public Staff audit and investigation.

Public notice was given to the customers as evidenced by the Certificate of Service filed by the Applicant on January 15, 1992.

On April 7, 1992, the customer hearing was held as scheduled and eight customers testified.

Three customers from Mallards Crossing Subdivision, Robert Duncan, Wayne C. Maxwell and Richard Fisher testified in opposition to the proposed rates. One customer from Brassfield Subdivision, Albert Calloway, testified in opposition to the proposed rates. One customer from Meadow Ridge Subdivision, John Houck, testified regarding pressure problems at his house and stains on fixtures in his spare bedroom. Three customers from Saddle Run Subdivision, Jose R. Reyes, James T. Williams and Paul Pinkston testified regarding problems with iron and manganese in the water.

On April 27, 1992, the Applicant filed a report addressing the service problems mentioned in four protest letters sent to the Commission and the service problems testified to at the April 7, 1992, customer hearing by customers of Meadow Ridge and Saddle Run Subdivisions.

On April 28, 1992, the Applicant and Public Staff filed a Joint Stipulation regarding the revenue requirement, rates and an agreement to file quarterly reports concerning the Company's corrective operations in Saddle Run Subdivision.

The hearing was held as scheduled on April 28, 1992, and no customers appeared to testify. The Commission accepted the filed stipulations by the Applicant and Public Staff. The Applicant presented the testimony of Jerry Tweed in support of the service report filed by the Applicant.

Based on the information contained in the Commission files, the verified application, the testimonies, the stipulations and the entire record in this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. Heater Utilities, Inc., is a public utility as defined by G.S. 62-3(23) and, as such, is subject to the jurisdiction and regulation of the North Carolina Utilities Commission. Heater is lawfully before the Commission seeking an increase in rates and charges pursuant to G.S. 62-133.

2. The Applicant's monthly present rates, proposed rates and rates stipulated to by the Applicant and Public Staff are as follows:

Base charge, zero usage -

Meter Size	Present	Proposed	Stipulated
5/8"	$ 7.00	$ 8.50	$ 8.28
3/4"	10.50	8.50	8.28
1"	17.50	21.25	20.70
1.5"	35.00	42.50	41.40
2"	56.00	68.00	66.24
3"	105.00	127.50	124.20
4"	175.00	212.50	207.00
6"	N/A	425.00	414.00
Usage Charge (per 1,000 gallons)	$ 2.37	$ 2.41	$ 2.35

3. The overall level of service is adequate.

4. The Public Staff has conducted a complete investigation of Heater's rate base, reasonable operating revenue deductions, and operating revenues.

5. The Public Staff and Heater have stipulated that, based on the Public Staff's investigation, a revenue requirement of $2,796,213 is just and reasonable to provide a reasonable return to Heater. Under Heater's currently approved rates, the Company is receiving $2,663,585 in total operating revenues.

6. The test period established for use in this proceeding is the 12 months ended September 30, 1991.

7. The revenues from its water utility operations that the Applicant should have the opportunity to generate under the rates agreed to by the Applicant and Public Staff are $2,796,213 consisting of $2,795,010 from water service revenues and $19,371 from other revenues less $18,168 of uncollectibles.

8. The rates agreed to by the Public Staff and Applicant are reasonable and should be approved.

9. The rates contained in Appendix A, attached hereto, will allow the Applicant to generate the revenue requirement approved herein.

EVIDENCE AND CONCLUSIONS

Based upon the entire record of this proceeding, the Commission is of the opinion that the rates agreed to by the parties to this proceeding are reasonable and should be approved.

The Commission is of the opinion that service problems are being adequately addressed but that Heater should submit quarterly service reports regarding improvements to the Saddle Run Subdivision water system. The Company may request permission to discontinue filing the reports upon completion of its reported improvement plan.

Following is a summary of the agreed upon capital structure, rates of return, revenue and expense data, and rate base:

Capital Structure and Related Cost

Debt	51.21%	$2,448,085	8.07%	$197,560
Preferred Stock	5.02%	239,980	7.78%	18,670
Equity	43.77%	2,092,417	12.25%	256,321
Total	100.00%	$4,780,482		$472,551

Overall Rate of Return - 9.88%

Operating Income

Operating Revenue	$2,796,213
Operating Revenue Deductions	2,323,662
Net Operating Income for Return	$ 472,551

Rate Base

Plant in Service	$5,658,338
Customer Deposits	(15,882)
Accumulated Deferred Income Taxes	(139,539)
Accumulated Depreciation	(1,185,271)
Net Water Plant in Service	4,317,646
Working Capital Allowance	291,571
Meters and Supplies Inventory	171,265
Rate Base	$4,780,482

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved and deemed to be filed with the Commission pursuant to G.S. 62-138. Said Schedule of Rates is hereby authorized to become effective for service rendered on and after the date of this Order.

2. That a copy of the Notice to the Customers, attached hereto as Appendix B, shall be mailed or hand delivered to all affected customers by the Applicant in conjunction with the next regularly scheduled billing process.

3. That Heater Utilities, Inc., shall file with the Commission quarterly service reports regarding the status of planned improvements to the water system serving Saddle Run Subdivision.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of May 1992.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

DOCKET NO. W-274, SUB 68
SCHEDULE OF RATES
FOR
HEATER UTILITIES, INC.
for providing water utility service in
all of its service areas in North Carolina

Metered Rates: (Monthly)

Base monthly charge for zero consumption

<1" meter	$ 8.28
1" meter	20.70
1 1/2" meter	41.40
2" meter	66.24
3" meter	124.20
4" meter	207.00
6" meter	414.00

Commodity Charge - $2.35 per 1,000 gallons or $1.76 per 100 cubic feet

Temporary Service: $40.00 - A one time charge to builder of a residence under construction payable in advance. Fee entitles builder to six months service, unless construction is completed earlier and the service is intended for only normal construction needs for water (not irrigation). Applicable only in the seven following subdivisions where such charge is specifically provided by contract with the developer:

Chesterfield II	- Contract date August 24, 1988
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
Southwoods Sect. III	- Contract date May 25, 1988
South Hills Ext.	- 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 Charges:

If water service cut off by utility for good cause: $20.00

If water service discontinued at customer's request: $ 5.00

Returned Check Charge: $10.00

Bills Due: On billing date

Bills Past Due: Fifteen (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 twenty five (25) days after billing date.

* 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 make a tap to an existing main, the charge will be $525.00, and where 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 68, on this the 12th day of May 1992.

APPENDIX B

DOCKET NO. W-274, SUB 68

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Heater Utilities, Inc., Post Office Drawer 4889, Cary, North Carolina 27519, for Authority to Increase Rates for Water Utility Service in All Its Service Areas in North Carolina

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 all of its water customers in North Carolina. The new approved rates are as follows:

Base Monthly Charge for Zero Usage:

Meter Size	Base Charge
<1"	$ 8.28
1"	20.70
1.5"	41.40
2"	66.24
3"	124.20
4"	207.00
6"	414.00

Commodity Charge - $2.35 per 1,000 gallons or $1.76 per 100 cubic feet

The new rates will increase the average residential bill from $22.74 to $23.88, based on an average monthly usage of 6,640 gallons, or approximately 5%.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of May 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. W-354, SUB 111

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in All of its Service Areas in North Carolina	RECOMMENDED ORDER ASSESSING RATE OF RETURN PENALTY AND GRANTING PARTIAL RATE INCREASE

HEARD IN: Courtroom No. 2, Watauga County Courthouse, 403 West King Street, Boone, North Carolina, on Tuesday, March 24, 1992, at 7:00 p.m.

Conference Center, Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, North Carolina, on Wednesday, March 25, 1992, at 6:30 p.m.

District Courtroom, Carteret County Courthouse, Courthouse Square, Beaufort, North Carolina, on Thursday, March 26, 1992, at 7:00 p.m.

Hearing Room No. 3, Second Floor, Old Cumberland County Courthouse, 130 Gillespie Street, Fayetteville, North Carolina, on Wednesday, April 8, 1992, at 7:00 p.m.

Courtroom, Jackson County Courthouse, Keener Street, Sylva, North Carolina, on Tuesday, April 14, 1992, at 7:00 p.m.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, May 18, 1992, at 7:00 p.m., Tuesday, May 19, 1992, at 9:30 a.m., and Tuesday, June 9, 1992, at 9:30 a.m. through Friday, June 12, 1992

BEFORE: Commissioner Allyson K. Duncan, Presiding, and Commissioners Sarah Lindsay Tate and Julius A. Wright

APPEARANCES:

FOR CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA:

Edward S. Finley, Jr. and James L. Hunt, Attorneys at Law, Hunton and Williams, Post Office Box 109, Raleigh, North Carolina 27602

FOR THE TOWN OF PINE KNOLL SHORES:

Kenneth M. Kirkman, Attorney at Law, Kirkman and Whitford, P.A., Post Office Drawer 1347, Morehead City, North Carolina 28557

FOR THE PUBLIC STAFF:

Antoinette R. Wike, Chief Counsel, David T. Drooz, and A. W. Turner, Jr., 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:

Assistant Attorneys General Karen E. Long and J. Bruce McKinney, and Associate Attorneys General Ted R. Williams, Margaret A. Force, and E. Clementine Peterson, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On December 23, 1991, Carolina Water Service, Inc., of North Carolina (CWS, Company, or Applicant) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust its rates and charges for water and sewer utility service in North Carolina. CWS requested that the proposed rates become effective February 1, 1992. On January 23, 1992, the Commission issued an Order Establishing General Rate Case, Suspending Rates, Scheduling Hearing and Filing Dates, and Requiring Public Notice. Public hearings were scheduled in Boone, Charlotte, Beaufort and Fayetteville in addition to Raleigh. The Order also gave evidentiary value to "[w]ritten statements that are sent to the Public Staff or Commission that clearly identify the customer, his or her address, and his or her concerns." The test year was established as July 1, 1990 - June 30, 1991.

On January 16, 1992, the Attorney General filed a Notice of Intervention. On January 30, 1992, the Public Staff and CWS filed a stipulation on rate of return and capital structure. After receiving suggestions from CWS on February 3, 1992, and February 7, 1992, the Commission issued an Order Modifying Notice to the Public on February 11, 1992.

On February 5, 1992, the Public Staff filed a motion incorporating into the rate case its request for system specific data. On February 26, 1992, the Commission issued its Order denying the Public Staff's motion for system specific data.

On February 24, 1992, the Public Staff requested an additional public hearing in the mountains. The Public Staff amended this request on February 26, 1992. On February 28, 1992, CWS filed its opposition to this request. On March 4, 1992, the Commission scheduled an additional public hearing in Sylva.

On March 9, 1992, CWS filed revised Schedules A, B, C, and D as required by the Order Establishing General Rate Case.

On March 12, 1992, the Attorney General moved the Commission to schedule additional public hearings. The Public Staff had one day earlier commented that more hearings were not necessary, and CWS filed its opposition to the Attorney General's motion on March 17, 1992. On March 24, 1992, the Commission denied the motion.

On March 20, 1992, CWS prefiled its direct testimony. On March 26, 1992, the Town of Pine Knoll Shores moved to intervene, and that motion was granted on April 13, 1992. On April 14, 1992, the Public Staff prefiled its testimony.

On April 20, 1992, CWS moved for interim rates. That motion, which was opposed by the Public Staff on April 21, 1992, and by the Attorney General on April 24, 1992, was denied by the Commission on May 1, 1992.

On April 28, 1992, the Public Staff filed a Motion to Compel Responses to Discovery. On April 30, 1992, CWS filed its response opposing the motion and requesting an extension of time for filing its rebuttal testimony. On May 2, 1992, the Public Staff filed its response to the Company's filing. On May 5, 1992, the Commission granted the Public Staff's motion and CWS's request for an extension.

On May 5, 1992, the Village of Whispering Pines moved to intervene. The Commission allowed that intervention by Order dated May 13, 1992.

On May 7, 1992, CWS prefiled its rebuttal testimony. The following day the Public Staff filed a Motion in Limine. CWS responded to that motion on May 13, 1992. The Commission entered its Order Ruling on Motion in Limine on May 15, 1992.

On May 11, 1992, the Public Staff filed a Motion for Imposition of Sanctions for Refusal to Comply with Commission Discovery Order. The following day the Public Staff moved for further discovery. That same day CWS filed its Response to Motion for Imposition of Sanctions. On May 13, 1992, the Attorney General joined in the Public Staff's motion for imposition of sanctions.

On May 14, 1992, the Commission issued its Order Rescheduling Hearing and Requiring Responses on Discovery. The next day the Public Staff filed a Notice of Further Discovery. On May 19, 1992, CWS filed a Response to Discovery.

On May 22, 1992, the Company filed a Further Response to the Public Staff's Motion in Limine. The Commission issued a Further Order on the motion in limine on June 4, 1992. On May 28, 1992, the Public Staff and CWS prefiled their supplemental testimony. The same day CWS moved for Leave to File the Rebuttal Testimony of John B. Cromwell. The following day the Public Staff filed its response opposing CWS's motion. On June 3, 1992, the Commission issued its Order denying the motion of CWS.

On June 1, 1992, CWS filed a Motion in Limine. On June 3, 1992, the Public Staff filed its response. On June 4, 1992, CWS filed a response to the Public Staff's response. This CWS filing was withdrawn and replaced by an Amended Reply on June 9, 1992. On June 5, 1992, the Commission issued its Order ruling on the motion.

On June 8, 1992, the Commission, at the request of CWS, issued subpoenas for Diane Dalton and James Thompson. The same day the Public Staff moved to bar these new witnesses and the Attorney General moved to quash the subpoena for James Thompson. On June 9, 1992, the Commission made a bench ruling that quashed the Thompson subpoena but allowed the Dalton subpoena.

On June 9, 1992, CWS filed a proposed order dealing with confidential information. The Commission approved the proposed order, which was issued on June 15, 1992.

Other motions and pleadings have been filed in this docket and other Orders ruling on various matters have been issued by the Commission.

Public hearings were held as scheduled. The following public witnesses appeared and testified:

Boone
March 24

Dolores Dietz, George Scheitlin, William Tyrl, Andrew Schuller, Charles Pabian, James Wood, Charles Compton, Robert C. Langston, Gaylord Williams, Barry Noll, Harvey Bauman, Rodney C. Walker, and Carus Schimdt

Charlotte
March 25

Lee Myers, Alex Sabo, Tommy Odom, Joseph H. Constant, Donna Savage, Ken Benzmiller, John Marks, Tad Prewitt, David A. Gant, Sr., Sonya Flores, Laura Davis, Roger Rummage, Nina DeBergalis, Leah Le Clere, Kelly Brown, Mitez Ormond, Rita Ehlers, Jess Riley, Brendon Lee Almond, Daniel Pape, David Hammond, Robert Broome, Frank Herron, Jeff Le Clere, Stephen R. Hargett, Thomas E. Johnson, Robert W. Mann, Louise Green, Michael Ray Allen, Rob Thomas, and Wanda Fuller

Beaufort
March 26

Art Cleary, Bill Ritchie, Mary Kanyha, Dave Hasulak, George Walton, Charles Allen, Barney Zmoda, Gene Hollowell, Rick Heal, Paul Maxson, George Wilkerson, A. C. Hall, R. W. Soderberg, Grady Fulcher, Clyde Lynn, Clay Dulaney, and Ray Brown

Fayetteville
April 8

Mary Davis, Sheree Croft, John Croft, George Langston, Joe Cormier, John R. McCary, Bruce Cox, Flora McCary, Joe Strickland, Grover L. White, Patricia White, Archie Blackwell, Bill Branham, and William Scott

Sylva
April 14

Earl Carson, Richard Randle, Ray Burrow, E. B. Trueblood, Jr., Betty Mortlock, C. L. Hollifield, H. E. Roche, James Poleski, Roger Misleh, D. L. Gump, Herbert Gibson, Ken Jarvis, Wayne Dygert, James Tanner, and Richard Randle

Raleigh
May 18

Senator Beverly Perdue, Representative Michael Decker, Paul K. Jarvis, Dianne MacAlpine, Representative Richard Morgan, Roy Anderson, Jerald T. Howell, Louise Rulon, Charles S. Pulliam, Charles S. Allen, Leon Clay, Charlie Baker, Bill Ritchie, David Dickey, William B. Heffner, Jr., Richard Sutton, Milton J. Arter, Donald P. Dise, Charles Morris, Byron K. Harris, Tony D. Wilson, and John Price

In addition to these persons who appeared at the hearings, the Commission takes notice of the letters filed by customers in this docket. The Commission has considered these letters as evidence in this case pursuant to the agreement of the parties.

The hearing in chief was held in Raleigh on June 9-12, 1992. The Applicant presented direct testimony of Carl J. Wenz, Director of Regulatory Accounting; Patricia M. Cuddie, Manager of Regulatory Accounting; and Carl Daniel, Vice-President and Regional Director of Operations.

The Public Staff presented the testimony of Jan A. Larsen, Utilities Engineer; William E. Carter, Jr., Director of Accounting; and Linda Petrie Haywood, Supervisor of the Water Section of the Accounting Division. In addition, J. C. Lin, Head of the Plan Review Branch of the Division of Environmental Health, appeared at the request of the Commission.

CWS presented the rebuttal testimony of witnesses Wenz, Cuddie, and Daniel; Andrew H. Dopuch, Manager of Corporate Operations for Utilities, Inc.; Patrick J. O'Brien, Vice President of Finance; Dale C. Stewart, a principal with Land Design Engineer Services, Inc.; and Frank Seidman, a principal with Management and Regulatory Consultants, Inc.

Based on the application, the testimony and exhibits, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

GENERAL MATTERS

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.

2. 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.

3. The test period appropriate for use in the proceeding is the 12 months ended June 30, 1991.

4. The Applicant's present and proposed rates are as follows:

WATER UTILITY SERVICE:

	Present Rates	Proposed Rates
Grandview Subdivision:		
First 2,000 gallons per month	$ 7.50	n/a
All over 2,000 gallons per 1,000	$ 1.90	n/a
Base Charge, zero usage per month	n/a	$ 10.00
Usage Charge per 1,000 gallons	n/a	$ 3.50
Olde Point Subdivision:		
Base Charge, zero usage per month	$ 5.00	$ 10.00
Usage Charge per 1,000 gallons	$ 0.74	$ 3.50
Providence West Subdivision:		
Base Charge, zero usage per month	$ 6.25	$ 10.00
Usage Charge per 1,000 gallons	$ 1.58	$ 3.50
All Other Service Areas:		
Residential - Metered		
Base Charge, zero usage per month	$ 9.00*	$ 10.00*
Usage Charge per 1,000 gallons	$ 2.83	$ 3.50
Residential - Unmetered		
Flat rate, per month	$ 19.75	$ 25.00
Metered - Commercial and Other		
Commercial and Other - Metered		
Base Charge, zero usage per month		
5/8" x 3/4" meter	$ 9.00	$ 10.00
1" meter	$ 22.50	$ 25.00
1-1/2" meter	$ 45.40	$ 50.00
2" meter	$ 72.00	$ 80.00
3" meter	$135.00	$150.00
4" meter	$225.00	$250.00
6" meter	$450.00	$500.00
Usage charge per 1,000 gallons	$ 2.83	$ 3.50
Usage charge for untreated water in Brandywine Bay per 1,000 gals.	$ 2.00	$ 2.50
Commercial and Other - Unmetered		
Flat Rate per month (Per single family equivalent)	$ 19.75	$ 25.00

* Base Charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually. Where service is provided through a master meter and a single bill is rendered for the master meter, as in a condominium complex, the existing base charge is $8.00 per month and the proposed base charge is $9.00.

SEWER UTILITY SERVICE:	Present Rates	Proposed Rates
Olde Point	$ 18.00	$ 32.66
All Other Service Areas		
Residential		
Flat Rate, per month	$ 26.32	$ 32.66
Commercial and Other		
Base Charge, zero usage per month		
5/8" x 3/4" meter	$ 9.00	$ 10.00
1" meter	$ 22.50	$ 25.00
1-1/2" meter	$ 45.40	$ 50.00
2" meter	$ 72.00	$ 80.00
3" meter	$135.00	$150.00
4" meter	$225.00	$250.00
6" meter	$450.00	$500.00
Usage charge per 1,000 gallons of water usage	$ 4.25	$ 5.55
Minimum bill per month	$ 26.32	$ 32.66
Customers who do not take water service from Carolina Water (Per single family equivalent)	$ 26.32	$ 32.66
Sewer Collection Service		
When sewerage is collected by the Utility and transferred to a government body or agency, or another entity, for treatment, the Utility's rates are as follows:		
Residential - monthly charge	n/a	$ 16.00
Commercial - monthly charge per single family equivalent	n/a	$ 16.00
OTHER MATTERS		
Reconnection Charge:		
If water service is cut off by utility for good cause:	$ 22.00	$ 27.00

If water service is disconnected at the customer's request:	$ 22.00	$ 27.00
Charge for Processing NSF Checks:	$ 7.00	$ 10.00
New Water Customer Charge:	$ 22.00	$ 27.00
New Sewer Customer Charge: (Waived if customer also receives water utility service)	$ 16.50	$ 22.00
Meter Testing Fee:	n/a	$20.00*

* If a customer requests a test of a water meter more frequently than once in a 24-month period, the Company will collect a $20 service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24-month period without charge.

Note:

No changes are proposed for presently approved Connection Charges, Plant Impact Fees, and Availability Rates. Also, no changes are requested for the date by which bills are past due, or for the finance charge for late payments.

5. The quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems.

6. CWS needs to improve the overall quality of service the Company offers to its customers in North Carolina. The Company should be penalized in this case by means of a rate of return penalty for inadequate service.

RATE BASE

7. The appropriate level of total plant in service is $45,252,000 of which $25,921,478 is applicable to water operations and $19,330,522 is applicable to sewer operations.

8. The state design criterion for the wastewater treatment capacity of the Brandywine Bay, Cabarrus Woods - Stonehedge - Cambridge - Steeplechase, and the Danby - Lamplighter South - Woodside Falls systems is 400 gallons per day (gpd) per dwelling unit. It is appropriate to use this state design requirement as the basis for evaluating how much capacity is "used and useful" for each customer.

9. The design criteria for water systems (per residential equivalent connection) which are appropriate for use in this proceeding are as follows:

Elevated water storage tanks: 400 gallons per connection

Wells: 400 gpd = 0.556 gpm (gallons per minute) based upon a 12 hour pumping day.

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. 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 $81,200. 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 $52,780. The net investment to include in rate base is $197,220.

12. 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 $208,170. 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 $135,311. The net investment to include in rate base is $273,427.

13. The net investment of the Company in the Cabarrus Woods elevated storage tank is $216,959. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $79,494. 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 $51,671. The net investment to include in rate base is $165,288.

14. The net investment of the Company in the Cabarrus Woods sewage treatment plant is $342,997. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $146,940. 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 $95,511. The net investment to include in rate base is $247,486.

15. The net investment of the Company in the Cambridge lift station is $138,000. This entire investment should be included in rate base.

16. 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 $123,017. 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 $79,961. The net investment to include in rate base is $129,039.

17. 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 $56,420. 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 $36,674. The net investment to include in rate base is $33,326.

18. 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 $26,076. 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 $16,950. The net investment to include in rate base is $18,050.

19. The net investment of the Company in the Sherwood Forest water system is $26,500. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $21,200. 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 $13,780. The net investment to include in rate base is $12,720.

20. 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 $6,333. 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 $4,116. The net investment to include in rate base is $5,211.

21. The investments for the new wells in Sugar Mountain, Sherwood Forest, and Wolf Laurel are used and useful for end of period customers and should be included from the Company's rate base in this proceeding.

22. The Company is providing sewer utility service in Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions. The Company served 316 customers in these subdivisions at the end of the test period.

23. On May 7, 1991, the Commission entered an Order in Docket No. W-354, Sub 91, and Docket No. W-778, Sub 6, approving a Settlement Agreement and Release which provided, in pertinent part, that CWS was released from any and all claims and demands, whether known or unknown, that the Commission has, or may have, arising out of ". . . acquisitions, whether by contiguous extensions or otherwise, that have been expressly noted in any previously decided CWS rate applications . . . "

24. It is not appropriate to reduce the Company's rate base by $212,000 or require refunds in this proceeding with respect to the Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions in view of the Settlement Agreement and Release approved by the Commission on May 7, 1991, in Docket No. W-354, Sub 91, and Docket No. W-778, Sub 6. CWS should be granted temporary operating authority, nunc pro tunc, to provide sewer utility service in these subdivisions and should be required to file applications for certificates of public convenience and necessity.

25. The Public Staff's removal from CWS's rate base of transportation costs related to non-jurisdictional operations is appropriate.

26. It is appropriate to include in plant in service the expenditure on the Wolf Laurel well and tank.

27. The Public Staff prefiled contradictory testimony regarding $19,494 for the Carronbridge force main.

28. It is appropriate to include the unamortized portion of the loss related to the abandonment of the Mt. Carmel wastewater treatment plant (WWTP) in plant in service for purposes of this rate proceeding.

29. The appropriate level of accumulated depreciation for use in this proceeding is $3,344,714, of which $1,988,456 is applicable to water operations and $1,356,258 is applicable to sewer operations.

30. The appropriate level of contributions in-aid-of construction for use in this proceeding is $19,223,064, of which $9,730,348 is applicable to water operations and $9,492,716 is applicable to sewer operations.

31. The appropriate level of advances in-aid-of construction for use in this proceeding is $221,382, of which $122,495 is applicable to water operations and $98,887 is applicable to sewer operations.

32. For purposes of this proceeding, the plant acquisition adjustment is $2,985,883, of which $1,787,538 is applicable to water operations and $1,198,345 is applicable to sewer operations.

33. The appropriate level of accumulated deferred income taxes (ADIT) for use in this proceeding should be $426,207, of which $720,700 is applicable to water operations and ($294,493) is applicable to sewer operations.

34. It is appropriate to include in rate base the ADIT associated with the CIAC applicable to the Monteray Shores system.

35. It is appropriate to include in rate base the ADIT associated with the CIAC for the Olde Point System.

36. For purposes of this proceeding, the amount of customer deposits is $113,589, of which $78,217 is applicable to water operations and $35,372 is applicable to sewer operations.

37. The appropriate amount of excess book value to be deducted in calculating the rate base in this proceeding is $4,281,266, of which $1,670,755 is applicable to water operations and $2,610,511 is applicable to sewer operations.

38. An amount of $60,000 for NCUC bonds should be included in rate base in this proceeding, of which $41,316 is applicable to water operations and $18,684 is applicable to sewer operations.

39. Gain on sale and flow back of taxes of $289,628 should be deducted from rate base for purposes of this proceeding, of which $216,693 is applicable to water operations and $72,935 is applicable to sewer operations.

40. It is appropriate to split the gains on the sales of the Beatties Ford and Genoa/Raintree systems equally between the stockholders and remaining ratepayers.

41. It is appropriate to split the loss on the sale of the Mt. Carmel system equally between the stockholders and remaining ratepayers.

42. The Purchase Acquisition Adjustments should be deducted from the original cost of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems in calculating CWS's net investment in these systems for the purpose of calculating the amount of gains or losses on the sales of these systems.

43. It is inappropriate to reduce the gains or losses on the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems by "compensation to management."

44. It is inappropriate for the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems to be reduced by personal Federal and Illinois income taxes that stockholders may have to pay based on the fact that their portion of the gains is paid to them in the form of dividends.

45. The costs of Docket No. W-354, Subs 82, 86, 87 and 88 should be split equally between the stockholders and remaining ratepayers.

46. It is inappropriate to reduce the ratepayers' portion of the gain on the sale of the Beatties Ford system by the loss of revenue from the date of the Commissions' Order in Docket No. W-354, Sub 81, to the date that the system was sold.

47. It is inappropriate to reduce the ratepayers' portion of the gain on the sale of the Beatties Ford system by the "loss of operating income" from the date of the sale of the system to the estimated date of the Commission's Order in Docket No. W-354, Sub 111.

48. It is inappropriate to reduce the ratepayers' portion of the gain on the sale of the Genoa/Raintree systems by the "loss of operating income" from the date of the sale of the system to the estimated date of the Commission's Order in Docket No. W-354, Sub 111.

49. The total net gain on the sale of the Beatties Ford system is $424,940. Of this amount, $212,470 should be assigned to the stockholders and $212,470 should be assigned to the remaining ratepayers.

50. The total net gain on the sale of the Genoa/Raintree systems is $131,595. Of this amount, $65,798 should be assigned to the stockholders and $65,797 should be assigned to the remaining ratepayers.

51. The total net loss on the sale of the Mt. Carmel water system is $28,383. Of this amount, $14,192 should be assigned to the stockholders and $14,191 should be assigned to the remaining ratepayers.

52. The amount of cost-free capital resulting from net gains on the sales of the Beatties Ford, Genoa/Raintree, and Mt. Carmel systems that should be deducted in calculating the original cost rate base in this proceeding and future rate proceedings is $264,076. This amount represents 50% of the total net gains and losses of $528,152 resulting from the sales of these systems.

53. The amount of cost-free capital resulting from the flow back of taxes paid through the gross-up of CIAC related to the Beatties Ford system that should be deducted in calculating the original cost rate base in this and future CWS rate proceedings is $21,747.

54. The amount of cost-free capital resulting from the flow back of taxes paid through the gross-up of CIAC related to the Genoa/Raintree systems that should be deducted in calculating the original cost rate base in this and future CWS rate proceedings is $3,805.

55. The appropriate level of working capital allowance is $499,065, of which $325,384 is applicable to water operations and $173,681 is applicable to sewer operations.

56. The appropriate level of deferred charges is $567,920, of which $439,771 is applicable to water operations and $128,149 is applicable to sewer operations.

57. The appropriate level of unamortized tank maintenance costs for purposes of this proceeding is $215,849.

58. The appropriate level of unamortized deferred rate case expense to include in rate base relating to Sub 111 is $145,293 and $8,290 relating to intervention costs.

59. No amount of unamortized VOC testing costs should be included in deferred charges.

60. CWS's reasonable rate base used and useful in providing service is $15,493,252, consisting of utility plant in service of $45,252,000, NCUC bonds of $60,000, working capital allowance of $499,065, and deferred charges of $567,920, reduced by accumulated depreciation of $3,344,714, contributions in-aid-of construction of $19,223,064, advances in- aid-of construction of $221,382, plant acquisition adjustment of $2,985,883, accumulated deferred income taxes of $426,207, customer deposits of $113,589, excess book value of $4,281,266, and gain on sale and flow back of taxes of $289,628.

REVENUES

61. The appropriate level of end-of-period service revenues is $7,189,400, of which $4,745,041 is applicable to water operations and $2,444,359 is applicable to sewer operations.

62. The revenues from the billing and collection service contract with the City of Charlotte should be assigned to CWS for ratemaking purposes.

63. It is appropriate to include $18,725 in miscellaneous revenues for management fees.

64. CWS should be permitted to increase the following miscellaneous charges:

Reconnection Charges - Water
New Account Fee Water
New Account Fee - Sewer
New Account Fee - Water and Sewer

65. The Company's request for an increase in the returned check charge should be approved.

66. The Company's request for a water meter test fee should be approved.

67. The appropriate level of miscellaneous revenues is $169,235, of which $122,876 is applicable to water operations and $46,359 is applicable to sewer operations.

68. The appropriate level of uncollectibles is $89,776 of which $59,389 is applicable to water operations and $30,387 is applicable to sewer operations.

69. Total revenues to be reflected in this proceeding are $7,268,859, of which $4,808,528 is applicable to water operations, and $2,460,331 is applicable to sewer operations. Gross service revenues are $7,189,400, of which $4,745,041 is applicable to water operations, and $2,444,359 is applicable to sewer operations. Miscellaneous revenue is $169,235, of which $122,876 is applicable to water operations and $46,359 is applicable to sewer operations. Total revenues are reduced by uncollectible revenue of $89,776, of which $59,389 is applicable to water operations, and $30,387 is applicable to sewer operations

OPERATION AND MAINTENANCE EXPENSES

70. The appropriate level of operation and maintenance expenses is $3,206,085, of which $2,051,285 is applicable to water operations and $1,154,800 is applicable to sewer operations.

71. The Public Staff's allocations of payroll expenses and vehicle expenses for non-regulated contract plant operations is appropriate. It is therefore appropriate to reduce salaries and wages by $84,653.

72. The operator's salary for the Pied Piper emergency operator system should be allocated out of the CWS rate case.

73. It is proper to remove the salary and vehicles of one and one-half field employees due to the sale of the Raintree/Genoa water systems.

74. The appropriate annual level of testing fees is $98,814 for sewer operations and $56,856 for water operations.

75. The appropriate level of maintenance and repair expenses is $826,845.

76. It is appropriate to allocate $7,173 of water and $3,238 of sewer transportation expenses to contract sewer systems and other systems not included in this proceeding.

77. The appropriate level of operating expenses charged to plant is $248,881 for water operations and $86,875 for sewer operations to reflect the allocation of salaries and wages discussed in Findings of Fact Nos. 71 and 80.

78. The appropriate level of outside services -- other is $144,180, of which $99,282 is applicable to water operations and $44,898 is applicable to sewer operations.

GENERAL EXPENSES

79. The overall level of general expenses under present rates appropriate for use in this proceeding is $1,409,007, of which $924,340 is applicable to water operations and $484,667 is applicable to sewer operations.

80. The Public Staff's allocation of common operating expenses for systems owned by other Utilities, Inc., subsidiaries in North Carolina is fair and should be used in determining the appropriate level of these expenses. It is therefore appropriate to reduce salaries and wages by $9,198 for water operations and $3,697 for sewer operations.

81. The appropriate level of rate case expenses for use in this proceeding is $132,268, of which $91,080 is applicable to water operations and $41,188 is applicable to sewer operations.

82. The total amount of rate case expenses should be amortized over a three-year period.

83. The appropriate level of pension and other benefits is $226,387 for water operations and $102,983 for sewer operations.

84. It is inappropriate to reduce general expenses applicable to sewer operations by $8,300 for revenues and expenses related to the wastewater treatment plants serving Farmwood 20 and 21, Windsor Chase and Habersham Subdivisions.

85. It is inappropriate to remove $1,322 from Northbrook expenses related to CMUD contract operations

86. For purposes of this proceeding, it is appropriate to reduce general expenses by $127,548 related to Northbrook office expenses allocated to North Carolina.

OTHER OPERATING REVENUE DEDUCTIONS

87. The appropriate level of depreciation expense, for use in this proceeding is $525,127, of which $357,545 is applicable to water operations and $167,582 is applicable to sewer operations.

88. It is appropriate to include the amortization associated with the abandoned Mt. Carmel WWTP in the cost of service for sewer operations in this proceeding.

89. It is appropriate to reduce payroll taxes by $5,875 applicable to water operations and $2,317 applicable to sewer operations to reflect the reduction in salaries and wages.

90. Based on the other findings and conclusions set forth in this Order, the appropriate level of regulatory fees is $4,328 for water operations and $2,214 for sewer operations.

91. Based on the other findings and conclusions set forth in this Order, the appropriate level of gross receipts taxes is $192,341 for water operations and $147,620 for sewer operations.

92. Based on the other findings and conclusions set forth in this Order, the appropriate level of state income taxes is $47,247 for water operations and $14,034 for sewer operations.

93. Based on the other findings and conclusions set forth in this Order, the appropriate level of federal income taxes is $191,212 for water operations and $56,797 for sewer operations.

94. The overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $5,971,517, of which $3,889,104 is applicable to water operations and $2,082,413 is applicable to sewer operations.

95. It is inappropriate for the Company to continue the accrual of AFUDC after the construction of a project has been completed.

OVERALL COST OF CAPITAL

96. The following capital structure and cost rates are appropriate for determining the overall cost of capital in this case:

Capital Structure	%	Cost Rate	Weighted Cost
Debt	55.6%	9.46%	5.26%
Equity	44.4%	11.00%	4.88%
Overall Weighted Cost			10.14%

Because the quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems, the Company has been assessed a rate of return penalty of 1.0% on common equity. If the Company's quality of service were adequate, CWS would have been entitled to a 12.0% rate of return on common equity. Using a weighted average for the Company's cost of debt and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 10.14% to be applied to the Company's original cost rate base. Such rate of return will enable CWS, by sound management, to produce a fair return for its sole shareholder, maintain its facilities and service in accordance with the reasonable requirements of its customers, and compete in the market for capital on terms which are reasonable and fair to its customers and its existing shareholder.

RATES, FEES, AND OTHER MATTERS

97. The Commission finds that the Applicant's rates should be changed by amounts which, under pro forma adjustments, will produce an increase in annual service revenues of $460,280 and an increase in annual miscellaneous revenues of $20,252. These increases will allow CWS the opportunity to earn an 10.14% overall rate of return on its rate base, which the Commission has found to be reasonable upon consideration of the findings herein.

98. The Commission has a generic proceeding pending in Docket No. W-100, Sub 13, to investigate the uniform rate methodology employed by many water and sewer companies in North Carolina. That docket is pending decision.

99. It is appropriate for the Commission to review the subject of system-specific data and rates in a generic proceeding prior to requiring CWS and any other water and/or sewer company to begin to develop allocations, assign costs, and begin maintaining their books and records so that system-specific data can be provided.

100. The Company should install individual water meters to the approximately 1,010 presently unmetered customers.

101. The installation of these meters should be completed by December 31, 1996.

102. The Company should file all contracts it has with developers that have not been previously filed with the Chief Clerk of the Commission within 30 days of the date of this Order, and should file future contracts and agreements within 30 days of signing or agreement.

103. The Company should charge the approved uniform tap fee and plant modification fee in all of its service areas unless it receives prior Commission approval to deviate from the uniform fees. Filing a contract with the Commission does not constitute approval of non-uniform fees. This requirement should apply to both existing and new service areas.

104. With regard to the billing and collecting services for the City of Charlotte, the Company should reduce to writing its informal agreement with Water Service Corporation and then submit such agreement or contract to the Commission for approval under G.S. 62-153.

105. With regard to its contract operations, the Company should reduce any informal agreements to writing and then submit its contracts and agreements with Water Service Corporation and any other affiliated entities to the Commission for approval under G.S. 62-153.

106. The Company shall undertake a study to determine an appropriate methodology to properly allocate employees' time who do not work exclusively on CWS jurisdictional operations. The reasonableness of such methodology and the results thereof shall be considered in the Company's next general rate case proceeding.

107. The attached Schedule of Rates is fair and reasonable and will allow the Company a reasonable opportunity to earn the authorized rate of return.

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

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; and the testimony and exhibits of the witnesses. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters that they involve are essentially uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is contained in the Company's application and in the Commission's official files. This finding is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence supporting these findings of fact is contained in the testimony, petitions and letters of the customers and the testimony of Company witness Daniel and Public Staff witness Larsen. The Commission will discuss each subdivision where the customers testified at the hearings about service problems and the Company's response.

Crystal Mountain

In addition to customer letters received by the Commission, three customers testified at the public hearing regarding the quality of water and, more specifically, the lead problem within the distribution system. One customer described the water as "chocolate brown" and also said that the Company provided "inadequate, despicable service." Other customers testified that there was "mud" in the water, that the quality has deteriorated, and that the Company has a lack of responsiveness.

In addition to these service problems, there was also lead contamination within the Crystal Mountain distribution system. Company witness Daniel stated that the Company supplied bottled water to the residents for cooking and drinking and conducted an extensive system sampling and testing program in an attempt to isolate the source of contamination but found that the contamination was spread throughout the system. The Company stated that the lead could not be eliminated without replacing all of the mains which would be at a high cost. Ultimately, the Company was able to remedy the problem by installing treatment equipment.

Charlotte Area - Overall

Mr. R. Lee Myers, Mayor of Matthews, and Mr. Alex Sabo, Commissioner for the Town of Matthews, presented testimony regarding the proposed rate increase and the quality of water being provided to the citizens of Matthews by the Company. Although neither Mr. Myers nor Mr. Sabo are customers of the Company, they made several statements on behalf of their constituents regarding water quality such as that the customers cannot drink the water, the water causes medical problems, and water pressure is poor.

Mr. Tommy Odom also presented testimony on behalf of his father, Senator Odom. Mr. Odom read a letter into the record written by his father, and this letter was submitted to the Commission as an exhibit.

A large number of customers also testified at the Charlotte hearing to protest the proposed rate increase and to register service and quality complaints.

In addition to these complaints, the Commission has received over 25 complaint letters detailing service problems from customers in this area.

According to the Company, all their systems providing service within the Matthews area meet EPA, North Carolina Division of Environmental Health (DEH), and Mecklenburg County Health Department regulations.

Lamplighter Village South

Two customers in this service area complained that a leak reported to the Company was not repaired in a timely fashion and that the water was hard and had a bad taste. According to CWS, the Company followed up in a very responsible manner and repaired the leak in both cases. The Company did not respond to the quality complaints.

Woodside Falls

One customer testified that the water has a "bad taste and odor" and "white 'crud' that forms on my faucets and in my hot water heater and everywhere else." Rather than respond directly to this customer's complaint, the Company stated that since the last rate case, a number of improvements have been made at the sewer facility serving Woodside Falls Subdivision. The Company has also replaced well pumps in wells 1, 2, and 3 and installed two new wells and water softening and filtration equipment.

Cabarrus Woods/Victoria Park

Three customers, in addition to their opposition to the proposed rate increase, presented testimony regarding quality of service. These complaints included stains on water fixtures, hard water, water that "tastes like chlorine mixed with iron" and that "stains my dishes brown, the inside of my dishwasher is brown and the reservoir tank of my toilets are black."

According to the Company, service orders were issued for these customers regarding the hardness level and other complaints. The Company stated that they personally met with these customers and explained that the water quality within the Cabarrus Woods/Victoria Park subdivision meets all EPA and state regulations.

Lamplighter Village East

One customer testified that he had to replace two commodes, a kitchen sink, and two lavatories. In addition, this customer described the water as "so black I could hardly--you could hardly see the bottom of the sinks and the commode." In addition, this customer stated that the Company's personnel "are very rude."

The Company explained that a service order was issued following the customer hearing, and a service representative followed up with this customer. The Company also mentioned that since the last rate proceeding, substantial improvements have been made at the sewer plant to ensure that the plant discharge is within allowable discharge limits, and approximately $26,000 has been spent to replace the hydropneumatic water storage tank with the ASME approved code tank, a new well house building, booster pumps, and a complete upgrade of the electrical system.

Chesney Glen

One customer stated that he had to "replace every washer, every toilet filler, everything in the house at least once because it's been rotted out." In addition, this customer testified that the water may be responsible for causing dermatitis, a skin allergy, as well as excessive calcium levels within his body.

According to CWS, the Company followed up on this customer's comments during the rate proceeding. The Company stated that one customer mentioned that her main concern was the water rates and not water quality. The Company went on to say that the water quality within Chesney Glen is well within the EPA and DEH drinking water regulations.

Mallard Crossing

One customer who resides near the well presented testimony that the water leaves "white chalk" on spigots, the "commodes have rings in them," and the "sinks have stains in there."

According to the Company, the water being provided to the customers of Mallard Crossing meets all EPA, state and Mecklenburg County drinking water regulations.

Eastwood Forest

Two customers presented testimony regarding cloudy and/or discolored water and service interruptions without notification. Sonya Flores, a representative of Eastwood Forest, offered a petition into the record and made a statement concerning the quality of service:

> First of which is, quite frankly, the water reeks of chlorine, it's cloudy, and speaking for all the customers, we have to purchase water--bottled water. We simply can't drink the tap water as it tastes unsatisfactory to all of us. Furthermore, the customer service at Carolina Water is very poor. They continually threaten us with service charges when we have problems with our service. . . .
>
> We are frequently without water. We are frequently having water interruptions and at times we have water interruptions and it may be hours. I know a couple of years back there were times it would be almost days that we would be without water. When our water comes back on, we will get maybe the first five or ten minutes water usage after we've had a water outage it runs mud. . . .

In addition to water quality complaints, this customer stated that the answering service is "very rude, very unfriendly, and very uncourteous."

According to the Company, the service interruptions were caused by water main cuts by Union County which was at the time installing sewer mains within the Eastwood Forest Subdivision. The cloudy and/or discolored water was apparently a result of the water main breaks. Union County has completed its sewer main installation, and since that time the Company says it has not received any complaints of service interruptions within the Eastwood Forest subdivision. The Company did not respond to the statements about poor customer service and chlorine smell.

Zemosa Acres

Mr. Frank Herron, president of the Homeowners Association, presented a petition signed by residents of Zemosa Acres opposing the proposed rate increase. In addition to stating that "odors and bad tastes are common complaints," Mr. Herron stated that there have been leaks in the Zemosa Acres Subdivision that have been ongoing for six months at a time and that there was a major leak located on the corner of Hanover and Channing Circle during the night of the hearing.

According to CWS, the Company followed up with Mr. Herron on April 7, 1992, and explained that CWS personnel had excavated several areas where they suspected leaks only to find underground springs. The Company also expressed concern about how important it is to repair a leak within Zemosa Acres, since the Company purchases bulk water from Cabarrus County via a master meter and resells it in Zemosa Acres. Although any water lost because of a leak results in lost revenues to the Company, a water loss during the test year can increase the Company's expense for purchased water. In addition the Company informed Mr. Herron about its flushing policy, which is a minimum flushing every six months in all systems.

Williams Station

One customer testified during the customer hearings in opposition to the proposed rate increase and complained about problems related to hardness. This customer stated that "there's some type of precipitant in the water that accumulated on . . . glass in the showers."

The Company followed up with this customer. The Company noted that hard water is typically composed of calcium and magnesium and usually is an aesthetic concern, but it presents no health risk. The Company also noted that it does not soften the water in Williams Station and leaves the option open for customers to install their own home water softeners. The Commission notes, however, that the Company has installed softeners on other systems.

Habersham

One customer from the Habersham Subdivision testified during the customer hearing and complained of low pressure and water that is "muddy," "dingy," and has particles in it.

CWS testified that during the follow up to this customer, the Company was told that the water quality was back to normal. The Company opined that the discolored water this customer experienced occurred during the time of flushing the system.

Saddlewood

One customer provided testimony opposing the proposed rate increase as well as complaining of "murky water" and air in the lines. In addition, this customer stated that the Company's technician (operator) did not return several calls. According to this witness, ". . . if you call to complain about something, you can't ever get them to return the calls."

CWS responded by saying that during follow-up to this customer, the Company discovered that the milky water or air in the lines no longer existed.

Cambridge

One customer testified that the quality of his water was "horrible." In addition, this customer stated that the water leaves scales on his sink and a white powder on his glass shower. The Company did not provide a written response to this complaint.

Brandywine Bay

The Commission has received over 35 letters that specifically cited quality problems in Brandywine Bay. These complaints included staining of water fixtures and a rotten egg smell to the water. In addition, many of these customers are purchasing bottled water and must replace their water heater elements and ice makers yearly.

According to the Company, the water meets all state and EPA limits.

Pine Knoll Shores

Several customers presented testimony at the customer hearings concerning quality complaints. Mr. Grady Fulcher, property manager of Beacon Reach, presented testimony opposing the proposed rate increase and stated that a lot of the residents do not drink the water due to sediment and/or smell. However, he also stated that he has seen improvement over the past three years.

The Company noted that Mr. Fulcher presented testimony at the last rate proceeding regarding discolored water at his swimming pool location. The Company contended that the discoloration resulted from infrequent usage of his service line, and the Company installed a blow-off line within the existing water main which corrected the problem. Mr. Fulcher noted the correction in his testimony in this proceeding.

Riverbend

Several customers from the Riverbend community presented testimony in opposition to the proposed rates and to the water quality. Arthur S. Cleary, the Mayor of Riverbend, testified that the quality of the water has ruined appliances and leaves a black residue inside dishwashers.

The Company responded by stating that the water provided to the Riverbend residents meets all state and federal standards.

Tanglewood South

Several customers from the Tanglewood South Subdivision provided testimony opposing the proposed rate increase and issued complaints regarding water quality. These complaints include water that is "slimy feeling," that "smells and tastes like detergent," and that leaves a "black scum" on water fixtures. In addition, customers testified that the water had ruined their toilets and the flushing system inside the toilet had to be replaced frequently. Also, customers testified that the water has ruined their clothes.

The Company stated that it followed up all the customers who testified, and tests were conducted. According to the Company, these tests indicate that all results are within compliance of the EPA and state regulations.

Bent Creek

Customers presented testimony that the quality of service was "lousy," such as that the water is brown at times, there are outages, and the customers buy bottled water for drinking.

The Company stated that it followed up with the one customer who testified about "lousy" service and learned that he had no quality or service problems, but was upset with the water and sewer rates.

Watauga Vista

Five customers from Watauga Vista Subdivision testified during the rate proceeding, including the testimony of Mr. E.B. Trueblood, Jr., the Chairman of the Water Committee for the Watauga Vista Owner's Association. According to witness Trueblood water quality problems do exist:

> The water is drawn from a deep well on the property and is not filtered. The resulting small rocks, pebbles, rust, and sediment ruins clothing during washing, clogs filters, and at times, stops water flow almost completely. Such problems result in expensive plumbing costs to the home owner.

In addition, other customers stated that the water was "muddy," "rust colored," had "flakes of rust" in it, had sediment in it, ruined commodes and left black residue in the commodes.

CWS responded by stating that the customers' complaints and water samples presented as evidence came as a total surprise since, based on its records, the Company has had very few complaints from this area. After further investigation following the hearing, the Company learned that many of the customers who had complaints, instead of calling the Company's toll free office number, contacted Howard Allen, the operator for this area directly. Also, according to the Company, CWS employed another operator who resides just a few miles from Watauga

Vista to handle some of the complaints locally. The Company states that it will advise the customers to contact the Sugar Mountain office regarding all complaints and will conduct a full-scale evaluation of the water system and take appropriate action to make improvements where necessary.

Bear Paw

Customers presented testimony stating they have experienced quality problems such as "high iron oxide" and sediment in water heaters. In addition, customer testimony revealed that, due to the quality of the water, white laundry eventually turned tan-colored.

According to the Company, the Bear Paw water supply system consists of four wells, two of which have very low iron levels and two of which contain excessive iron. However, when all four wells are combined, the water supply does not exceed the iron content limits. It is the Company's opinion that the intermittent discolored water mentioned by these two customers is caused by an accumulation of iron in the mains. Therefore, the Company stated that it has increased the frequency of flushing and has also added a phosphate sequestering agent. This treatment should help alleviate the iron problems by holding the iron in suspension so that it will not be objectionable. According to the Company, polyphosphate sequestration treatment coupled with flushing has corrected iron problems in many other systems owned by CWS.

Wolf Laurel

Three customers presented testimony opposing the proposed rate increase and stated they were either not aware of or did not benefit from any of the improvements made to the Wolf Laurel water system. One customer also mentioned low pressure but stated that was "summer before last."

According to the Company, it has made extensive improvements to the water system serving Wolf Laurel. These improvements include such things as three 65,000 gallon water storage tanks; replacing leaking concrete tanks; drilling four wells, the rehabilitation of three wells, including well houses, pumps, etc.; two new booster stations; six pressure reducing stations; more than 4,400 feet of water main to loop the system for better operations; and 30 blow-offs to properly flush the system. In addition, CWS located and/or replaced approximately 180 water main valves.

Wood Run

One customer testified concerning service problems such as muddy water, air in the water, and water shortages. The Company stated that the wells have a history of decreasing yield over time and that water is difficult to obtain in this particular area. The Company also stated that it has "attempted on several occasions to advise the Public Staff concerning water capacities" without success. The Commission notes that the Public Staff has not recommended any wells or any other plant item be excluded from rate base for the Wood Run system.

Abington

Two customers, including the President of the Abington Homeowner's Association, presented testimony and a petition and cited problems such as hard water and sediment in the water.

Olde Pointe

One customer testified that "several customers have complained about sewage back-up and the quality of water since their acquisition of the utility."

Summary

The Commission is particularly sensitive to customer complaints regarding quality of service in view of the dramatic rate increases the customers of CWS have experienced since 1985. A summary of the average bill (based upon 5,200 gallons of usage per month) is listed below:

	Average Bill		Percent Increase	
Date of Increase	Water	Sewer	Water	Sewer
February 1985	$14.20	$16.00	n/a	n/a
March 1986	$17.40	$18.00	22.5%	12.5%
February 1989	$19.96	$20.50	14.7%	13.9%
June 1990	$22.52	$25.10	12.8%	22.4%
July 1991	$23.72	$26.32	5.3%	4.9%
July 1992 (Proposed)	$28.20	$32.66	18.9%	24.1%

February 1989 - July 1992 (3.5 years) Increase

Present water bill (5,200 gal.)	=	18.8% increase
Present sewer bill	=	28.4% increase
Proposed water bill (5,200 gal.)	=	41.3% increase
Proposed sewer bill	=	59.3% increase

Furthermore, the Commission concludes that the number of customers who appeared and testified at the public hearings in this docket may not be indicative of the full extent of service problems. In order to minimize rate case expense, the number of customer hearings was restricted in this proceeding. The Commission received requests from customers for additional hearings, but scheduled only one additional hearing, which was held in Sylva. The Commission believes that the customer complaints voiced during the public hearings account for only a sampling of the service problems. Witnesses at several hearings testified that many customers have given up coming to public hearings since they came year after year and no improvements were made and their rates always went up. There have been over 500 protest letters filed with the Chief Clerk and over 2,000 signatures on petitions. Although many of these letters only opposed the requested rates, approximately 120 customers addressed water quality and/or service problems. For instance, customers made the following claims in their letters to the Commission:

> In Brandywine it is essential to own and use a water softener, one that hides or absorbs the taste and smell and prevents plumbing fixtures from accumulating rusty stains.

As an example of the quality of water which Carolina Water Service delivers to me let me tell you that my son, when born two years ago, was made ill every time he drank the tap water, causing us to buy bottled water to mix baby formula. Even today, I have to choke down glasses of tap water because of the taste and the small articles suspended in the fluid.

Since Carolina Water Service has had control of the system, nothing has been done to "clean up" the water quality. Mr. Bloxam and I purchase six to ten gallons of water weekly for drinking and cooking use.

During the two week period from January 10, 1992 to January 24, 1992, the water not only wasn't safe to drink but it so stained my spa we have lost part of the finish. . . .

The water quality is terrible--it smells of chlorine and other nauseous odors, and the taste is impossible.

Very poor quality of water with odor, taste, and color problems.

. . . we now have to take a shower because if you fill the tub, the smell is so strong you get a headache before your (sic) finished.

We are constantly told by plumbers that we have the worst water they have seen in our County.

It is not drinkable unless boiled which we do for all water that we ingest.

The water service and quality has never been satisfactory and seems to get worse as time goes on. . . I have been told that I will have to replace all the pipes in the house as we started having pin holes.

We have not drunk water from the tap for two years. We buy bottled water. We have to scrub our toilet bowls with pumice stone every week to clean the stains.

I am using, at additional utility expense, a water softener. Without it would be likened to taking a shower with lard instead of soap.

The water from the tap is not clear - the water has a bad taste - the water has an odor to it - ice cubes are slimy after they are used from an ice bucket.

We purchase new poly trays every 2 - months due to corrosion. . .

. . . the water is not drinkable and leaves mineral crud around my faucets and sinks. The sewer is not adequate either because I constantly have a backup in my toilets.

The water is awful. We have to buy bottled water to drink, and a water softener which does not help a great deal. The color of the water is cloudy and the smell is worse.

The water supplied is very poor quality with a disagreeable odor, color, and taste. .

The water system at times has been deplorable, smelly and discolored as well as foul tasting.

It tastes terrible. . .

Many of us are forced to purchase bottled water to drink because of the materials floating in the water. Fixtures such as sinks, tubs, showers, ice makers, dishwashers, toilets, as well as faucets need to be replaced on a fairly frequent basis, due to the minerals and calcium in the water.

The quality of the water has been poor for the past several years, i.e., mud and iron.

In addition to paying for this foul smelling, inferior water, we have to pay for a private water softening and purification system.

For ten years we have bought bottled water to drink. The color of the water is cloudy, it smells, and tastes horrible.

The water from the tap is unfit to drink! When we wash clothes, after the washer fills it is impossible to open the lid because the odor from the water is so strong it makes you sick.

Although I must say the quality of the water and the courtesy of the staff at Carolina remains unchanged. They are the rudest, nastiest people I have ever dealt with.

The appearance of our water is terrible. A dirty glass is cleaner than our water with all the particles and unwanted mineral floating in it. On several occasions, the water has been too dirty to wash clothes.

It has a profound dirty odor that is nauseating.

The odor is extremely obnoxious, the color is that of swamp water, and the taste makes one sick to their stomach.

Following are excerpts from petitions and a resolution filed with the Commission which address water quality deficiencies:

I did not realize that the water quality was so bad in River Bend. I would never drink water out of the faucet, I even purchase bottled water to freeze ice cubes. The dishwasher can hardly be used because of the lime and calcium contents. - Signed by 26 customers.

Many water customers still find the water quality delivered by the Belvedere system to be unsatisfactory due to periodic excessive chlorine taste, and evidence of both rust and sand in the water delivered. - Signed by 208 customers.

We are outraged by the proposed water rate increase for several reasons. The first of which is that quite frankly, the water reeks of chlorine, it's cloudy and speaking for all customers, we have to purchase bottled water. We simply can't drink the tap water as it tastes unsatisfactory to all of us. - Signed by 43 customers in the Eastwood Forest Mobile Home Park.

The quality of water provided by Carolina Water Service within the Town of Matthews is consistently poor. - An excerpt from resolution presented by the Mayor of Matthews.

In addition to the testimony and letters provided by consumers, the Commission has considered the Company's own customer surveys. According to many of these survey reports, presented as Public Staff Dopuch Cross-Examination Exhibit 5, customers are not receiving the quality of water that the Company contends it provides. Most of those customers whose responses are set forth in the Public Staff's cross-examination exhibit rate the quality of the water provided by CWS for taste, appearance, and pressure as ranging from average at best to fair or poor at worst. For instance, customers responded to the survey with the following comments in response to what CWS could do to improve service:

Quit raising rates & get the hardness out of the water. The scale build up is ruining everything

The water is not fit to drink. We must bring jugs from Charlotte. It spots dishes, it spots cars when washed. The price charged far exceeds the quality of the water

Filter your H2O - My house is 3 years old & the water has ruined my fiberglass tub & bathroom sink. Your rates are outrageous & your water is terrible - We can only hope Cabarrus County will annex us into city H2O

Considering the quality of water and the rate that is being charged it should be a criminal offense

Improve quality of water. It tastes terrible. I don't even like to use it for cooking and I have to use bottled water for coffee because the tap water is so bad. Also, your water price is extremely high.

The water is staining our clothing & fixtures. Black residue is appearing. At the cost of $50 per month I can hardly tolerate the quality of water and feel it should be 100 times better.

Tap water is frequently cloudy or muddy leaving mineral stains in sinks and toilets.

Our water is so bad if we make tea with it we have to scrape oily scum off the top of it. Water this poor should not cost 2 or 3 times what city water cost.

The quality of the water is terrible. I have a new baby and buy bottled water for the formula. We've had the H2O tested and it came back +12 in hardness. The odor is bad, also. I'm embarrassed when we

have company and the odor is so strong you can smell it. Also the price is outrageous!! The quality definitely doesn't match the price.

The water tastes bad, is hard, and leaves mineral deposits that have ruined 3 coffeemakers and stained all my sinks. Your prices are too high for this quality of water!

All neighbors I have spoken to unanimously wish to use another water service, and resent the fact that they (we) are forced to use your unsatisfactory service due to our location. Even if our water quality were excellent, the price we pay you would be prohibitive. Unfortunately, we pay prohibitive amounts for filthy water. And this paper is our only say in the matter. I can't even allow my 3 yr. old son to get a glass of water from the sink because it's so dirty it's white (like a thin white paint). This is constantly & when we first moved in, I voiced my concerns of the water's cloudiness to a field representative. I was told the cloudiness was the result of some break in the water in the neighborhood, and that it would be fine by the day's end. It never was fine and is still white. We even have filters and it's horrible. Something must change soon, and we thank you for allowing us the chance to tell you. Please do some improving quickly.

Treat water so it is clear & does not stain clothes, fixtures "red" & so that it tastes good--flush dirty water after you make repairs! reduce horrendous rates!

I think what you charge for water and sewer service is outrageous! The quality of the water is VERY POOR. We do not even trust the water enough to drink it so we buy bottled water. Our white clothes have a rust colored tint and we have only lived here since April 19. I think you have a great monopoly going on the water and sewer business in this area!

We do not drink the water. There has to be a way to have better drinking water. The cost is way too high, especially for such nasty water.

Lower your rates for one thing. They are outrageous--Also water has too much calcium in it--it is too hard--leaves brown rings around tubs & sinks--rates are definitely too high!!

Improve the taste of the water--we have to buy bottled water to drink - Improve the hardness of the water--we have mineral stains we can't remove - The rates are too high for the water quality to be so poor.

The above-quoted comments from letters, petitions, and customer surveys cause great concern to the Commission. It is unacceptable to the Commission that so many customers testified that they cannot drink their water. Those customers pay high rates for water they will not drink and, in addition, pay for bottled water. This is clearly inadequate service. When considered in conjunction with the plethora of testimony offered by customers, the evidence requires that CWS be penalized for inadequate service.

Public Staff witness Larsen testified that "mud" in the water as well as some staining (usually reddish brown) is probably attributable to over-pumping of wells or iron in the water. Black stains are most likely due to high manganese in the water. Corrosion is probably due to low pH of the water, whereas white powder and scales on water fixtures are due to hard water (high levels of calcium carbonate). Water that has a rotten egg odor contains hydrogen sulfide, which is a gas. A red and/or black "slime" may be iron, manganese, or iron bacteria, a harmless but bothersome type of bacteria. A septic smell may indicate iron bacteria or hydrogen sulfide.

Although most of the service problems are not health hazards (except the lead problem and excessive corrosion), they certainly are serious nuisance problems. As testified by several of the customers, some of these quality problems cost them substantial money due to more frequent replacement of appliances that use the water, the need to install home water filters and softeners, and their purchase of bottled water to drink or cook with.

The Public Staff explained that solutions to these problems do exist in many situations. For example, manganese greensand filters can be used to remove iron and manganese; polyphosphate sequestering agents can be used to sequester or "tie up" iron and manganese in their clear or liquid form, keeping them non-objectional; and soda ash or caustic soda is used to raise the pH level of the water to avoid corrosion.

The Commission is of the opinion that the Company should evaluate the cost of these and other remedies that are not currently being used against the seriousness of the problem for each system. In addition, the Company should respond to each customer complaint received in this case and in the last customer survey, and file a report by September 14, 1992. This report should state the cause of the problems and what corrective action the Company is taking or plans to take. The Commission also concludes that CWS should do more than just state "the water meets state guidelines" where there is testimony of ruined appliances and clothes and staining of water fixtures. The Company should state the cause of the problem, what remedial options are available, and how much the remedies will cost.

In addition to water quality complaints, the Commission is concerned with the caliber of the Company's public relations. According to the testimony of several customers, the Company's personnel have been rude and impolite. The Commission cautions the Company to be polite and courteous to all customers and fully responsive to their complaints and problems.

On the basis of the entire record in this proceeding, including the unprecedented public outcry through testimony, letters, and petitions alleging inadequate water quality and service from CWS at excessive rates, the Commission concludes that a rate of return penalty is justified. To that end, the Company's rate of return on common equity will be reduced by 1.0% from 12.0% to 11.0% as a consequence of our finding that the quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems. The Company's assertion that it "is the largest and most professionally operated water and wastewater utility in the state" needs to be reflected in more than words. It must also be reflected in the overall quality of service provided to <u>all</u> customers. The Company needs to do a better job of improving its relations with

customers through an improved quality of service and product in many of its service areas and through development of a greater degree of sensitivity to what appear to be never-ending requests for rate increases. The customers of CWS spoke eloquently of their frustrations and anger over service deficiencies and high rates. Those customers have been heard by the Commission. A public utility, such as CWS, which asserts pride in being the best, must live up to the mantle of pre-eminence it assumes. Clearly, the outcry of customers in this case documents service deficiencies and extreme dissatisfaction with CWS sufficient to justify a rate of return penalty resulting from inadequate and unacceptable quality of water and service. To ignore this unprecedented outcry from customers would be unconscionable.

The Commission is also concerned by evidence offered by the Public Staff which indicates that the rates for water and sewer service paid by customers of CWS do not compare favorably with rates paid by customers served by subsidiaries of Utilities, Inc., in other states and the rates of most regulated water and sewer companies in North Carolina. Although we realize that there are reasons why the rates of CWS in North Carolina are not perfectly comparable to the rates charged by other affiliated entities and other water and sewer utilities in this State, they are sufficiently comparable to be worthy of consideration.

Witness Dopuch disagreed with the Public Staff's contention that the rates of CWS in North Carolina are for the most part higher than other Utilities, Inc., subsidiaries. He noted that the general trend of rising rates, the differences in system sizes and operating conditions, the high-quality professionalism of CWS staff, the role of CWS in setting regulatory precedent, and various other factors accounted for the Company's level of rates. Mr. Dopuch also observed that the CWS North Carolina operations faced a wide variety of operating conditions, which led him to conclude that in comparing water systems, "The costs in North Carolina reflect the effect of the combination of variables with relatively average rates." Likewise, witness Dopuch observed that in comparing sewer systems, CWS "has a combination of small and large treatment facilities, full-time and part-time residents, and moderate and stringent treatment requirements. The average bills in North Carolina are the result of this mixture."

According to the Public Staff, the redirect exhibit of Mr. Larsen and the cross-examination exhibits of Mr. Dopuch are relevant on this issue. Of the 336 regulated water and sewer utilities in North Carolina, only 10 water companies and seven sewer companies have rates higher than the present rates of CWS. Only five water companies and six sewer companies have rates higher than the rates proposed by CWS. Witness Larsen testified that the many CWS systems spread across the State represent a composite of the conditions and types and sizes of systems throughout North Carolina.

Public Staff Dopuch Cross-Examination Exhibit 2 shows that the water bill for 5,200 gallons of usage for CWS customers is presently $23.72 per month, and would go to $28.20 under proposed rates. This is 40.4% higher than the average bill for the other Utilities, Inc., subsidiaries under present rates, and 67% higher under proposed rates. For sewer, the comparison shows the present rate for CWS to be 8.6% higher than the average for other Utilities, Inc. subsidiaries, whereas the CWS proposed rate would be 34.8% higher. This exhibit puts Dopuch Exhibits 3 and 4 in perspective and shows that for 5,200 gallons of usage per month, CWS's present rates do not compare favorably with other Utilities, Inc., subsidiaries.

Similarly, Public Staff Dopuch Cross-Examination Exhibit 3 gives perspective to the information on Dopuch Exhibits 5 and 6. This is based on the average monthly bill per customer for each state, as opposed to an average company bill at a constant usage level. CWS's present water bills are 31.9% higher than the weighted average for Utilities, Inc., operations in other states, and proposed water bills would be 56.8% higher. CWS's sewer bills are 20.3% higher than the weighted average bill for Utilities, Inc., operations in other states presently, and would be 49.3% higher under proposed rates.

The Commission has not made any specific ratemaking adjustments in this case based upon rate comparisons. A rate of return penalty would have been imposed on CWS even in the absence of rate comparison evidence. However, comparison of the rates of CWS in North Carolina with those of affiliated companies in other states and other regulated water and sewer utilities in this State provides additional corroboration of the reasonableness of the rate of return penalty for inadequate service imposed in this case. Customers who pay high water and sewer rates have a right to expect service and a product of the highest quality. Furthermore, rate comparisons tend to contradict the Company's claims of economies of scale and efficiency relative to other North Carolina utilities.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-60

The evidence for findings of fact nos. 7-60 is found in the testimony of Public Staff witnesses Larsen and Haywood, which includes her own testimony and that of Jane Rankin which she adopted, and Carter as well as Company witnesses Cuddie, Wenz, O'Brien, Stewart, Seidman, and Daniel. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding:

WATER OPERATIONS:

Item	Company	Public Staff	Difference
Plant in service	$26,131,823	$25,492,027	$(639,796)
Accumulated depreciation	(1,959,356)	(1,988,456)	(29,100)
Contributions in-aid-of construction	(9,730,348)	(9,730,348)	0
Advances in-aid-of construction	(122,495)	(122,495)	0
Plant acquisition adj.	(1,787,538)	(1,787,538)	0
Acc. deferred taxes	(720,700)	(796,643)	(75,943)
Customer deposits	(78,217)	(78,217)	0
Excess book value	(1,670,755)	(1,670,755)	0
NCUC bonds	41,316	41,316	0
Gain on Sale and flow back of taxes	0	(216,693)	(216,693)
Working capital allow.	346,401	318,205	(28,196)
Deferred charges	533,842	408,836	(125,006)
Total original cost rate base	$10,983,973	$9,869,239	$(1,114,734)

SEWER OPERATIONS:

Item	Company	Public Staff	Difference
Plant in service	$19,701,797	$18,803,640	$(898,157)
Accumulated depreciation	(1,343,169)	(1,356,258)	(13,089)
Contributions in-aid-of construction	(9,492,716)	(9,492,716)	0
Advances in-aid-of construction	(98,887)	(98,887)	0
Plant acquisition adj.	(1,198,345)	(1,198,345)	0
Acc. deferred taxes	294,493	201,973	(92,520)
Customer deposits	(35,372)	(35,372)	0
Excess book value	(2,610,511)	(2,610,511)	0
NCUC bonds	18,684	18,684	0
Sewer systems without a franchise	0	(212,000)	(212,000)
Gain on Sale and flow back of taxes	0	(72,935)	(72,935)
Working capital allow.	177,836	168,511	(9,325)
Deferred charges	131,665	114,160	(17,505)
Total original cost rate base	$5,545,475	$4,229,944	$(1,315,531)

As shown in the preceding tables, the Public Staff and the Company agree on several components of rate base for both water and sewer operations. The Company and the Public Staff agree on the amounts for contributions in-aid-of construction, advances in-aid-of construction, plant acquisition adjustments, customer deposits, excess book value, and NCUC bonds. Therefore, the Commission concludes that the appropriate level of contributions in-aid-of construction is $19,223,064, with $9,730,348 applicable to water operations and $9,492,716 applicable to sewer operations; the appropriate level of advances in-aid-of construction is $221,382, with $122,495 applicable to water operations and $98,887 applicable to sewer operations; the appropriate level of plant acquisition adjustments is $2,985,883, with $1,787,538 applicable to water operations and $1,198,345 applicable to sewer operations; the appropriate level of customer deposits is $113,589, with $78,217 applicable to water operations and $35,372 applicable to sewer operations; the appropriate level of excess book value is $4,281,266, with $1,670,755 applicable to water operations and $2,610,511 applicable to sewer operations; and the appropriate level of NCUC bonds is $60,000, with $41,316 applicable to water operations and $18,684 applicable to sewer operations.

PLANT IN SERVICE

The first component of rate base on which the parties disagree is plant in service. The Public Staff recommends an amount of $25,492,027 for water operations which is $639,796 less than the Company's proposed amount of $26,131,823, and an amount of $18,803,640 for sewer operations which is $898,157 less than the Company's proposed amount of $19,701,797.

This difference in the level of plant in service recommended by the Company and the Public Staff is composed of the following items:

Item	Amount	
	Water	Sewer
1. Excess Capacity	($580,944)	($822,990)
2. Transportation vehicles	(65,302)	(29,564)
3. CWIP	6,450	19,494
4. Mt. Carmel WWTP	0	(65,097)
TOTAL	($639,796)	($898,157)

Many of the differences between the parties regarding the level of plant in service result from disagreements over issues of capacity not fully used at the end of the test year, the design criteria relied upon in installing such capacity and the issue of tap fees. The Commission will address these three issues generally before addressing each of the specific items of plant in service upon which they bear. Another difference between the parties exists regarding the investment in certain plant facilities which will be addressed in the discussion of each specific item of plant.

EXCESS CAPACITY

State Design Criteria

The proper standard to use for calculating used and useful wastewater treatment capacity at the Brandywine Bay, Cabarrus Woods - Stonehedge - Cambridge - Steeplechase system, and the Danby - Lamplighter South - Woodside Falls system, was not controverted. Both Public Staff witness Larsen and Company witness Dopuch used 400 gpd per residential equivalent connection as the amount of capacity needed for each customer on these systems. Witness Larsen explained that the design criteria for newer systems is 120 gpd per bedroom with a minimum of 240 gpd per residential dwelling unit, and that DEM presumes on average a three bedroom house for each connection, resulting in a current design requirement of 360 gpd per connection. He further stated that this is an accepted engineering standard, and that it is almost twice the actual average flow of 200 gpd per connection.

The Commission concludes that the standard for evaluating the used and useful portion of the wastewater treatment plants serving the Brandywine Bay, Cabarrus Woods, and Danby Subdivisions should be 400 gpd per connection. This is an established state design standard that has been used in the past CWS cases and that is accepted by the parties in this case.

In addition, the Public Staff maintained that the pumping capacity of the wells should be set at 400 gpd per residential connection, which equates to 0.556 gpm (gallons per minute) per connection, in a 12 hour pumping day. While the Company did not disagree that 0.556 gpm was the state design criterion for well supply, it did state that this was a minimum and should not be used to limit its investment in wells.

The appropriate design standard to use in calculating the used and useful capacity of elevated storage tanks in water utility systems is also an issue.

Company witnesses Daniel, Dopuch, and Stewart testified that 400 gallons per connection was the proper amount, while Public Staff witness Larsen testified in support of 200 gallons per connection.

This is the third case in which the Commission has been called upon to address this issue. In Docket No. W-354, Sub 69, both the Company and the Public Staff agreed that the design criterion to be used for determining unused capacity for elevated storage tanks was 400 gallons per connection. In Docket No. W-354, Sub 81, the Public Staff argued that the design capacity for an elevated storage tank is 200 gallons per connection. In response to this Public Staff recommendation, CWS presented substantial rebuttal testimony in support of the Commission's decision reached in Docket No. W-354, Sub 69, that 400 gallons per connection should still be the design criterion. After a careful analysis of the substantial evidence in the Sub 81 case, the Commission reaffirmed its initial decision that the criterion should be 400 gallons per connection.

In support of its position in this case, the Public Staff provided some letters from DEH, which the Public Staff interprets to indicate that the minimum standard is 200 gallons per connection. The Public Staff cites several incidences in which CWS does not supply 400 gallons per connection to its systems that have elevated storage facilities.

In its Motion in Limine, filed on June 1, 1992, CWS sought to eliminate the issue of design criterion for elevated storage tanks on the basis that the issue had been fully and finally adjudicated. The Commission, in its Order ruling on that matter, filed on June 5, 1992, denied the Company's motion but requested that the Public Staff call a representative of DEH to address the issue at the hearing. In that regard the Public Staff called J. C. Lin, Head of Plan Research Branch, Division of Environmental Health.

Mr. Lin testified that the minimum design criterion, according to current division policy, is 200 gallons per connection. At first, Mr. Lin testified that the 200 gallon standard is based on division rules and regulations. On cross-examination Mr. Lin was requested to cite the rule or regulation upon which he relied. He cited T15A 18C.0805(c). That section states:

> The elevated storage for a large municipality should be sufficient to minimize the effect of fluctuating demand plus provide a reasonable reserve for fire protection. The combined elevated and ground storage of finished water should be at least one day's supply.

Mr. Lin testified that in spite of the language that there "should be at least one day's supply," division policy for the minimum design criterion was one-half day's supply or 200 gallons per day. Mr. Lin testified that if the regulation had been written in terms of "shall be at least one day's supply," the division would not be able to permit a policy of one-half day's supply for the minimum standard.

Mr. Lin testified that in the early 1970's the regulation had been written differently. In 1972, the "brown book" stated that "where ground level storage tanks are used, the tank volume shall equal at least one-half (1/2) day's supply based on 400 gallons per connection. One day's supply is recommended." The language of the prior regulation makes clear that one day's supply for elevated storage is 400 gallons.

Mr. Lin conceded that the only place in the current regulations where one day's supply is defined is in the well water supply regulations where a one day's supply is again defined as 400 gallons per day. Mr. Lin testified that the current policy of 200 gallons per connection minimum was adopted because the earlier requirement of 400 gallons per connection was challenged. Mr. Lin stressed that the 200 gallons was only the minimum under the division's current policy based on its interpretation of the regulations. He testified that the 200 gallons is based on average usage conditions and does not provide protection for high summertime use or emergencies.

Mr. Lin testified that the minimum design criterion was only a threshold and that if storage fell below the threshold, DEH would take steps to require the service provider to add additional storage. Mr. Lin testified that it is not his responsibility to address service problems but only to review design plans. However, he was aware of storage problems in Seven Lakes where storage problems exist presumably even though the minimum design criteria are met.

Mr. Dopuch and Mr. Stewart testified on behalf of the Company in rebuttal to Mr. Larsen's recommendation that 200 gallons per connection be used as the appropriate criterion. These witnesses testified that the minimum design standard should not be used for purposes of determining useful capacity in setting rates. Mr. Dopuch testified that the Public Staff is attempting to hold the Company to a standard that was not recognized by the Public Staff or the Commission at the time the facilities in question were installed. As was agreed to by the Public Staff and CWS and affirmed by the Commission in Docket No. W-354, Sub 69, and as was reaffirmed by the Commission in Docket No. W-354, Sub 81, the appropriate minimum design standard at the time the Brandywine Bay and Cabarrus Woods facilities were installed was understood to be 400 gallons per connection. Mr. Dopuch stated that this fact essentially renders moot Mr. Larsen's discussion of what the appropriate minimum design standard is for elevated storage tanks for purposes of this case.

Mr. Dopuch testified that it is inherently wrong to use minimum state design standards as a basis for determining useful capacity. He testified that minimum state design standards are just that -- minimum standards -- and are not necessarily indicative of the amount of storage capacity needed for all situations. The application of minimum state design standards in the fashion chosen by the Public Staff to determine useful capacity ignores differences that exist between water systems, economies of scale in construction of utility facilities, customer growth rates, community characteristics and consumption patterns. CWS outside rebuttal witness Dale Stewart concurred in the opinions expressed by Mr. Dopuch.

The Commission has carefully analyzed the issue of the appropriate design criterion for elevated storage tanks again in this case. The Commission reaffirms its opinion, expressed in the two previous cases, that the appropriate standard by which to measure the capacity of elevated storage tanks to include in rate base is 400 gallons per connection. As the Commission indicated in the Sub 81 Order, there appears to be confusion as to the appropriate design criterion. The Commission is unable to say that the confusion has been eliminated based upon the testimony presented in this case. While the Commission understands that DEH has a policy permitting utilities to use a minimum standard of 200 gallons per connection, the Commission is unconvinced that this is a standard with which DEH feels comfortable. The Commission is also convinced that

policy is inconsistent with DEH's rules and regulations. The standard says that there "should be" one day's supply. Based on our reading of the testimony in this case, there is no dispute that one day's supply is equal to 400 gallons per connection. Mr. Lin seems to testify that because the regulations can be read to not absolutely require 400 gallons per connection, it is permissible for DEH to permit operators of water systems to use a minimum of 200 gallons per connection. However, it is clear to this Commission that DEH's regulations and policies strongly suggest that elevated tanks should be designed to have at least 400 gallons per connection.

In summary, the Commission concludes that the DEH design standard for elevated storage is 400 gallons per connection and that the DEH design standard for well yields is 400 gpd and that those design criteria are appropriate for use in this proceeding.

Excess Capacity Methodology

Public Staff witness Larsen recommends that the Commission apply the principle of excluding from rate base plant capacity not needed to serve customers beyond the test year. Mr. Larsen contends that such plant is not being matched with appropriate revenues, expenses and contributions in aid of construction related to the customer growth the "unused" capacity can serve.

Witness Larsen argues that the Commission could include in rate base the cost of plant capacity used to serve customer growth that occurs from the end of the test year to the close of the hearing, but it would be inappropriate to do so without a corresponding update to revenues, expenses and CIAC associated with such customer growth. He testified that there should be no allowance for capacity for future growth beyond the close of the hearing because it is virtually impossible to achieve an accurate matching of revenues, expenses and CIAC for a date beyond the close of the hearing.

CWS advocates the inclusion in rate base of a reasonable capacity margin that anticipates future growth. In rebuttal testimony, Company witnesses Seidman and Dopuch testified that it is virtually impossible for a utility's investment in service capacity to be equal to the current customer demands as recommended by the Public Staff. Mr. Seidman stated that unused capacity results in part from the fact that utilities must have adequate capacity to meet peak demands. He also noted that unused capacity results from the general policy requirement that a public utility have the necessary capacity to meet reasonably anticipated increases in demand.

Mr. Seidman stated that the Public Staff failed to distinguish between a reasonable capacity margin and excess capacity margin. Mr. Seidman stressed that well-managed utilities all maintain reasonable capacity margins and that the key issue faced by regulators is determining when capacity margin becomes excess capacity. Mr. Seidman stated that if plant investment is prudent and does not result in unreasonable capacity margin, it should be included in rate base.

Mr. Seidman also testified that the Public Staff is misconstruing the definition of "used and useful." He testified that including a reserve does not violate the revenue, investment matching concept. The obligation to serve and

the ability to be ready to provide service is a current, not a future, obligation. Therefore, the investment necessary to meet the obligation is a current investment and should be recovered from or "matched" with current revenues.

Company witness Dopuch 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. Mr. Dopuch advocated inclusion of prudent capacity margins and recommended a minimum of five years as a growth projection time frame in evaluating the reasonableness of capacity margins. Mr. Dopuch stressed that the issue of the appropriate capacity margin had been litigated in the Company's prior two general rate cases for the majority of the plant items for which the Public Staff sought adjustments in this case. Mr. Dopuch warned that failure to project into the future for allowance for growth would be extremely shortsighted and would lead to higher rates for customers.

Further, the Public Staff argues that North Carolina is a historical test year jurisdiction, not a future test period or combined historical and future test year jurisdiction. This means, argues the Public Staff, that rate base in this proceeding should consist of plant which serves existing customers and not plant built with capacity to serve future customers too. The Company argued that in North Carolina the test year may be adjusted for known and measurable changes occurring up to the close of the hearing and that investment in plant in service that is actually placed on line by the close of the test year or, at the latest, by the close of the hearing is recognizable under the historical test year concept. CWS further argues that the statute does not require that only the investment on line at the end of the hearing required to serve existing customers may be recognized in setting rates. According to the Company, the Public Staff's interpretation would exclude capacity margin as a matter of law. Thus, the Public Staff's interpretation of the statute is one that is at odds with the Company's interpretation of the statute.

In this case, the plant investment at issue clearly has been completed, not only prior to the close of the hearing, but years prior to the close of the test year. Consequently, the Company asserts that there is no question that G.S. 62-133 permits inclusion of such investment in rate base.

The Public Staff places substantial reliance upon the holding of the North Carolina Supreme Court in the Carolina Water Service decision, 328 N.C. 299, 401 S.E.2d 353 (1991). In Carolina Water Service, the Supreme Court reviewed this Commission's decision in Docket No. W-354, Sub 69. In the Sub 69 docket, we applied the percentage utilization concept to remove from rate base investment in sewage treatment plant and elevated storage tank capacity allegedly not needed to serve end-of-test-period customers. In its appeal of our decision, CWS argued that our decision constituted error as a matter of law because G.S. 62-133 authorizes inclusion in rate base of plant additions made to meet reasonably anticipated post test period growth. In response to the Company's arguments that the Commission had disallowed this allowance for growth, the Supreme Court stated:

> That is not how we read the order of the Commission. As we read the order, the Commission allowed for capacity larger than presently needed which could reasonably be foreseen to be needed in the near future.

328 N.C. at 307, 401 S.E.2d at 357.

The Public Staff relies upon the Carolina Water decision to support its argument that there should be no capacity larger than that which is presently needed to serve end-of-test-period customers. The North Carolina Supreme Court interpreted our decision in the Sub 69 case as allowing for capacity larger than needed to serve end-of-test-period customers. It is difficult for us to understand how Carolina Water Service provides precedent for the Public Staff's position.

Furthermore, we agree with the Company that Carolina Water Service is not an endorsement by the Supreme Court of a position either for or against the percentage utilization concept. As we read the holding of the Court, it was that:

> It is a question of fact to be decided by the Commission as to what part of the utility's property is "used and useful, or to be used and useful within a reasonable time after the test period." If a finding of fact on this issue is supported by competent, material and substantial evidence in view of the whole record, we cannot disturb this finding.

328 N.C. at 303, 401 S.E.2d at 355 (citations omitted).

As we read the holding in Carolina Water Service, if the Public Staff had appealed the Commission's decision in Docket No. W-354, Sub 81, modifying the percentage utilization concept, the Court would have affirmed that decision as well. Our decision on the factual issues in Sub 81 was supported by competent, material, and substantial evidence in view of the whole record. We note that the Public Staff declined to appeal the Sub 81 Order. We conclude that the holding in Carolina Water Service is not dispositive in this case and that the Court has left to the Commission ample discretion whether to reject, accept, or modify percentage utilization.

The Public Staff in its testimony implies that little reliance should be placed on the Commission's decision in Docket No. W-354, Sub 81, because that decision was rendered prior to the Supreme Court decision in Carolina Water Service. However, as stated above, we find nothing in Carolina Water Service that is inconsistent with or that casts doubt upon our decision in Docket No. W-354, Sub 81. Indeed, the Full Commission has already been called upon to address the percentage utilization concept as sponsored by the Public Staff subsequent to the Supreme Court's opinion in Carolina Water Service. The Commission addressed the concept in the Final Order of May 31, 1991, in a general rate case for the Carolina Trace Corporation in Docket No. W-436, Sub 4. We stated in that case:

> This and other issues here under review were addressed most recently by the North Carolina Supreme Court in State ex rel. Utilities Commission v. Carolina Water Service Inc. of North Carolina, 328

N.C. 299 (1991). With respect to the propriety of the Commission having included in current rates costs associated with the plant capacity needed to serve future customer demand, the Supreme Court in this decision at page 308 stated as follows:

> "CWS, relying upon Utilities Comm. v. Telephone Co., 281 N.C. 318, 189 S.E.2d 705, argues that the Commission is laboring under the false impression that the current ratepayers cannot be required to pay through rates for plant that can be used for future growth. That is not how we read the order of the Commission. As we read the order, the Commission allowed for capacity larger than presently needed which could reasonably be foreseen to be needed in the near future."

Based on the foregoing and the entire evidence of record, the Commission finds and concludes that it is reasonable and proper in determining the Company's [Carolina Trace Corporation] cost of service for purposes of this proceeding to include an allowance . . . for plant capacity above that marginally needed to serve existing customer demand. This plant capacity can reasonably be foreseen to be needed in the near future and is representative of the level of such capacity that the Company can reasonably be expected to maintain on an ongoing basis. Thus, the inclusion of this capacity is entirely consistent with the ratemaking process, including the requirement that there be a proper matching of revenues and costs.

While the Public Staff has appealed our Order in the Carolina Trace docket, we see no need to retreat from this Full Commission position unless and until the North Carolina Supreme Court rules differently.

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 obtained 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 should be allowed.

A good example of the dangers that would arise if the Commission adopted the Public Staff recommendation is the one we cited in our Order in Docket No. W-354, Sub 81. Under the strict 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. If a utility added a 250,000 gallon tank to meet future anticipated growth and there were only 285 customers on line at the end of test year, rather than the 1,250 customers that could be served by the tank at full capacity, only 22.8% of the investor-supplied cost would be included in rate base.

Under the percentage utilization theory, had the utility installed a much smaller 60,000 gallon tank, 95% of the cost would have been included in rate base. If rates are set by reliance upon the percentage utilization principle in order to recoup their investment economically, utilities might be encouraged to make imprudent engineering decisions that, in the long run, will cost the

customers more. In this illustration, 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.

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 concludes that it is entirely inappropriate to arbitrarily assume that all plant capacity over and above that needed to provide service to existing customers is excessive and therefore is not used and useful in providing service at the end of the test year.

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 adjustments to certain items of rate base, based upon the evidence of record, the Commission concludes that it is appropriate, for 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 designing and constructing water and sewer facilities to meet anticipated customer growth. In making 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 the engineering, construction, and maintenance efficiencies which are inherent in meeting reasonably anticipated growth. It is also consistent with our decision in the Sub 81 docket.

Such determination is based further upon the Commission having concluded that, in order to achieve economic efficiency, certain plant facilities cannot be constructed on a piecemeal basis; that it is entirely appropriate and consistent with the public interest for the Company to maintain a reasonable level of reserve capacity; and that the inclusion of an allowance for such required plant capacity in determining the Company's cost of service or overall revenue requirement achieves the most propitious matching of revenues and costs from the standpoint of periodic income determination and public utility rate regulation.

In modifying the percentage utilization concept recommended by the Public Staff, we note that by accepting the Public Staff's position we would be removing from rate base substantial percentages of plant items that were included in rate base in the Sub 81 case, two years ago. There has been growth in the service areas between the two cases. To accept the Public Staff position would be to reduce the percentage of plant investment from rate base even though a greater portion of the plant now serves existing customers than was the case two years ago. We conclude that such regulatory retrenchment would send the wrong signal to investors; namely, that investment in plant is more risky due to changing regulatory treatment. More risk equates to higher cost of capital. Such inconsistent, retroactive regulatory treatment is counterproductive and should not be followed.

Based upon a thorough analysis of the evidence presented on the issue of the appropriate capacity margin to include in rate base, the Commission has determined, as we did in CWS's last case, that the Public Staff sponsored percentage utilization method should be modified. 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 percentage utilization, the utility is subjected to economic losses by foregoing the return on and the 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, would put in place a disincentive for utilities to take advantage of economies of scale, and thus would raise costs for ratepayers.

Whatever the wisdom of reliance upon matching to apply the percentage utilization principle in the Sub 69 docket, the facts have changed subsequent to that case. In Docket No. W-354, Sub 81, the Commission was not confronted with major post test period plant expansions, and the record on the plant capacity issues was much more complete. The Commission had an opportunity to revisit the advisability of application of the percentage utilization principle by reliance on a matching argument and determined that percentage utilization without modification was unwise. After carefully examining the arguments pro and con on percentage utilization in the two prior cases and after examining the evidence in this case, we conclude that percentage utilization should be modified consistent with our decision in the Sub 81 docket.

Tap Fees

Another area of dispute between the parties concerns whether tap fees and plant impact (or modification) fees should be deducted before or after calculating any disallowance based upon percentage utilization. This issue or methodology was not questioned in the prior two cases. In the present case, the Public Staff recommended that tap fees and plant impact fees should be treated differently from developer contributions. The Company disagreed.

Witness Larsen explained the reason for deducting tap and plant fees after making the percentage utilization adjustment:

> we deduct customer tap fees [after the excess plant adjustment] since the existing customers who have paid these fees should have their

contributions decreasing the plant investment that is used and useful for them, not the entire plant that includes capacity for future customers.

To remove customer tap fees prior to the overbuilt adjustment as the Company has done would be unfair to the customers since these contributions would then cover plant that is not used and useful to the existing customers.

He further testified that prepaid tap fees from the developer should be treated the same as customer tap fees, and not like developer contributions.

The Commission agrees with the Public Staff's position on this issue with respect to customer tap and impact fees. When a customer pays a tap fee/plant impact fee, he is paying to offset the cost of plant he uses. It would contradict the very purpose of tap fees and plant impact fees if they were deemed to be paid by a customer on behalf of some potential future customer rather than on his own behalf. Therefore, such fees should be deducted from the used and useful portion of the utility plant cost, not from the utility plant cost prior to excess capacity adjustments.

The issue of prepaid tap fees from the developer was also an issue of disagreement between the parties. The Public Staff treats these fees in the same manner as customer tap fees. With respect to the Cabarrus Woods elevated storage tank and sewer treatment plant, the Public Staff has deducted these prepaid tap fees after making its percentage utilization adjustment.

The Public Staff cites that the amounts "contributed by developer" in Mr. Dopuch's rebuttal testimony relating to the Cabarrus Woods facilities were actually prepaid tap fees from the developer (see Public Staff Dopuch Cross-Examination Exhibit 10). However, it appears to the Commission from such exhibit that these amounts were contributed by developers and paid directly to construction contractors. Therefore, the Commission will treat these items as developer contributions and will be deducted prior to any disallowance.

Brandywine Bay Elevated Water Storage Tank

This issue involves the amount of investment that should be allowed in rate base for the elevated water storage tank in the Brandywine Bay Subdivision. Public Staff witness Larsen recommended that $165,500 of the Company's $250,000 investment in this facility be excluded from rate base, whereas the Company includes its entire investment.

The Public Staff explained that the tank cost $450,000 and that a developer contributed $200,000 specifically for the construction of this tank. To determine the used and useful percentage of the elevated tank's capacity, the Public Staff compared the number of customers on line at the end of the test year (422) to the maximum number of connections the tank can serve (1,250) based on a 200 gpd per connection standard. Therefore, only $84,500 should be included in rate base.

The Commission concludes that $197,220 of the Company's investment in the Brandywine Bay elevated storage tank should be allowed prior to any adjustments for tap fees paid directly by customers.

In concluding that $197,220 should be allowed in rate base for this elevated storage tank, the evidence in this proceeding indicates that the tank was serving 422 customers at the end of the test year. Using the 400 gallons per connection standard that the Commission has found to be appropriate in this proceeding, this facility is capable of serving 625 customers. 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 $81,200. 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 $52,780. Accordingly, the amount that should be included in rate base for the Brandywine Bay elevated storage tank is $197,220 ($250,000-$52,780)

Brandywine Bay Sewer Treatment Plant

This issue involves the amount of investment that should be allowed in rate base for the Brandywine Bay wastewater treatment plant. Public Staff witness Larsen recommended that $227,686 of the Company's $447,321 investment in this facility be excluded from rate base, whereas the Company included its investment of $408,738 less tap fees of $84,112.

The Public Staff determined that the total treatment plant cost is $447,321. This is comprised of $408,738 to expand the initial plant, $24,275 capitalized rehabilitation costs, and an initial investment of $14,308. The Public Staff disallowed $227,686 of this investment by using the percentage utilization method and the 400 gpd standard, both of which were discussed earlier. In determining the percentage utilization, the Public Staff compared the number of customers on line at the end of the test year (184) to the number of maximum connections the plant can serve (375).

CWS differed from the Public Staff in its calculation in the following respects. The Company did not include the cost of the original unit or capitalized rehabilitation costs. The Company maintained that the total cost of the effluent line to the golf course ($75,000) as well as the total cost of the holding ponds ($87,387) should be allowed in rate base. In addition, the Company stated that $84,112 in tap fees collected (from customers) should be deducted from plant prior to the calculation of any excess adjustment.

The Commission concludes that the Public Staff is in error in arguing that any percentage utilization ratio should be applied to a cost base that includes the old wastewater treatment plant. In Docket No. W-354, Sub 69, the Commission was confronted with the issue of whether the cost of the old plant should be included in rate base. We determined in that case that the Public Staff recommendation to exclude the cost of the old plant should be rejected. We determined that CWS was in the process of refurbishing the old plant for future use and that it was inappropriate to exclude any portion of it from rate base.

The Company acquired the Brandywine Bay water and sewer systems at a price substantially below the cost of the facilities at the time of acquisition. CWS argues that one reason for its ability to acquire the facilities for such a low price was that parts of the system were not functional. Indeed, the old 50,000 gallon per day wastewater treatment plant was incapable of meeting its NPDES

limits and was incapable of providing adequate service to customers. By adding the cost of this old plant to the cost of the new expansion in its percentage utilization calculation, the Public Staff has placed a value on the old 50,000 gallons of capacity equal to the value of the new 100,000 gallons of capacity. However, without the recent, very expensive expansion, the original 50,000 gallons of capacity would be of no use. It was therefore valueless without the expansion. The Commission therefore determines that the recommendation of the Public Staff that percentage utilization be applied to the total cost of the old and new plant must be rejected.

The Commission concludes that $273,427 of the Company's investment in the Brandywine Bay sewer treatment plant should be allowed prior to any adjustments for tap fees paid directly by customers.

In concluding that $273,427 should be allowed in rate base for this plant, the evidence in this proceeding indicates that the plant was serving 184 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 375 customers. 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 plant under its percentage utilization method would be $208,170. 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 $135,311. Accordingly, the amount that should be included in rate base for the Brandywine Bay sewer treatment plant is $273,427 ($408,738 - $135,311).

Cabarrus Woods Elevated Water Storage Tank

This issue involves the amount of investment to include in rate base for the elevated water storage tank in the Cabarrus Woods Subdivision. Public Staff witness Larsen recommended that $250,974 of the Company's $367,459 investment in this facility be excluded from rate base, whereas the Company proposes to include the cost of the tank of $367,459, less developer contributions of $150,500 and $52,179 in tap fees.

The Public Staff disallowed $250,974 of this investment by using the percentage utilization method and the 200 gpd standard. In determining the percentage utilization, the Public Staff compared the number of customers on line at the end of the test year (396) to the maximum number of connections the tank can serve (1,250) based on 200 gpd.

The Commission concludes that $165,288 of the Company's investment in the Cabarrus Woods elevated storage tank should be allowed prior to any adjustments for tap fees paid directly by customers.

In concluding that $165,288 should be allowed in rate base for this elevated storage tank, the evidence in this proceeding indicates that the tank was serving 396 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 customers. 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 $79,494. In reaching its conclusion, the Commission notes its percentage utilization method would apply after the deduction of developer contributions including prepaid taps paid directly to the construction contractor. 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 $51,671. Accordingly, the amount that should be included in rate base for the Cabarrus Woods elevated storage tank is $165,288 ($216,959-$51,671).

Cabarrus Woods Sewer Treatment Plant

This issue involves the amount of investment that should be allowed in rate base for the Cabarrus Woods wastewater treatment plant. Public Staff witness Larsen recommended that $298,315 of the Company's $696,998 investment in this facility be excluded from rate base, whereas the Company proposes to include the total cost of the plant of $626,597, less $283,600 contributed by the developer and less $114,794 contributed as tap fees.

The Public Staff determined that the total treatment plant cost is $696,998. This is comprised of $660,418 invested to expand the initial plant as well as $36,580 in capitalized rehabilitation costs.

The Commission has carefully considered the evidence relating to this item and concludes that the cost of this plant for purposes of subsequent calculations is $626,597, as was the case in Sub 81 and proposed by the Company herein. Furthermore, from this amount the Commission has deducted developer contributions in the form of prepaid tap fees paid by the developer to the construction contractor prior to making any disallowance.

The Commission concludes that $247,486 of the Company's investment in the Cabarrus Woods sewer treatment plant should be allowed prior to any adjustments for tap fees paid directly by customers.

In concluding that $247,486 should be allowed in rate base for this plant, the evidence in this proceeding indicates that the plant was serving 643 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 1125 customers. 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 plant under its percentage utilization method would be $146,940. 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 95,511. Accordingly, the amount that should be included in rate base for the Cabarrus Woods sewer treatment plant is $247,486 ($342,997-$95,511).

Cambridge Lift Station

The Public Staff includes $32,568 for the Company's Cambridge lift station in rate base. CWS includes $138,000 of the cost of the lift station in rate base. Public Staff witness Larsen recommended disallowing a portion of the

investment in the sewer pumping station. He testified that the station has capacity to serve 900 lots planned for Cambridge, plus the 145 customers in Steeplechase for a total of 1,045 customers. Mr. Larsen testified that the station was serving 247 customers at the end of the test year, or 23.6% of its capacity. He testified that the total cost of the station was $388,000 of which $250,000 was CIAC, leaving $138,000 as the Company's investment. He recommended disallowing $105,432 as excess capacity.

CWS witness Dopuch testified in rebuttal. Mr. Dopuch testified that the Commission in Docket No. W-354, Sub 81, ruled that the total $138,000 Company investment related to the lift station should be included in rate base. This decision was based on the fact that by installing the force main, the Company would avoid the cost of improving the Steeplechase plant while at the same time effectively eliminating customer complaints relating to odors. Mr. Dopuch testified that the Commission's ruling was based on Company testimony indicating that the installation of the lift station allowed the Steeplechase treatment plant to be taken out of service. Also, if the lift station had not been installed, the Company would have been forced to make an investment in a separate force main from Steeplechase to the Cabarrus treatment plant site for the existing customers. Mr. Dopuch testified that the lift station investment of $138,000 should continue to be included in rate base.

After having carefully examined the testimony on the Cambridge lift station issue, the Commission determines, as it did in Docket No. W-354, Sub 81, that the entire portion of investor supplied capital of $138,000 should be included in rate base. We note that a lift station is partially constructed underground and is part of the sewage collection system. It is unusual to construct portions of a sewage collection system with capacity less than that anticipated at full buildout. The Commission deems it especially unwise to apply a percentage utilization formula to portions of the sewage collection system. The Company really had little choice in sizing the lift station the way it did. The Public Staff has made no showing that the Company's decision to build the lift station at the size it did was imprudent or unwise. The Commission determines that $138,000 should be included in plant in service for the Cambridge lift station.

Danby Sewer Treatment Plant

This issue involves the amount of investment that should be allowed in rate base for the Danby wastewater treatment plant. Public Staff witness Larsen recommended that $143,976 of the Company's $244,441 net investment in this facility be excluded from rate base, whereas the Company proposed to include its net investment of $209,000 ($459,000 less $250,000 in developer contributions).

The Public Staff determined that the total treatment plant cost is $494,441. This is comprised of $459,000 to expand the initial plant from 130,000 gpd to 630,000 gpd as well as $35,441 in capitalized rehabilitation costs.

The Commission concludes, as it did in Sub 81, that the cost basis for this plant for the purposes of subsequent calculations is $209,000.

The Commission concludes that $129,039 of the Company's investment in the Danby sewer treatment plant should be allowed prior to any adjustments for tap fees paid directly by customers.

In concluding that $129,039 should be allowed in rate base for this plant, the evidence in this proceeding indicates that the plant was serving 648 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 1575 customers. 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 plant under its percentage utilization method would be $123,017. 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 $79,961. Accordingly, the amount that should be included in rate base for the Danby sewer treatment plant is $129,039 ($209,000-$79,961).

Queens Harbor

The issue involves the amount of rate base to include for the water and sewer systems at Queen's Harbor subdivision. CWS paid $70,000 for a complete water and sewer system designed to serve approximately 206 customers in June 1987 when it had five customers. (80 NCUC Reports at p. 391 -- the Commission Order in Docket No. W-354, Sub 81.) At the end of the test year, CWS had 40 customers in Queens Harbor.

The Public Staff has made an adjustment to exclude $56,420 of the $70,000 investment as not used or useful to the existing customers. The Public Staff divided the end of period customers (40) by the capacity of the system (206) and concluded that only $13,580 should be allowed in rate base.

The Company argued that its $70,000 purchase price for this system is significantly less than the net original cost of $419,372, and its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for Queens Harbor System under its percentage utilization method would be $56,420. 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 $36,674. Accordingly, the amount that should be included in rate base for Queens Harbor is $33,326 ($70,000 - $36,674).

Riverpointe

The issue involves the amount of rate base to include for the water and sewer systems at Riverpointe subdivision. The Company paid $35,000 for these systems. The water utility system is comprised of several wells, treatment equipment, and water mains capable of serving 200 customers. In addition, the sewer utility system consists of a 100,000 gpd treatment plant, along with sewer collection mains capable of serving 200 customers. (See 80 NCUC Reports at p. 391 -- the Order in Docket No. W-354, Sub 81.) There were 51 customers at the end of the test year.

The Public Staff made an adjustment to exclude $26,076 of the investment as not used and useful to the existing customers. The Public Staff divided the end of period customers (51) by the capacity of the system (200) and concluded that only $8,924 should be allowed in rate base.

The Company argued that it only paid $35,000 for this system which is significantly less than the net original cost of $795,417, and therefore its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for the Riverpointe system under its percentage utilization method would be $26,076. 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 $16,950. Accordingly, the amount that should be included in rate base for Riverpointe is $18,050 ($35,000 - $16,950).

Sherwood Forest

The issue involves the amount of rate base to include for the water system at Sherwood Forest subdivision. The Company paid $26,500 for a water utility system that is capable of serving 950 customers. (See 80 NCUC Reports at p. 391 -- the Order in Docket No. W-354, Sub 81.) There were 190 customers at the end of the test year. (Supplemental Larsen Exhibit 1.)

The Public Staff made an adjustment to exclude $21,200 of the investment as not used or useful to the existing customers. The Public Staff divided the end of period customers (190) by the capacity of the system (950) and concluded that only $5,300 should be allowed in rate base.

The Company argued that it only paid $26,500 for this system which is significantly less than the net original cost of $85,000, and therefore its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for the Sherwood Forest system under its percentage utilization method would be $21,200. 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 $13,780. Accordingly, the amount that should be included in rate base for Sherwood Forest is $12,720 ($26,500 - $13,780).

TET

This issue involves the amount of rate base to include for the TET sewer system. The Company paid $9,327 for a sewer utility system that is capable of serving 28 customers. (See 80 NCUC Reports at p. 391 -- the Order in Docket No. W-354, Sub 81.) There were 9 customers at the end of the test year.

The Public Staff made an adjustment to exclude $6,333 of the investment as not used and useful to the existing customers. The Public Staff divided the end of period customers (9) by the capacity of the system (28) and concluded that only $2,994 should be allowed in rate base.

The Company argued that it only paid $9,327 for this system which is significantly less than the net original cost of $122,531, and therefore its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for the TET system under its percentage utilization method would be $6,333. 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 $4,116. Accordingly, the amount that should be included in rate base for TET is $5,211 ($9,327 - $4,116).

New Wells

CWS added three wells after the conclusion of the test year but prior to the completion of the hearing in this case. The three wells were added in the Sugar Mountain, Sherwood Forest and Wolf Laurel developments. The Public Staff disallowed the investment in these wells on the theory that the capacity was not needed to serve end of test period customers. The Public Staff contends that DEH requires pumping capacity of 400 gallons per customer for 12 hours each day, which is 0.556 gallons per minute per customer. The Public Staff compared the actual pumping capacity of all wells within the systems with the DEH required pumping capacity for the subdivisions in question. Public Staff witness Larsen testified that the capacity for the new wells may be needed to serve future customer growth, but it is not needed to serve customers on line at the end of the test year.

CWS, through witnesses Daniel and Stewart, argues that the three wells in question are wells within mountain systems. Mountain water systems are unlike normal water systems both in terms of operations and in terms of the facilities needed to provide adequate service. Because mountain water systems must be designed to take into account the variations in elevation and differences in water pressure that result throughout the water system, mountain systems are segregated into pressure zones. Although the entire water system may be interconnected, each pressure zone exists almost as a separate water system and must possess its own supply, storage, and distribution capabilities. Therefore, even though the aggregate water supply capacity of a mountain system may be adequate by minimum DEH standards, deficiencies may exist within a pressure zone which would require the addition of a well or storage tank. When it comes to making a judgment regarding the necessary level of supply or storage capacity needed for mountain systems, it is inappropriate to blindly apply the minimum State standards in an attempt to judge the prudence of an investment; a more thorough investigation is required. The Company maintains that all three of the mountain wells are necessary to provide adequate service to customers and should be included in rate base.

CWS maintains that the Public Staff's logic in determining the prudence of an investment in water supply capacity based on a simplistic application of minimum State standards to any ground water well system is inherently flawed. First, wells are not like a new sewage treatment plants or water storage tanks. When purchasing sewage treatment plant capacity or water storage capacity, the purchaser has the ability to specify exactly the amount of capacity in gallons to be purchased. Conversely, in purchasing water supply capacity, the utility does not call upon the well drilling contractor and say "We want a 50 gallon per minute well and no larger." Well capacity is not known until the well is drilled and tested. Therefore, even though only 50 gpm of water supply capacity may be needed, a utility may end up with a 200 gpm well just because there is a favorable subsurface water supply. Conversely, the same well could just as easily produce only 25 gpm. Therefore, the overall well capacity of a ground water system compared to minimum State standard is not a reasonable measure of the prudence of water supply capacity.

CWS maintains that the incremental difference in cost associated with using the complete capacity of a well versus the minimum permissible capacity is very small. The only additional investment between providing 250 gpm would be the incremental cost of purchasing a larger well pump, approximately $3,000. This compares to the typical well cost of $100,000.

CWS maintains that, unlike surface water sources of supply, wells are unpredictable and often lose capacity over time. It is advisable for any ground water system to have extra capacity available to counterbalance the unpredictable effects from yield lost in customer growth or well failures.

CWS maintains that the Public Staff has failed to take into account the length of time necessary to complete a well. It takes up to nine months to complete a well. A utility should not wait until the very next connection forces the addition of water supply capacity before beginning construction of a well.

CWS maintains that applying minimum State standards as a means for calculating useful capacity of wells ignores peak demand situations and the quality of water provided by each individual well. The State's standards are minimum standards and are not necessarily indicative of the amount of water supply capacity needed to provide adequate service. Even though a well may provide water supply capacity, the quality of water obtained from that well may be so poor that using the well will create customer complaints.

Sugar Mountain Well

The cost of the Sugar Mountain well is $28,115. Public Staff witness Larsen testified that, according to the 1990 annual report, the combined pumping capacity of the existing wells at Sugar Mountain is 848 gpm. The pumping capacity required to supply the 1,409 end of period customers at Sugar Mountain is 783 gallons based on state design criteria for .556 gpm per customer. Mr. Larsen testified that the new well may be needed to serve future customer growth, but it is not needed to serve customers on line at the end of the test year.

On cross-examination Mr. Larsen was presented with CWS Larsen cross-examination Exhibit No. 1, which constitutes data responses of CWS to the Public Staff requested and provided during discovery after Mr. Larsen filed his initial testimony removing the cost of the wells. This Exhibit indicates that CWS has been experiencing water problems in zones 1 and 2 within Sugar Mountain because it is impossible to transfer water from zone 3 to zones 1 and 2. CWS was not able to provide adequate service to its customers in zones 1 and 2 during peak usage periods. As a result, CWS drilled well No. 20, which is the well that the Public Staff has disallowed.

Zone 1 and zone 2 provide service to approximately 75 percent of CWS's customers. Zones 1 and 2, without well No. 20, provide 0.511 gpm per customer which is below DEH standards. Zones 1 and 2, with well No. 20, provide only 0.61 gpm per customer, which is only slightly over DEH requirements.

The Commission determines that the cost of the Sugar Mountain well No. 20 should be included in rate base. The Commission finds unpersuasive the Public Staff argument that the well should be disallowed simply because, with the

addition of the well, the combined pumping capacity on paper of all the wells within Sugar Mountain exceeds DEH requirements for end of test year customers. N.C.G.S. 62-133 clearly permits consideration of post test period investment if the investment is complete and on line by the close of the hearing. There is no requirement that this investment be disregarded simply because it was not needed to serve customers on line at the end of the test year. Indeed, if the new wells were needed to serve end of test period customers, the Company would have been imprudent in waiting to place the wells on line until after the end of the test year. It is apparent that the Public Staff has applied a formula without any analysis of the underlying facts. Based upon the record as a whole it seems irrefutable that the decision to build the Sugar Mountain well was prudent and necessary for adequate customer service. We agree with the unrefuted evidence presented by the Company that wells are added for purposes other than fulfilling a state minimum combined system capacity requirement. If the capacity exists in one pressure zone, but system constraints prevent its use in another pressure zone, obviously an additional well is necessary for the Company to meet the supply in the second zone. The Commission determines that $28,115 should be included in plant in service for the Sugar Mountain well.

Sherwood Forest

Public Staff witness Larsen testified that the Company completed construction of a new well at Sherwood Forest on December 15, 1991, at a cost of $42,382 and is proposing to include this well's cost in rate base. Mr. Larsen testified that prior to constructing this fourth well, the system's existing three wells had capacity sufficient to serve 250 customers according to the DEH plan approval dated September 20, 1990. Mr. Larsen testified that the new well is not needed to serve the 190 customers on line at Sherwood Forest at the end of the test year.

CWS Larsen Cross-Examination Exhibit No. 1 indicates that Sherwood Forest is a mountain system with a number of pressure zones, and the well was necessary to provide adequate service to existing customers.

Based upon the unrefuted evidence presented by the Company as to the necessity and need for the Sherwood Forest well, the Commission determines that the $42,382 cost of the well should be included in rate base.

Wolf Laurel Well

Public Staff witness Larsen testified that the Company constructed Well No. 9 at Wolf Laurel and is proposing to include $25,075 in rate base. He testified that prior to constructing this well, the seven existing wells had a combined yield of 242 gpm and had capacity to serve 457 connections according to the DEH plan approval letter dated March 26, 1991. He testified that at the end of the test year, the Wolf Laurel system was serving 446 customers. He concluded that the new well is not needed to serve end-of-test-year customers.

CWS Larsen Cross-Examination Exhibit No. 1 indicates that there are ten different pressure zones within Wolf Laurel. Well No. 9, drilled in Zone 2, is the only well in this zone. Zone 2 had 103 single-family and six commercial connections at the end of the test year. Until drilling well 9 this zone was supplied by a 35 gallon per minute booster pump from Zone 3, which by DEM

standards would only provide service to 63 customers. The exhibit shows clearly that additional capacity was needed to provide adequate service to CWS customers as is indicated by the customer complaints of low pressure and water outages in 1990.

Once again the Commission concludes that the Company has presented a convincing case supporting the prudence of constructing Well No. 9 within Wolf Laurel. We reject the Public Staff approach of applying a formula without investigation into the underlying facts. We find that the addition of a new well when the booster pump was inadequate to provide sufficient capacity within Zone No. 2 is prudent and appropriate. The Commission determines that $25,075 should be included in plant in service for the Wolf Laurel well.

Transportation Rate Base

This issue has to do with the allocation to remove a portion of the CWS investment in transportation equipment due to its use in contract and non-CWS operations. The Commission concludes that the allocations that apply to transportation rate base should be the same as the allocations of the operators discussed in the expenses part of the Order. The Public Staff testified that vehicle investment is directly related to the time spent on particular systems by the employees assigned to those vehicles. In its rebuttal testimony, the Company agreed with the theory of the Public Staff's adjustment, although CWS did not agree with all the specific allocations and adjustments to salaries. The Commission concludes that this methodology is appropriate. Having elsewhere found that the Public Staff's adjustments and allocations to salaries are reasonable, the Commission concludes that the $94,866 adjustment to remove transportation equipment from rate base is proper.

CWIP

The next difference between the Public Staff and the Company concerning plant in service relates to two items of construction work in progress (CWIP). The first item is a $6,450 expenditure on the Wolf Laurel well and tank the Company has apparently completed. Company witness Cuddie discussed this expenditure in rebuttal testimony, but the expenditure was not reflected in the amount of plant in service in the Company's schedules of final position. The other CWIP item is a $19,494 expenditure for an extension to the Carronbridge force main. Carronbridge is part of the Beatties Ford system which has been sold by the Company. The Company has removed this item from plant in service in its schedules of final position. Public Staff witness Larsen addressed the removal of the $19,494 from plant in service in his testimony. The Public Staff has failed to reflect the removal of the $19,494 from its schedules of final position and, therefore, its plant in service amounts are overstated by $19,494. Witnesses for both the Public Staff and the Company agree that this amount should be removed from sewer plant in service.

The Commission has reviewed the evidence concerning the two items of CWIP and concludes that the $6,450 expenditure for the Wolf Laurel well and tank should be included in plant and service, while the $19,494 for the Carronbridge extension of the force main should be excluded from plant in service.

MT. CARMEL WWTP

This difference between the parties with respect to rate base involves the issue of the Mt. Carmel Wastewater Treatment Plant that is no longer in service. Public Staff witness Haywood testified that she has made an adjustment to remove the investment in Mt. Carmel Wastewater Treatment Plant from rate base. She testified that Mt. Carmel Wastewater Treatment Plant is not currently used and useful plant, and she reduced rate base by $72,330.

In his rebuttal testimony, CWS witness Wenz testified that it is his understanding that the Commission and the Public Staff approach to abandoned property is to recover the costs of the abandoned plant over a ten year period and to include the unamortized portion in rate base. He testified that this is a reasonable methodology and should be adopted by the Commission in this proceeding. Mr. Wenz adjusted operating expenses by $7,233 to reflect a ten year amortization period. He also included in rate base the $65,097 unamortized cost of this facility which is properly recovered from ratepayers in this proceeding.

Mr. Wenz stated that the plant should not be classified as plant held for future use. The uniform system of accounts provides the following guideline for use of Account 105 - Plant Held for Future Use:

> This account shall include the original cost of property owned and held for future use in utility service under a definite plan for such use.

Mr. Wenz testified that this guideline would not permit the Mt. Carmel WWTP to be classified as plant held for future use. The Mt. Carmel plant will never again be used for the provision of utility service as the Company is taking bulk service from the Asheville-Buncombe County Authority.

Mr. Wenz testified that CWS has been negotiating with a developer who is interested in purchasing the land upon which the WWTP is presently situated. He testified that the "talked about" sale price is $13,000 for the land. The purchaser would also be responsible for the removal of the old WWTP. Mr. Wenz testified that as of today there has been no formal agreement signed for such a sale. Therefore, the disposition of this facility is uncertain except to say that it will never be put back into service because of the interconnection of the Mt. Carmel collection system with the Metropolitan Sanitary District. He testified that if CWS cannot sell the land and the WWTP, the plant will have to be disassembled and scrapped by CWS. There will be a cost associated with that.

Ms. Haywood stated that the appropriate ratemaking treatment of the abandoment related to Mt. Carmel WWTP should be deferred until CWS's next rate case due to the uncertainties surrounding this issue.

The Commission has carefully analyzed the positions of the parties with respect to the appropriate treatment of the abandoned Mt. Carmel wastewater treatment plant. As of the end of the test year and the close of the case, the plant is no longer in service. There is some speculation as to what will ultimately become of the plant, but as of the close of the hearing there has been no known and measurable decision that would permit any treatment different from that advocated by the Company. The Commission concludes that the plant should be treated as abandoned plant, and the unrecovered costs should be amortized over

ten years with the unamortized portion included in rate base. Mr. Wenz testified that the plant was in very poor condition prior to its being abandoned and that it is a plant partially above ground and partially below ground. This type of plant has little if any salvage value. Indeed, the cost of dismantling the plant may be in excess of any salvage value that it may have.

Although conditions may change in the future that possibly could allow the Company to recover some cost of the plant, the appropriate way to handle that situation if it occurs, will be to simply adjust the amortization and unrecovered costs in the next rate case. It is common Commission practice to authorize that abandoned plant be amortized, and, as conditions change over the amortization period, the Commission can change the amortization rate. We agree with the Company's argument that it is inappropriate to deny any rate base treatment for this plant. This unrecovered investment represents cost prudently incurred in public utility facilities. We commend the Company's efforts, motivated by our decisions in past cases, to obtain wholesale wastewater treatment services from the Asheville Buncombe County Authority. We would be sending the wrong message to the Company if, after having obtained the contract with the municipal authority, we punished the Company for its efforts by refusing rate base treatment on the unamortized portion of the old plant. The Commission concludes that $65,097 should be included in plant in service for the unamortized portion of the Mt. Carmel WWTP.

Based on the foregoing, the Commission concludes that the appropriate amount for plant in service is $25,921,478 for water operations and $19,330,522 for sewer operations.

FARMWOOD 20 AND 21, HABERSHAM, AND WINDSOR CHASE

This finding of fact deals with sewer utility service in the Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions. The parties disagree over the issue of the rate base treatment for the sewer plant serving Farmwood 20 and 21, Habersham and Windsor Chase. The Public Staff recommends that this investment be removed from rate base. Public Staff witness Larsen testified that on June 14, 1990, Andy Lee, Director of the Public Staff's Water and Sewer Division, wrote a letter to Carl Daniel of CWS expressing his belief that the Company does not have a franchise to provide sewer service to certain sections of the Farmwood Subdivision. The Company responded on October 30, 1990, claiming that it does have a franchise.

On January 31, 1991, Mr. Lee again wrote the Company reiterating that while the Company has a water franchise, it does not have a sewer franchise. Mr. Lee stated that the areas are not contiguous to an existing sewer franchised area and that the Company must file an application for authority to serve this area. Mr. Larsen testified that the Company has never filed such an application.

Mr. Larsen also testified that the Public Staff has subsequently inspected the area. He testified that CWS is providing sewer service in Farmwood 20 and 21, Habersham and Windsor Chase. Mr. Larsen expressed the opinion that these subdivisions are not contiguous with any other franchised sewer area operated by CWS. Therefore, he concluded that CWS is offering sewer service to those customers without authority to do so. For that reason, Mr. Larsen removed the estimated cost of the sewer system from rate base, and Public Staff witness Haywood has removed estimated revenues and expenses for those areas. Mr. Larsen

testified also that if the Commission agrees that the Company is operating this sewer system without a franchise, despite warnings from the Public Staff, refunds to customers would be appropriate.

Company witness Wenz offered rebuttal testimony on the issue of the Farmwood franchise. Mr. Wenz testified that CWS was granted a certificate of public convenience and necessity for the Farmwood system in October 1980, in Docket No. W-354, Sub 15. The certificate, transferred to CWS in that docket, authorized CWS to provide water service to twenty subdivisions and sewer service to two of those twenty subdivisions. At that time, the Farmwood Subdivision was only provided water service by CWS. Sewer service was obtained through individual septic tanks. Mr. Wenz testified that septic tanks were apparently unsuitable for the development of Sections 20 and 21 of the Farmwood Subdivision. In 1986, the developer of Sections 20 and 21 installed a central sewage collection and treatment system at a cost of $323,000. CWS purchased the sewer facilities for $5,000, resulting in a net contribution in aid of construction of $318,000.

The accounting entries to reflect the original cost, contribution in aid of construction, and purchase price of this sewer system were made in December 1986. The number of customers attached to the Farmwood wastewater treatment plant (WWTP) has grown from nine at the end of 1987 to 316 at the end of the test year (291 in Farmwood, 15 in Habersham, and 10 in Windsor Chase).

Mr. Wenz testified that the Public Staff learned that CWS was providing sewer service in the areas in question in the general rate case in Docket No. W-354, Sub 69, filed in July 1988. Mr. Wenz testified that in that case Mr. Lee of the Public Staff filed testimony that included an exhibit that lists the WWTP in Farmwood serving the nine customers. Mr. Wenz testified that in the Company's next case, Docket No. W-354, Sub 81, Mr. Lee again filed testimony that included an exhibit listing the Farmwood system, then serving thirty customers. Mr. Wenz also testified that the operating and servicing area sections of the Company's 1988 annual report to the Commission included information and specifications for the Farmwood WWTP as have all subsequent annual reports.

With respect to the dispute between the Public Staff and CWS regarding Farmwood, Mr. Wenz testified that the Company has been corresponding with the Public Staff on this issue since it was brought up in 1990. In October 1990, Mr. C. Thomas Cross, a former Public Staff engineer, who at that time was employed by CWS, responded to Mr. Lee's inquiry. In his letter, Mr. Cross stated his view that CWS was authorized to provide sewer service in the Farmwood Subdivision, pursuant to the Order issued in Docket No. W-354, Sub 15. Mr. Wenz testified that even though Mr. Lee maintained in January 1991, that the Company needed to file an application, Mr. Cross was still not convinced that a certificate was required under the circumstances involving the sewer system in Farmwood. Mr. Cross did not follow-up any further.

Mr. Wenz further testified that it would not be appropriate for the Commission to accept the Public Staff's adjustment to rate base, revenues, and operating expenses for the Farmwood sewer system for two reasons. The existence of Farmwood was clearly noted in two previous rate cases. According to witness Wenz, there was certainly no intent to mislead or improperly provide service. Recognizing that over time there may have been issues that inadvertently were not addressed properly, the Company agreed to a settlement in connection with Docket No. W-778, Sub 6, and Docket No. W-354, Sub 91. Mr. Wenz stated that CWS

intended the settlement to be a point from which to start anew with respect to the scrutiny of previous acquisitions and contiguous expansions. Mr. Wenz further testified that if the Commission determines that a sewer certificate for Farmwood is required, the Company requests that the certificate be granted concurrent with the decision in this proceeding.

The Commission concludes that the Order Approving Settlement Agreement entered by the Commission in Docket No. W-778, Sub 6, and Docket No. W-354, Sub 91, on May 7, 1991, is determinative of the ratemaking issues raised by the Public Staff with respect to the Farmwood 20 and 21, Habersham, and Windsor Chase Subdivisions. The Settlement Agreement and Release approved by the Commission specifically provided, in pertinent part, that CWS was released from any and all claims and demands, whether known or unknown, that the Commission has, or may have, arising out of ". . . acquisitions, whether by contiguous extensions or otherwise, that have been expressly noted in any previously decided CWS rate application. . . ." Mr. Wenz testified that "CWS intended the settlement to be a point from which to start anew with respect to the scrutiny of previous acquisitions and contiguous expansions." He further testified that the existence of Farmwood was clearly noted in the Sub 69 and 81 general rate cases and that there was certainly no intent by CWS to mislead or improperly provide service.

Because of our approval of the above-discussed Settlement Agreement and Release, the Commission must reject the Public Staff's proposed adjustments to rate base, revenues, and operating expenses and requests for refunds for the Farmwood sewer system. In so ruling, we do not hold that CWS has properly interpreted G.S. 62-110 as authorizing the Company to provide sewer service in areas contiguous to those for which it has a water franchise. Instead, we hold that for purposes of this case, no ratemaking adjustment is appropriate with respect to the Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions. Furthermore, in order to avoid any further doubt about the Company's authority to provide sewer utility service, the Commission will grant CWS temporary operating authority, nunc pro tunc, to provide sewer service in Farmwood Sections 20 and 21, Habersham and Windsor Chase. This Order shall constitute that temporary operating authority. In addition, the Company is hereby required to file applications for permanent certificates of public convenience and necessity to serve those subdivisions not later than 30 days from the date of this Order.

ACCUMULATED DEPRECIATION

The following chart summarizes the differences between the Public Staff and the Company concerning accumulated depreciation:

Item	Public Staff	Company	Difference
Steeplechase WWTP	$ 287	$ 287	$ 0
Mt. Carmel WWTP	33,387	33,387	0
Allocation of Vehicles	32,610	53,399	(20,789)
Retired Vehicles	66,904	66,904	0
Depreciation on Vehicles	(21,400)	0	(21,400)
Total	$111,788	$ 153,977	$(42,189)

The Public Staff and the Company disagree on several aspects of accumulated depreciation. First, the Public Staff removed from accumulated depreciation the depreciation expense on several vehicles for which an allocated portion of the cost of the vehicles was removed from plant in service based on Public Staff witness Larsen's testimony. This adjustment resulted in a $32,610 decrease of accumulated depreciation, of which $22,455 is allocated to water operations and $10,155 is allocated to sewer operations. The Company also removed an amount from accumulated depreciation for the accumulated depreciation associated with the vehicles that were allocated to the contract sewer plants ($36,771 for water operations and $16,628 for sewer operations). The Public Staff used a percentage of the vehicle cost to reduce accumulated depreciation while the Company took a percentage of the actual accumulated depreciation associated with the vehicles to adjust its accumulated depreciation. Therefore, the Public Staff and the Company adjusted accumulated depreciation for different amounts with respect to the allocations. Next, the Public Staff has included in accumulated depreciation one year of depreciation expense ($14,736 for water operations and $6,664 for sewer operations) on the vehicles the Company has acquired since the April 14, 1992, filing date. The Company did not adjust accumulated depreciation for this item.

As discussed earlier under plant in service, the Commission has determined that the allocation methodology proposed by Public Staff witness Larsen regarding vehicles is appropriate. Therefore, the Commission concludes that it is appropriate to allocate accumulated depreciation associated with vehicles as recommended by the Public Staff. The Commission also concludes it is appropriate to include one year of depreciation expense in accumulated depreciation related to the new replacement vehicles as recommended by the Public Staff. Thus, the Commission agrees with the adjustments to accumulated depreciation as proposed by the Public Staff.

Based on the foregoing, the Commission finds that the level of accumulated depreciation for use in this proceeding is $3,344,714, of which $1,988,456 is allocated to water operations and $1,356,258 is allocated to sewer operations.

ACCUMULATED DEFERRED INCOME TAXES

CWS has included in the accumulated deferred income taxes account $426,207; the Public Staff $594,670, for a difference of $168,463. The first difference between the parties relates to the issue of including the taxes the Company paid upon its acquisition of Monteray Shores.

Monteray Shores/Shipwatch

In consideration for $370,000 in original cost facilities, CWS paid $1,000 in cash to the developer of the Monteray Shores and Shipwatch subdivisions and assumed the tax liability for the tax owed on the CIAC. The Company includes the tax paid in the accumulated deferred income taxes added to rate base. The Public Staff objects to this approach and makes adjustments to remove the taxes paid with respect to the Monteray Shores/Shipwatch contribution.

The Monteray Shores system is located in Currituck County and is contiguous to the Corolla Light Subdivision which CWS also serves. The Monteray Shores water system is comprised of numerous shallow wells, chemical treatment equipment and the distribution system. The sewer system is comprised of gravity and force mains, lift stations, man holes and a wastewater treatment plant. The developer contributed only the water distribution and sewer collection systems to CWS. The developer retained ownership rights in all the other facilities. The value of land upon which the supply and treatment facilities is located is very high, and the developer sought to retain ownership rights to the land and facilities in the event that alternative services become available. If bulk service becomes available, the supply and treatment facilities can be sold, and the land can be used for an alternative purpose by the developer. The original cost of the supply and treatment facilities, without regard to any land value, is approximately $876,000. The developer was unwilling to contribute these facilities as well as very expensive land and pay the gross-up of approximately $550,000. Likewise, CWS was unwilling to accept a contribution of this size without a gross-up. In addition to the $1,000 purchase price, CWS paid taxes of $142,736.

CWS entered into a contract to serve Monteray Shores and Shipwatch on November 15, 1988. On October 1, 1990, CWS's Vice President of Finance, Patrick J. O'Brien, wrote the Commission stating the Company's intent to seek rate base treatment for the payment of tax on the contributed facilities. Mr. O'Brien stated that it was the Company's understanding that the order in Docket No. M-100, Sub 113, issued September 14, 1990, did not in and of itself require the gross-up of contributed property to be received under the Monteray Shores contract. The Company based its position on the fact that the contract was dated prior to the September 14, 1990, Order and pertained to an area that was already certificated in that it is contiguous to an already certificated area.

Mr. O'Brien requested that if it was necessary for CWS to petition the Commission for approval of this approach that his letter be treated as such a request.

By letter dated February 6, 1991, James D. Panton, Financial Analyst for the Commission, responded to Mr. O'Brien. Mr. Panton agreed with Mr. O'Brien that the requirements of the September 14, 1990, Order in Docket No. M-100, Sub 113, did not apply. Mr. Panton stated, however, that the Commission concluded that the subject CIAC fell under the requirements of the order establishing procedures related to taxes on contributions in aid of construction issued August 26, 1987, ordering paragraph 2A, which requires that water and sewer companies use the full gross-up method with respect to collections of CIAC unless the Commission gives prior approval of a different method in a particular case or unless the Company applies for and is granted approval to use the present value method.

Mr. Panton advised that the Commission had concluded that CWS should file a formal request with the Commission for permission to effectuate the tax treatment for CIAC included in the letter of October 12, 1990. Mr. Panton stated that such request should include full justification, including all relevant financial information. Although Mr. O'Brien assigned the duty of filing the request to the rate department, the filing folder was misplaced and subsequently went unnoticed until mentioned by the Public Staff in this case.

In his prefiled testimony, Public Staff witness Larsen stated that the Company has never made the formal request to which Mr. Panton referred. He argued that because the Commission has never granted the Company permission to deviate from the 1987 Order, the Public Staff had made a tax adjustment relating to the contract. On cross-examination, Mr. Larsen stated that since the Company entered into the contract calling for it to pay the tax on CIAC without developer gross-up without first obtaining the Commission approval, it would be inappropriate to include the tax in rate base.

Company witness Wenz provided comprehensive testimony indicating that the Monteray Shores/Shipwatch arrangement, structured as identified above, provides substantial benefits to customers and that the tax should be included in rate base. He testified that the investment per customer in the Monteray Shores system, once the development has reached its potential, will be significantly lower than CWS's overall investment per customer of approximately $680 for water and $665 for sewer. As of the date of Mr. Wenz's testimony, there were 72 customers on the system for an investment per customer of $880 and $1,103 for water and sewer, respectfully.

Mr. Wenz testified that once the number of customers on the water system exceeds 96, the water system investment per customer will be below the Company average, thereby benefiting all customers. Similarly, once the number of customers attached to the sewer system exceeds 121, the sewer system investment per customer will be below the Company average, thereby benefiting all customers.

Mr. Wenz testified that prior to obtaining Monteray Shores CWS only served Corolla Light in the Currituck County area. The addition of the Monteray Shores service territory allowed CWS to more fully utilize its personnel and expand to the point where backup people and resources are readily available to serve the needs of Corolla Light and Monteray Shores, hence providing many economies to CWS's operations.

Mr. Wenz explained the ultimate accounting treatment of the transaction if taxes paid are included in rate base. The tax on CIAC is recovered from the IRS over the life of the plant. Therefore, the amount included in rate base now will ultimately be zero, and the entire system would have been contributed. The ultimate investment for customers in the facilities will be zero, thereby benefiting all customers. In effect, CWS has acquired a system giving it access to facilities valued at over $1 million. CWS's current cost is $143,000. Over time the cost will be reduced to practically zero as the tax paid by CWS is recovered from the IRS. The Monteray Shores acquisition compares favorably to other recent acquisitions such as Carolina Trace and Transylvania on a cost per customer basis.

Mr. Wenz stressed that in analyzing the reasonableness of CWS's request to include the ADIT related to Monteray Shores in rate base, the Commission should look at the most likely alternative to what would have occurred had CWS not acquired the system. The only alternative, in light of the facts confronting the parties, was for the developer to retain the systems and form his own utility company. Under this scenario the developer could seek rate base treatment for the entire $1,000,246 of original cost facilities. This could have resulted in higher costs being passed on to the customer.

Mr. Wenz stated that history has shown many developer-owned utility systems are not operated and maintained with the same view toward long term viability, nor with the same level of expertise, as are professionally-run utilities like CWS. Mr. Wenz testified that the strategy of CWS paying the taxes and seeking rate base treatment is reasonable in this specific situation and is further justification for the allowance of ADIT in rate base. Mr. Wenz indicated that the Commission had approved a similar situation in Docket No. W-345, Sub 92, involving the Olde Pointe subdivision. Mr. Wenz requested that the Commission, based upon this record, include in rate base the purchase price of the Monteray Shores facilities paid in the form of income taxes.

The Commission has carefully analyzed the testimony on this adjustment and rules that it is appropriate for CWS to include the tax paid on the Monteray Shores acquisition in rate base. CWS has made a compelling case to demonstrate that the customers in Monteray Shore and Shipwatch, as well as CWS's other customers, are substantially better off after the transaction structured so as to permit CWS to pay the taxes than they would have been had no such transaction taken place. CWS obtained facilities that will cost less than its other facilities on a per customer basis as the systems grow. This is beneficial to all of CWS's customers. Unless CWS had been willing to pay the tax, the transaction could not have been completed. CWS will be able to recover the tax payment from the IRS over time so that ultimately its investment in the systems will be zero. We therefore find that the transaction as structured is beneficial to the customer.

The Public Staff objection to rate base treatment is based on procedure rather than substance. The Public Staff bases its disallowance on the fact that CWS failed to make the formal request for Commission approval as instructed by Mr. Panton in his 1991 letter. The Commission's concern insofar as requiring pre-approval of not collecting the gross-up from a contributor is clearly stated in the August 26, 1987, Order in Docket No. M-100, Sub 113.

> Consequently, the full gross-up method prevents the potentially adverse situation where a water or sewer utility pays from its own funds the tax related to a substantial contribution of a large system serving a generally undeveloped area. Had this situation been allowed to occur, then the company would suffer a drain of capital in the amount of the tax paid, without the assurance of short term cash in flow from the contributed system, because it serves an undeveloped area.

That same order goes on to say:

> The Public Staff further recommended that approval should be given only in cases where the utility can show that it is impossible or

impractical to collect the CIAC tax from the contributor and that paying the tax out of utility funds will not significantly increase the utility's rates.

The evidence provided by the Company in this case indicates the concerns expressed by both the Commission and the Public Staff, that resulted in the August 1987 pre-approval requirement, were not present in this particular situation.

CWS's acceptance of the Monteray Shores CIAC and the subsequent funding of the tax liability resulted in neither a drain of capital nor a significant increase in rates. In fact, just the opposite is true. Given the size and cost of the facilities, the capital expended by CWS was reasonable. Mr. Wenz pointed out that in the near future, the rates of CWS may be favorably impacted from what they otherwise would be (i.e., decreased) by the continually declining investment in the facilities.

CWS employed its judgment and assumed the risk for not seeking prior approval to fund the tax liability. It would be unwise of this Commission to now penalize CWS for making what was clearly a good business decision.

Since the Public Staff's disallowance is based solely on the fact that prior approval was not sought, it must be rejected. However, the Commission reiterates its concern as clearly expressed in the August 1987 order. Prior approval for not collecting the gross-up on CIAC is required. CWS assumed the risk in the Monteray Shores system that the Commission would not invoke a penalty for not seeking prior approval. Given the clear benefits of structuring this transaction as was done, the Commission is convinced to include the taxes paid in rate base. The Company is put on notice that this decision is not precedential. CWS should seek prior approval in the future, even where the arguments are as compelling as in Monteray Shores.

The Public Staff also points to certain Commission orders in Docket No. M-100, Sub 113, requiring prior Commission approval. The Commission notes that CWS justifiably began to provide service to Monteray Shores and Shipwatch through a contiguous extension. Consequently, there was no required regulatory proceeding at the time of acquisition in which CWS would have sought prior approval of the rate base treatment for the tax on the CIAC.

Prior to this case CWS has never sought to include the tax payments in rate base, and as of this date customers have never been called upon to pay a return on the tax payment. Therefore, whatever procedural requirements may not have been met calling for prior approval have been without harm to the customers. We note that CWS brought the Monteray Shores situation to the attention of the Commission prior to any inducement by the Commission or the Public Staff through Mr. O'Brien's letter in 1990. Clearly, there has been no attempt on the Company's part to conceal the issue or to avoid Commission regulation. We find that an inequity would result if we refuse to address the substance of this transaction based purely on failure to obtain approval prior to entering into the contract. We note that the tax on the CIAC issue has undergone continuous scrutiny and analysis since 1986. We also note that the Commission is presently studying the topic of contiguous extensions in Docket No. W-100, Sub 17. For

these reasons we deem it inappropriate to accept the Public Staff adjustment removing the tax on the Monteray Shores/Shipwatch acquisition from rate base. The Commission determines that $142,736 should be included in ADIT for the taxes paid on the Monteray Shores acquisition.

Olde Pointe

The second difference between the parties relates to ADIT with respect to the Olde Pointe system. In his rebuttal testimony, Mr. Wenz mentions that based on an agreement between CWS and the Public Staff, the Commission issued an order when the Company acquired Olde Pointe that the taxes paid by the Company upon acquisition of this system would be included in rate base. The total of the taxes paid with respect to Olde Pointe is $25,727. As a result of our order approving the acquisition of the Olde Pointe system based upon the stipulation between the parties, the Commission determines that $25,727 should be included in accumulated deferred income taxes with respect to the Olde Pointe system.

Based on the foregoing, the Commission concludes that the appropriate level of ADIT is $426,207, of which $720,700 is applicable to water operations and ($294,493) is applicable to sewer operations.

NET GAIN ON SALES OF SYSTEMS

Introduction

In Docket No. W-354, Subs 82, 86, 87 and 88, the issue was which party, CWS's stockholders or its remaining ratepayers, should receive the benefits of gains on the future sales of the Beatties Ford, Genoa/Raintree and Riverbend systems. Based on the evidence presented in that proceeding, the Commission, in Ordering paragraph No. 1 of that Order, ordered as follows:

> "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)."

The Commission also included the following language on Page 16 of its Order in Docket No. W-354, Subs 82, 86, 87 and 88:

> "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."

Since the Commission issued its Order in Docket No. W-354, Subs 82, 86, 87 and 88, CWS has sold the Beatties Ford, Genoa/Raintree and Mt. Carmel systems. The Riverbend system, which was discussed in that Docket, has not been sold, but the Mt. Carmel system, which was not discussed in that Docket, has been sold.

In this proceeding Company witness O'Brien and Public Staff witness Carter presented testimony and exhibits concerning the amounts of the gains and losses on the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems, and discussed items which should or should not be considered as an "investment" or "reasonable transaction costs associated with the transfers" as those terms are used by the Commission in its Order in that Docket. Company witness O'Brien testified that the calculation of the gain or loss on the sales of the systems should not be calculated based solely on the "accounting debits and credits" required to remove the assets from the books. He testified that it is essential that the Commission look at the economic realities that accompany a decision to sell a system. The economic realities that witness O'Brien presented for the Commission's consideration in determining the amount of gains and losses to assign to the Company's ratepayers are:

(1) In calculating the net plant figure for each system that was sold, Mr. O'Brien did not reduce the original cost of the systems by the Purchase Acquisition Adjustment (PAA) applicable to each system.

(2) In calculating the amount of the pre-tax gain or loss on the sale of each system, Mr. O'Brien decreased the total gain or loss by a 13% "compensation to management."

(3) For the gains on the sales of the Beatties Ford and Genoa/Raintree systems, Mr. O'Brien reduced the gain assigned to the ratepayers by calculating and subtracting Federal and Illinois state income taxes that he says the stockholders will have to pay on the portion of the gains paid to the stockholders as dividends.

(4) Mr. O'Brien reduced the ratepayers' portion of the gain on the sale of the Beatties Ford system for the "loss of revenue" from the date of the Order in Docket No. W-354, Sub 81, to the date that the Beatties Ford system was sold.

(5) Mr. O'Brien reduced the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems for the "loss of operating income" from dates of the sales of these systems to the date of the Order in Docket No. W-354, Sub 111.

Public Staff witness Carter did not reflect the effect of any of the above items in calculating the amounts of gains and losses on the sales of systems that he recommends be assigned to the ratepayers.

In addition to the above items, Company witness O'Brien and Public Staff witness Carter also differ on the following two items:

(1) Witness O'Brien assigned all of the costs related to Docket No. W-354, Subs 82, 86, 87 and 88, to the ratepayers, while witness Carter split the cost of that proceeding equally between the ratepayers and the stockholders.

(2) Witness O'Brien assigned 100% of the loss on the sale of the Mt. Carmel system to the ratepayers, while witness Carter assigned the loss on the sale of the Mt. Carmel system equally between the ratepayers and the stockholders.

Company witness O'Brien and Public Staff witness Carter presented testimony concerning the amounts of gains and losses associated with CWS's sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems. Both witnesses presented testimony concerning the amount of the gains and losses which should go to the benefit of the Company's stockholders and the amount which should go to the benefit of the Company's remaining ratepayers. Witness O'Brien testified that a net loss of $12,465 resulting from the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems should be assigned to CWS's remaining ratepayers, while witness Carter testified that $264,076 of a total gain of $528,152 should be assigned to CWS's remaining ratepayers. The difference between the negative amount of $12,465 recommended by witness O'Brien and the positive amount of $264,076 recommended by witness Carter results from the following differences broken down by each system that was sold:

Line No.	Item	Beatties Ford	Genoa/ Raintree	Mt. Carmel	Total
1.	Net Gain/(Loss) assigned to ratepayers by Company witness O'Brien	$ 30,583	$ 7,183	$(50,231)	$(12,465)
2.	Deduction of purchase acquisition adjustment from original cost of the systems sold	15,008	28,894	29,354	73,256
3.	Elimination of amount allocated to ratepayers for the 13% "Compensation to Management"	25,910	5,037	(7,506)	23,441
4.	Elimination of Federal and Illinois personal income taxes on stockholders' portion of gains on the sales of systems paid in the form of dividends	34,351	6,678	-	41,029
5.	Assignment of 50% of the costs related to Docket No. W-354, Subs 82-88 to stockholders	1,842	1,843	-	3,685
6.	Elimination of loss of revenue from date of order in Docket No. W-354, Sub 81 to date of sale caused by removing Beatties Ford from rate case in anticipation of sale	18,255		-	18,255
7.	Elimination of loss of operating income from date of sale to date of decision in Docket No. W-354, Sub 111	86,521	16,162	-	102,683

8. Assignment of 50% of the loss on the sale of the Mount Carmel System to the stockholders	-	-	14,192	14,192
9. Portion of Net Gain/(Loss) assigned to ratepayers by Public Staff witness Carter	$212,470	$65,797	$(14,191)	$264,076

The Commission will discuss each of the above-listed differences between witness O'Brien and witness Carter in the calculation of the amount of gain or loss resulting from the sale of each system which should go to the benefit of CWS's remaining ratepayers.

Purchase Acquisition Adjustment

In calculating CWS's investment in the Beatties Ford, Genoa/Raintree and Mt. Carmel systems for purpose of calculating the gain or loss on the sales of these systems, Company witness O'Brien did not reduce the original cost of the systems by the Purchase Acquisition Adjustment (PAA), while Public Staff witness Carter did reduce the original cost of these systems by the PAA applicable to each system. Witness O'Brien testified that CWS paid less for each of these systems than the net original cost of the systems, resulting in a PAA for each system. Mr. O'Brien testified that CWS has made additional investments in these systems equal to or greater than the PAAs, and that fact should be recognized in determining the portion of the proceeds that constitute a reimbursement for investment. Mr. O'Brien testified that the PAAs represent a part of shareholders' investment as the term "investment" is used in the Commission's Order In Docket No. W-354, Subs 82, 86, 87 and 88. Mr. O'Brien further testified that if a utility pays more than the net original cost of a system, the shareholders have no opportunity to earn on the premium. He also testified that ratepayers should not be permitted to benefit from the PAA by recognizing it as a deduction from rate base in calculating rates while the utility owns the system, and inconsistently benefit again by disregarding the PAA once the system is sold and the gain is shared with the ratepayers. Witness O'Brien testified that the Genoa/Raintree systems were in deplorable condition when they were purchased by CWS, and that a significant amount of costs were incurred in upgrading these systems. Mr. O'Brien also testified that CWS operated these systems at reduced rate levels for a number of years, and that the Raintree system was operated without rates for 1 1/2 years. Mr. O'Brien stated that the result of these actions by CWS represents an investment in these systems. In both his prefiled and rebuttal testimony and exhibits, Mr. O'Brien deducted the PAA applicable to the Mt. Carmel system from the original cost of the Mt. Carmel system. When he presented the summary of his testimony, Mr. O'Brien stated that he was revising his testimony and exhibits to exclude the deduction of the PAA applicable to the Mt. Carmel system in order to be consistent with the manner in which he handled the PAAs for the Beatties Ford and Genoa/Raintree systems.

Public Staff witness Carter testified that the gain or loss on the sale of a utility system should be based on the difference between the sales price and the purchase price of the system, assuming the purchase price of the system is reasonable. Witness Carter testified that this is the case whether a utility paid more or less than the original cost of the system. Witness Carter testified that the Commission was aware of the problems CWS had encountered at the Beatties

Ford and Genoa/Raintree systems when it made its decision to split the gains on the sales of these systems equally between the stockholders and the remaining ratepayers, because the problems were described in CWS's Brief in Docket No. W-354, Subs 82, 86, 87 and 88. Mr. Carter testified that Mr. O'Brien is in effect asking the Commission to reach a different result on the basis of facts that were already known by the Commission at the time of its Order in Docket No. W-354, Subs 82, 86, 87 and 88. Witness Carter testified that Mr. O'Brien, in his exhibits filed in Docket No. W-354, Subs 86 and 87, reduced the original cost of the Beatties Ford and Genoa/Raintree systems by the PAA applicable to each system in calculating the estimated gains on the sales of those systems. Witness Carter stated that Mr. O'Brien presented no testimony in that proceeding indicating that he thought it was inappropriate to deduct the PAA from the original cost of the systems for the purpose of calculating the gain or loss on the sales of those systems.

The Commission concludes that it is appropriate to deduct the PAA from the original cost of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems for the purpose of determining CWS's net investment in each of these systems. The gain or loss on the sale of each of these systems should be calculated on the difference between the sales price of each system and CWS's net investment in each system. The PAA does not represent an investment by CWS in these systems as contended by witness O'Brien. In order to determine CWS's net investment in each of these systems, the PAA for each system must be deducted from the original cost of each system, because the PAA represents the difference between the original cost of these systems and the lower prices that CWS paid for these systems. All expenditures by CWS to upgrade the Beatties Ford and Genoa/Raintree systems were capitalized and included in CWS's investment in those systems. The fact that the systems were in deplorable condition when CWS purchased them is most likely the reason that the systems were purchased for prices less than the original cost of these systems. The Commission was aware of the problems at the Beatties Ford and Genoa/Raintree systems when it made its decision in Docket No. W-354, Sub 82, 86, 87 and 88, to split the gains equally between the ratepayers and stockholders.

The Commission does not agree with witness O'Brien that the ratepayers will get a double benefit if the PAA is recognized at the time of the sale of a system. Both the rate base and the gain or loss on the sale of a system should be determined based on the amount that a utility actually paid for a system, plus improvements made since the system was purchased. A utility is not penalized and the ratepayers do not get a double benefit if a negative PAA is recognized in calculating the gain or loss at the time a system is sold. In fact, just the opposite would be true. If a negative PAA is not considered in determining a utility's net investment for purposes of calculating the gain or loss on the sale of a system, the stockholders will receive a windfall. First of all, all improvements made to these systems were capitalized and reflected in CWS's investments in those systems. Second, the original costs of those systems do not reflect the fact that CWS paid less than the original costs of the systems. If the PAA applicable to each of those systems is not deducted from the original cost of each system when calculating the gains or losses on the sales of the systems, CWS's investment in the systems will be overstated and the resulting gains will be understated or the resulting losses will be overstated.

The Commission concludes that the PAAs applicable to the Beatties Ford, Genoa/Raintree and Mt. Carmel systems must be deducted from the original cost of each system in determining CWS's investment in each system for the purpose of calculating the gain or loss on the sale of each system. The amount of PAA that must be deducted for the Beatties Ford system is $49,300, for the Genoa/Raintree systems is $94,915 and for the Mt. Carmel system is $48,213.

"Compensation To Management"

In calculating the gain or loss on the sale of each system, Company witness O'Brien reduced the gain or loss on the sale of each system by a 13% "compensation to management". Public Staff witness Carter did not reduce the amounts of the gains or losses on the sales of the systems by a 13% "compensation to management." Witness O'Brien calculated the "compensation to management" related to each system by multiplying the amount of gain or loss on the sale of each system before income taxes by 13%. Witness O'Brien testified that this cost is a factor in selling a system just as surely as any other cost. He testified that CWS's Board of Directors approved this cost in 1982, long before these sales were contemplated, and that this compensation would not be paid if the transactions did not occur. Mr. O'Brien testified that this compensation is paid to facilitate a sale by removing the natural economic incentive of management to retain property and have a large economic base upon which future compensation is determined. Mr. O'Brien also testified that this compensation program benefits the customers and the shareholders in that it encourages management to look realistically at a sale in terms of what is best for both parties. Additionally, Mr. O'Brien stated that this compensation also gives management a vested interest in negotiating for the highest possible sales price, which will benefit both the stockholders and ratepayers if gains on the sales of systems are to be split between the stockholders and ratepayers.

Public Staff witness Carter testified that the 13% "compensation to management" is not a necessary transaction cost related to the sale of a system. He stated that it is management's decision on whether to pay a compensation to management, and if they make the decision to do so, it should be paid from the stockholders' portion of the gain instead of reducing the pre-tax gain or loss on the sales of the systems. It is Mr. Carter's opinion that the 13% "compensation to management" is not a transaction cost as that term is used in the Commission's Order in Docket No. W-354, Subs 82, 86, 87 and 88. He testified that the sales of systems could occur whether or not additional compensation is paid to management.

The Commission concludes that the 13% "compensation to management" is not a transaction cost as that term is used in our Order in Docket No. W-354, Subs 82, 86, 87 and 88. The sale of a system can take place with or without the "compensation to management." Management has a choice whether or not to pay a "management compensation" from the proceeds of a sale; and if it does, the compensation should not reduce the ratepayers' portion of the gain on the sale. Mr. O'Brien's testimony that the "compensation to management" is necessary in order to give management the incentive to look realistically at a sale in terms of what is best for both the stockholders and ratepayers, and in order to negotiate the highest possible sales price on the sale of a system, is not convincing. It is the Commission's opinion that it should not be the ratepayers' responsibility to pay a bonus to management to do what management should do based

on its normal compensation. Management should always make decisions based on what is best for both the stockholders and ratepayers, and should always negotiate to receive the highest possible sales price on the sale of a system. If, as a result of the sales of these systems, CWS wants to pay its management additional compensation above and beyond the salary level approved as reasonable in the rate case, the additional compensation should be paid from the stockholders' 50% portion of the gain or losses on the sales of these systems, instead of being recognized as an expense in calculating the amount of the gain or loss on the sales of the systems.

Federal and Illinois Income Taxes on Stockholders' Portion of Gains Paid in the Form of Dividends

Company witness O'Brien reduced the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems by Federal and Illinois income taxes that the stockholders may have to pay based on the fact that their portion of the gains on the sales of these systems was paid to them in the form of dividends. Public Staff witness Carter did not reduce the ratepayers' portion of the gains on the sales of these systems for this item. Witness O'Brien testified that when the stockholders' portion of the net proceeds from the sales of the systems are paid to them in the form of dividends, the shareholders' must pay Federal and Illinois income taxes on those dividends. Mr. O'Brien referred to this adjustment as a "tax equalization adjustment." Witness O'Brien further testified that if the ratepayers and stockholders are to split the gains equally on the sales of these systems, the "tax equalization adjustment" must be recognized, because the stockholders must pay income taxes on their portion of the gains, which are paid to them in the form of dividends, but the ratepayers will not have to pay income taxes on their portion of the gains.

Public Staff witness Carter testified that whether CWS retains its 50% portion of the net gains in the business or pays the funds to its stockholders in the form of dividends should not affect the amount of net gains which will be used for the benefit of the ratepayers. He testified that CWS's stockholders have the choice to either leave the money from the net gains on the sales of the systems in the Company and have the opportunity for their funds to grow in the business, or have the cash in their pockets in the form of dividends. He stated that if they choose to receive their 50% share of the net gains in the form of cash dividends, that should not affect the amount of gains that the ratepayers receive. Mr. Carter further stated that the stockholders know that if they receive their portion of the gains as dividends, the dividends will have to be reflected as dividend income on their Federal and state income tax returns, and they will be required to pay income taxes on the dividends based on their individual Federal and state income tax brackets. Mr. Carter further testified that the personal income tax liability of CWS's stockholders is not even a relevant consideration with respect to the issue of gains or losses on the sales of utility systems, and that it will be a breakdown of regulatory policy if ratepayers are required to pay the personal income taxes of utility investors related to dividends received on their investment in stocks of public utilities. Mr. Carter stated that the clear distinction between the expenses of the utility and the investors must be retained and ratepayers should pay rates designed to cover only the expenses that a utility incurs in providing service to its customers.

The Commission concludes that the ratepayers' portion of the gains on the sales of systems should not be reduced to pay any Federal and Illinois income taxes that CWS's stockholders may incur on their portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems that are paid to them in the form of dividends. The stockholders have the choice to take all or a portion of the Company's earnings from all sources, not just from gains on sales of systems, in the form of cash dividends, or leave 100% of the earnings in the business. The choice belongs to the stockholders. If the stockholders choose to receive a portion of the Company's earnings in the form of dividends, the ratepayers should not be required to pay the stockholders' personal Federal and state income taxes on the dividends. When and if earnings, from whatever source, are taken out of the Company in the form of dividends, it is not the responsibility of the ratepayers to pay the stockholders' personal income taxes on those dividends.

Costs of Docket No. W-354, Subs 82, 86, 87 and 88

Company witness O'Brien assigned 100% of the costs of Docket No. W-354, Subs 82, 86, 87 and 88, to the ratepayers, while Public Staff witness Carter assigned the costs of that Docket equally between the stockholders and ratepayers. Witness O'Brien testified that the costs of regulatory proceedings are recoverable from customers because they represent costs of doing business. Mr. O'Brien testified that a non-regulated business would avoid this expense, because there would be no need to obtain a ruling on who should keep the gain on the sale of part of a business. He stated that a non-regulated business would automatically keep the gain.

Witness O'Brien further testified that when a utility litigates against the consumer advocates, the recoverability of the costs by the utility does not depend on the outcome of the litigation. He also testified that Docket No. W-354, Subs 82, 86, 87 and 88, was in effect a generic proceeding, not unlike proceedings in M-100 dockets; therefore, the costs of Docket No. W-354, Subs 82, 86, 87 and 88, should be borne by the ratepayers.

Public Staff witness Carter testified that the purpose of Docket No. W-354, Subs 82, 86, 87 and 88, was to determine the regulatory treatment of the gains on the sales of facilities. He testified that based on the Commission's decision in that Docket that the gains on the sales of the Beatties Ford and the Genoa/Raintree systems should be assigned equally between the ratepayers and the stockholders, he believes that the costs of that proceeding should also be assigned equally between the ratepayers and the stockholders. He testified that it would be unfair and inconsistent for the ratepayers to receive only 50% of the gains on the sales of these systems, but pay 100% of the costs of the proceeding which was necessary in order to determine the manner in which the gains on the sales of these systems should be assigned between the ratepayers and stockholders. Witness Carter testified that assigning the costs of Docket No. W-354, Subs 82, 86, 87 and 88, between the ratepayers and stockholders in the same manner as the benefits of the gains on the sales of the systems are assigned is the fairest manner of assigning the costs of that proceeding. He also testified that it would be unfair and unreasonable to require the ratepayers to pay all of the costs CWS incurred while litigating against the interests of the ratepayers.

The Commission concludes that the costs of Docket No. W-354, Subs 82, 86, 87 and 88, should be split equally between the ratepayers and the stockholders. Since both the stockholders and ratepayers received an equal benefit as a result of that proceeding, it is only fair that each party absorb an equal amount of the costs of that proceeding.

The Commission does not agree with Mr. O'Brien that a non-regulated business would automatically keep the gain on the sale of a part of its business. We believe that it would depend on the competitive environment and the financial condition of a particular company. A non-regulated business may use a similar gain on the sale of a segment of its total business to lower the prices of its products in order to gain market share. That would be a manner in which a non-regulated business would pass the benefits of such a sale to its customers.

The Commission normally does not assign costs of regulatory proceedings between the stockholders and ratepayers based on the manner in which we decide a case. Docket No. W-354, Subs 82, 86, 87 and 88, was a different type proceeding than the type of proceedings that are usually before the Commission. Most types of proceedings before the Commission are rate case proceedings, franchise proceedings, complaint proceedings or generic type proceedings in which the Commission must make a policy type decision. In those types of proceedings there are usually no proceeds to be split between the stockholders and the ratepayers. In Docket No. W-354, Subs 82, 86, 87 and 88, the issue was to determine the appropriate manner of splitting proceeds between the stockholders and ratepayers that CWS would be receiving in the near future from gains on the sales of some of its systems. Since the Commission, in that proceeding, ruled that the stockholders and ratepayers should equally share the gains on the sales of the systems, including the Beatties Ford and Genoa/Raintree systems, we also conclude that the stockholders and ratepayers should equally share the costs of that proceeding.

"Loss of Revenue" From the Date of the Order in Docket No. W-354, Sub 81 to the Date of the Sale of the Beatties Ford System

Company witness O'Brien reduced the ratepayers' portion of the gain on the sale of the Beatties Ford system by the "loss of revenue" from the date of the Commission's Order in Docket No. W-354, Sub 81, to the date of the sale of that system. Public Staff witness Carter did not reduce the ratepayers' portion of the gain for this item. The "loss of revenue" represents the difference between the amount of revenues that CWS actually received from the customers of Beatties Ford based on rates approved in Docket No. W-354, Sub 69, and the amount of revenues that CWS would have received from the Beatties Ford customers based on the rates approved for all other systems in Docket No. W-354, Sub 81. Witness O'Brien testified that at the time CWS filed its rate case in Docket W-354, Sub 81, the sale of Beatties Ford was imminent and Beatties Ford was removed from that rate case. Mr. O'Brien testified that the decision to exclude Beatties Ford from that rate case was a direct result of the decision to sell that system; therefore, the "loss of revenue" was a direct result of that decision. Mr. O'Brien testified that the Company suffered a true measurable loss; therefore, the "loss of revenue" from the Commission's exclusion of Beatties Ford from the Docket No. W-354, Sub 81, rate case must be deducted from the ratepayers' 50% portion of the gain on the sale of the Beatties Ford system in order to put stockholders in the position they otherwise would have been.

Public Staff witness Carter testified that the "loss of revenue" resulting from the exclusion of the Beatties Ford system from Docket No. W-354, Sub 81, is not a reasonable transaction cost of selling the Beatties Ford system. Witness Carter testified that the Commission's June 15, 1990, Order in Docket No. W-354, Sub 81, indicates that CWS was denied a rate increase in that proceeding for the Beatties Ford customers "because CWS failed to give notice of this rate case to those customers." He testified that the Commission had previously ordered CWS to give notice of its proposed rate increase in Docket No. W-354, Sub 81, to the customers of the Beatties Ford system, and that CWS voluntarily chose not to give notice of the rate increase request to the customers of Beatties Ford despite the Commission's Order, therefore, it was CWS's own decision that led to the "loss of revenue." Witness Carter further testified that by making that decision, CWS assumed the risk that it would be serving customers of the Beatties Ford system when the Order in Docket No. W-354, Sub 81, was issued, but would not be able to charge those customers the rates approved in Docket No. W-354, Sub 81.

Mr. Carter also testified that the Commission has previously determined that CWS should bear any "loss of revenue" due to the exclusion of Beatties Ford from the Sub 81, rate case. He referred to language in the Commission's Order in Docket No. W-354, Sub 81, to support his position. Witness Carter also testified that counsel for CWS stated at the oral argument on February 1, 1990, that any penalty resulting from the decision to exclude Beatties Ford from the Sub 81 case would fall on the Company. Mr. Carter testified that the "loss of revenue" is neither a transaction cost nor an increase in investment as contended by Mr. O'Brien.

The Commission concludes that the ratepayers' portion of the gain on the sale of the Beatties Ford system should not be reduced by "loss of revenue" from the date of the Commission's Order in Docket No. W-354, Sub 81, to the date of the sale of the Beatties Ford system. The economic impact of the "loss of revenue" is neither a transaction cost nor an increase in investment. In Docket No. W-354, Sub 81, the Commission determined that CWS would bear any revenue loss due to CWS's decision to exclude Beatties Ford from the Sub 81 case. On page 19 of our Order in that proceeding we stated as follows:

> "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."
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> "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 Beatties Ford
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> > 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." [emphasis added] (Eightieth NCUC Report, pp. 360-361, 1990)

The Commission has previously made it clear that CWS would bear the risks associated with excluding Beatties Ford from the Sub 81 rate case. It is entirely inappropriate to reduce the ratepayers' portion of the gain on the sale of the Beatties Ford system by "loss of revenue" because CWS voluntarily removed Beatties Ford from the Sub 81 case and assumed all risks associated with that decision.

"Loss of Operating Income" From the Dates of the Sales of the Beatties Ford and Genoa/Raintree Systems to the Date of the Commission's Order in Docket No. W-354, Sub 111

Company witness O'Brien reduced the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems by the "loss of operating income" from the dates of the sales of these two systems to the estimated date of the Commission's Order in this proceeding. Public Staff witness Carter did not reduce the ratepayers' portion of the gains on the sales of these two systems by the "loss of operating income."

Witness O'Brien testified that when a system is sold certain expenses disappear such as electricity, chemicals, postage, depreciation and other expenses directly related to plant and customer administration, but that many expenses remain, such as the overhead expenses allocated to the customer base. He stated that when a company is sold, the margin between the revenues and expenses that are eliminated is no longer available to cover the fixed expenses that remain. Witness O'Brien testified that the elimination of this margin on the sale of a system is tantamount to either an investment or a reduction in the selling price of the system. Mr. O'Brien testified that this reduction in the ratepayers' portion of the gain by the "loss of operating income" puts the stockholders in the same position as if there had been no sale.

Public Staff witness Carter testified that the "loss of operating income" should not be deducted from the ratepayers' portion of the net gains on the sales of these two systems. He stated that when CWS sold these systems any operating income the Company was earning from these systems ceased to exist, and that it is not appropriate for the ratepayers' portion of the gains resulting from the sales of these systems to be reduced by an amount which Mr. O'Brien testifies will "put the shareholder in the position he would have been if there were no sale." Witness Carter further testified that if the Commission grants CWS's request to reduce the ratepayers' portion of the gain by the "loss of operating income" from the dates of the sales of the Beatties Ford and Genoa/Raintree systems to the date the Order is issued in this proceeding, it will be granting

CWS a return on plant that is no longer in service and was not used and useful in providing service to CWS's customers during that time period. Witness O'Brien testified that this action by the Commission would not result in the Commission granting the Company a return on plant that was not in service during that time period.

The Commission concludes that it is inappropriate to reduce the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems by the "loss of operating income" from the dates of the sales of these systems to the estimated date of the Commission's Order in this proceeding. The "loss of operating income" represents neither a transaction cost, an investment, nor a reduction in the selling prices of the systems. It is not the responsibility of CWS's remaining ratepayers to put CWS in the same position it would have been in if there had been no sale. CWS sold the systems at a profit and has had the use of the entire amount of the sales proceeds since the proceeds were received. The earnings on the sales proceeds from the dates the proceeds were received until the date of the Order in this proceeding belong to CWS's stockholders. The Company's request that its ratepayers pay for the "loss of operating income" from the dates these systems were sold until the date of the Commission's Order in this proceeding is no more appropriate than would be a decision by this Commission to require CWS to refund monies to its ratepayers for an "increase in operating income" as a result of CWS acquiring new systems.

Loss on the Sale of the Mt. Carmel System

Company witness O'Brien assigned 100% of the loss on the sale of the Mt. Carmel system to the ratepayers, while Public Staff witness Carter assigned the loss on the sale of the Mt. Carmel system equally between the stockholders and ratepayers. Witness O'Brien testified that the decision to sell the Mt. Carmel system was the only option available to the Company. He stated that further upgrades to the Mt. Carmel system would conceivably result in higher rates for all customers and still not satisfy the Mt. Carmel customers. Mr. O'Brien testified that the sale of the Mt. Carmel system was the best decision for both the stockholders and ratepayers, and that the Company should not be penalized for that decision. Witness O'Brien further testified that the Company was denied rate relief for the Mt. Carmel system in its last two rate cases, and the Company has paid a significant price for its efforts to upgrade service to the residents of Mt. Carmel. Witness O'Brien stated that based on the Company's efforts to improve service and being denied rate relief, the only fair treatment is to offset the entire loss against the gains being distributed to the customers.

Public Staff witness Carter testified that the loss on the sale of the Mt. Carmel system should be split equally between the ratepayers and the stockholders. He stated that it would be unfair and inconsistent for the ratepayers to receive only 50% of the gains on the sales of the Beatties Ford and Genoa/Raintree systems, but absorb 100% of the loss on the sale of the Mt. Carmel system.

The Commission concludes that the loss on the sale of the Mt. Carmel system should be assigned equally to the stockholders and ratepayers. It would be unfair and inconsistent for the ratepayers to receive the benefit of only 50% of the gains on the sales of the Beatties Ford and Genoa/Raintree systems, but assume 100% of the loss on the sale of the Mt. Carmel system. Mr. O'Brien

offered testimony concerning the problems CWS has encountered at the Mt. Carmel system, including the need to spend additional capital to upgrade the equipment, going for periods of time without rate relief, and operating the system with inadequate rates for certain periods of time. The Commission is aware of the problems that CWS has encountered at Mt. Carmel; however, for certain periods of time CWS encountered similar problems at the Beatties Ford and Genoa/Raintree systems. For example, on pages 2 and 6 of its Brief in Docket No. W-354, Subs 82, 86, 87 and 88, CWS stated as follows:

> "By order dated January 10, 1986, Carolina Water Service, Inc. of North Carolina (CWS) received a certificate of public convenience and necessity to provide water and sewer utility service to the Beatties Ford Park (Trinity Park) and Hyde Park East (hereinafter "Beatties Ford") subdivisions in Mecklenburg County. The prior owner was experiencing financial distress, and the systems were in a state of extreme disrepair. Immediately upon undertaking operation of the systems CWS began making improvements and bringing the system up to appropriate operating standards. Subsequent to CWS's takeover and operation of the systems, rates to the Beatties Ford customers were increased. Rates were "stepped in" or brought up to CWS's rates to other customers gradually to avoid precipitous rate increases to the Beatties Ford customers."
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> ....
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> "CWS took over the operation of three systems in Wayne County, collectively called the Raintree systems, in December 1988. At that time, the systems were not providing safe water and were not being operated by a certified operator. CWS made improvements to the systems and subsequently applied for a certificate of convenience and necessity to provide water service. By Order dated April 25, 1990, in Docket No. W-354, Sub 74, the Commission granted CWS the franchise."

When the Commission made its decision in Docket No. W-354, Subs 82, 86, 87 and 88, to equally split the gains on the sales of the Beatties Ford, Genoa/Raintree and Riverbend systems between the stockholders and ratepayers, it was aware of the problems CWS had encountered at those systems. Those facts entered into the Commission's decision to split the gains on the sales of those systems equally between the stockholders and the ratepayers. Since the problems of upgrading facilities, the denial of rate relief, and operating with inadequate rates for some period of time were incurred at the Beatties Ford and Genoa/Raintree systems, as well as at the Mt. Carmel system, and the fact that ratepayers are receiving only 50% of the benefit of the gains on the sales of the Beatties Ford and Genoa/Raintree systems, it is only fair that the ratepayers assume only 50% of the loss on the sale of the Mt. Carmel system. There is not a material difference between the factors affecting the Mt. Carmel sale and the factors affecting the sales of the Beatties Ford and Genoa/Raintree systems.

In his testimony concerning the treatment of the Mt. Carmel loss, Mr. O'Brien reargued the general principles that were addressed in Docket No. W-354, Subs 82, 86, 87 and 88, with respect to other systems. He testified that the economic risks were all on the shareholders; therefore, they should retain all extraordinary capital gains. He also testified that as part of the economic risk

shareholders would absorb all losses on sales, but Mr. O'Brien appears to have abandoned this principle for the Mt. Carmel loss due to the Commission's treatment of the gains on the sales of the other systems. The Commission disagrees with this argument in the present case just as we disagreed with it in Docket No. W-354, Subs 82, 86, 87 and 88.

First of all, the costs of extraordinary losses have often been placed on ratepayers, as in the case of dry wells, storm damage, abandonments, etc. This plainly shows that not all economic risks fall on shareholders.

Second, the Commission determines a fair rate of return on the shareholders' investment, and sets rates that allow CWS a reasonable opportunity to earn that return. The return includes a risk premium (i.e., the authorized return is greater than the risk-free rate of return) to provide adequate incentive for shareholders to take whatever economic risks may occur with their investment in CWS. Thus, the Commission has already provided reasonable compensation for the economic risks facing shareholders. To eliminate the economic risk to shareholders by placing the loss on ratepayers, while compensating shareholders for taking such a risk, would be inappropriate.

Third, the Commission struck a balance in Docket No. W-354, Subs.82, 86, 87 and 88, which is equally applicable here. The sharing of economic risks between ratepayers, and the need to create some incentive for a utility to sell a system to a municipal provider, is just as valid for Mt. Carmel as for Beatties Ford and Genoa/Raintree. This is because the Mt. Carmel sale involves the same utility in the same time frame, and because the economic risks for CWS ratepayers are equal for all systems under uniform rates.

CWS witness O'Brien also sought to justify his recommendation for the gains and losses on sales of systems by reference to historically low rates of return earned by CWS. However, the Commission cannot and should not place all the Mt. Carmel loss on ratepayers as a way of helping offset any past weakness in CWS earnings. Moreover, the Commission does not place much weight on CWS's evidence of historically low returns in light of the steadily increasing investment CWS has in North Carolina and in light of testimony in Docket No. W-100, Sub 13, by the Utilities, Inc., Director of Regulatory Accounting that CWS has historically generated revenues at least equal to its revenue requirement.

Summary Conclusion

Based on the foregoing, the Commission concludes that the appropriate level of net gains and losses on the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems is $528,152, as calculated on Carter Exhibit I, Schedule 1. One-half of this amount, or $264,076 should be assigned to CWS's stockholders and the remaining $264,076 should be assigned to CWS's remaining ratepayers and be used as a deduction in calculating CWS's original cost rate base in this proceeding and all future CWS rate proceedings.

FLOW BACK OF TAXES PAID THROUGH GROSS UP OF CONTRIBUTIONS IN AID OF CONSTRUCTION

Company witness O'Brien and Public Staff witness Carter presented testimony concerning the amount of cost-free capital resulting from the flow back of taxes paid through the gross-up of contributions in aid of construction (CIAC). Witness O'Brien testified that the flow back of taxes paid through the gross up of CIAC results from taxes that have been gross up on tap fees from customers in the Beatties Ford and Genoa/Raintree systems. Witness O'Brien testified that when these systems were sold CWS received a tax deduction for the amount of tap fees previously included as taxable income, which results in lower taxes. The amount related to the Beatties Ford system is $21,747 and the amount related to the Genoa/Raintree systems is $3,805. Witness O'Brien testified that the ratepayers should receive 100% of the benefit of the flow back of this tax benefit.

Public Staff witness Carter agreed with both the amounts and the regulatory treatment of the flow back of tax benefits recommended by witness O'Brien.

Based on the foregoing the Commission concludes that the flow back of taxes paid through the gross-up of CIAC in the amount of $21,747 related to the Beatties Ford system and $3,805 related to the Genoa/Raintree systems, for a total of $25,552, should be assigned to CWS's remaining ratepayers and be used as a deduction in calculating CWS's original cost rate base in this proceeding and all future CWS rate proceedings.

WORKING CAPITAL

The Company and the Public Staff are recommending different amounts of working capital due to the difference in the level of expenses and tax accruals recommended by each party. The Company included an amount of $346,401 for its water operations and an amount of $177,836 for its sewer operations. The Public Staff included an amount of $318,205 for CWS's water operations and $168,511 for CWS's sewer operations.

Based upon its conclusions reached elsewhere herein regarding the appropriate level of expenses and certain taxes, the Commission concludes that the appropriate level of working capital is $499,065, of which $325,384 is applicable to water operations and $173,681 is applicable to sewer operations.

DEFERRED CHARGES

The final component of rate base on which the Public Staff and the Company disagree is deferred charges. Company witnesses Wenz and Cuddie recommended a level of deferred charges in the amount of $665,507, while Public Staff witness Haywood recommended a level of $522,996. There is a difference of $142,511 between the level recommended by the Company and the Public Staff. The difference of $142,511 is summarized as follows:

Item	Public Staff	Company	Difference
Tank Maintenance - 1985	$ 0	$ 0	$ 0
Tank Maintenance - 1986	0	0	0
Tank Maintenance - 1987	0	0	0
Tank Maintenance - 1988	25,559	25,559	0
Tank Maintenance - 1989	16,630	16,630	0
Tank Maintenance - 1990	80,869	80,869	0
Tank Maintenance - 1991	23,742	23,742	0
Tank Maintenance - 1992	69,049	102,353	(33,304)
Total Tank Maintenance	215,849	249,153	(33,304)
Relocation	8,505	8,505	0
Unamortized Balance - Hugo	79,088	79,088	0
Unamortized Balance - Rate Case Expenses	193,199	250,540	(57,341)
Other Sewer	26,356	26,356	0
VOC Testing	0	51,865	(51,865)
Rounding Difference	(1)	0	(1)
Total	$522,996	$665,507	($142,511)

The first area of disagreement between the Company and the Public Staff, in the amount of $33,304, relates to tank maintenance for 1992. The Company included the unamortized balance of five additional projects as detailed in Mr. Wenz's rebuttal testimony. Mr. Wenz did not reduce the total amount of the tank maintenance expenses by the associated reduction in income taxes related to the expenditures. The Public Staff also included the cost of these five projects, but reduced the total cost of these projects by the associated reduction in income taxes. The Public Staff contends that the unamortized deferred balance for tank maintenance is $215,849.

The Commission agrees with the Public Staff that the cost of the tank maintenance projects should be included in rate base net of the associated reduction in income taxes. Therefore, the Commission concludes that the appropriate level of deferred tank maintenance cost to include in the deferred charges component of rate base is $215,849 which includes an amount of $69,049 related to maintenance in 1992.

The second area of disagreement between the Company and the Public Staff concerns the appropriate level of deferred rate case expenses to include in rate base. The Company contends that the rate case expense for Sub 111 is $224,130. After adopting a three-year amortization period, the Company contends that $149,420 of deferred charges for Sub 111 rate case expenses be included in rate base. The result is a difference of $40,761 between the parties concerning deferred charges - rate case expense for Sub 111.

The Commission has concluded elsewhere in this Order that $217,939 of rate case expenses should be included for this proceeding. Assuming a three year amortization period results in $145,293 of deferred charges for Sub 111. The $145,293 should be allocated between water and sewer as follows: $100,049 for water and $45,244 for sewer.

The third area of disagreement between the Company and the Public Staff concerns intervention costs. During the test year, CWS intervened in two dockets instituted through applications by other utilities. Docket No. W-274, Sub 59,

involved an application for a general rate case filed by Heater Utilities, Inc. Docket Nos. W-720, Subs 96 and 108, involved applications for new franchises filed by Mid South Water Systems, Inc. CWS now seeks rate recovery of $20,725, representing a portion of the costs of intervention in those cases. The Company seeks to recover one-fifth of the costs, or $4,145, through rates as a test year expense and proposes to include the unamortized amount of $16,580 in rate base.

In the Heater docket, CWS sought to intervene to insure that the Company's interests in certain issues such as the gain on the sale of Hasty Water Company's systems to the City of Raleigh were adequately represented. CWS sought an opportunity to participate to advocate the same degree of regulatory scrutiny and application of the same standards for Heater as the Commission had applied in recent cases involving CWS. The Commission denied the Company's petition to intervene, but permitted CWS to file an amicus brief. In denying intervention, the Commission ruled, in part, that the concerns being expressed by CWS did not constitute a real interest in the subject matter of the proceeding. Subsequently, CWS communicated with Bryan-Watson, Inc., a customer of Heater. Bryan-Watson agreed to intervene and pursue the issues CWS sought to raise. The Commission also denied that intervention. CWS filed its amicus brief on November 2, 1990. CWS raised four issues that it asked the Commission to address. In the Heater Order dated December 20, 1990, the Commission concluded that the issues raised by CWS in its amicus brief were properly addressed in the proceeding.

In Docket Nos. W-720, Subs 96 and 108, CWS intervened to assert that Mid South had obtained contracts to provide water and sewer service in several Mecklenburg and Cabarrus County Subdivisions by declining to require, in compliance with Commission Orders, the developers to pay the reimbursement for taxes due on contributions in aid of construction (CIAC). By Order dated April 4, 1991, the Commission permitted CWS to intervene and conducted a hearing on the issues raised. On July 28, 1992, the Commission entered an Order in the Mid South dockets which revoked Mid South's temporary operating authority in Bradfield Phases III, IV, and V, declared Mid South's service to the Silverton Subdivision by contiguous extension unauthorized and unlawful, and scheduled a further hearing to consider whether Mid South's certificate to serve Bradfield Phase II should be revoked. The Commission stated that:

> "Only as a result of the extensive proceedings in these dockets, including the intervention of Carolina Water, has the Commission learned of the extent of Mid South's service obligations in the Bradfield development, the nature of the contractual relationship between Mid South and Crosland/Centex, the facts surrounding the 'contiguous' extension into Silverton, and the uncertain status of Mid South's financial fitness to serve these developments." (Emphasis added).

Ms. Haywood testified for the Public Staff that the services for the interventions by CWS in the Heater and Mid South dockets were not needed to provide utility service to the Company's customers. In rebuttal, CWS witness Wenz addressed Ms. Haywood's contention that the services were of no benefit to the customers of CWS. Mr. Wenz noted the competition between the larger water and sewer utilities for the opportunity to acquire systems and franchises. He testified that acquisitions enable growth and that growth facilitates economies

of scale and an ability to spread fixed costs over more customers. Mr. Wenz testified that the customers of CWS benefit when CWS can grow in an economically sound manner. According to witness Wenz, the degree of regulatory scrutiny afforded by the Commission and the decisions it makes can play a significant role affecting such competition. CWS intervened in the proceedings to assure that regulation is evenhanded and that its ability to compete fairly would be maintained.

Mr. Wenz testified that the intervention of CWS was necessary to aid the evaluation and refinement of regulatory policy which has taken place in recent years. Mr. Wenz further testified that CWS intervened in the Heater case to insure that the precedent set in that case would have input from CWS. CWS desired to clarify regulatory policy and assure regulatory consistency. Rather than CWS being the test case for each emerging issue, CWS sought to focus attention to such issues in another utility's case so that the costs could be absorbed by other customers.

With respect to the Mid South case, Mr. Wenz noted that areas for which Mid South sought a certificate were adjacent to the service area of CWS. Mr. Wenz restated the contention of CWS that its negotiations with the developers had been prejudiced because Mid South ignored Commission policies and tax regulations thereby gaining an unfair competitive advantage. Mr. Wenz reiterated that had not Mid South unfairly hindered the ability of his Company to serve, CWS would have increased its customer base and spread its fixed and operating costs over more customers, thereby benefitting its existing customers.

In litigation of regulatory proceedings such as these, the test for determining whether the costs should be recoverable through rates is not solely confined to whether the utility can show some direct and tangible benefit to its customers. Otherwise, recoverability would be totally dependent on the ultimate outcome of each case. Instead, the test is whether the expenditures were prudent and reasonable, whether the participation constituted a legitimate business decision on the part of the utility's management, and whether the intervention was in the public interest and of benefit to the Commission and consumers.

CWS, through the testimony of witness Wenz, has clearly demonstrated that its management decisions to participate in the dockets in question were reasonable and prudent and that, contrary to the Public Staff's assertion, there are, at the very least, indirect benefits to the customers of CWS. Regulatory policy was refined in the Heater case. On the gain on sale issue, we determined that sales occurring before our decision in Docket Nos. W-354, Subs 82, 86, 87, and 88, would not be affected by the decision. The participation of CWS in the Mid South docket was beneficial in that it assisted the Commission in arriving at a fully-informed decision. Both decisions further defined and clarified regulatory policies. The public interest was served by the intervention of CWS in the dockets in question. That being the case, CWS should be allowed to recover at least some portion of its intervention costs through rates. The question now becomes: what level of recovery is appropriate?

Having carefully examined this issue, the Commission concludes that CWS should be allowed to recover only 50% of the requested intervention costs from its customers through rates established in this proceeding. CWS will be required to absorb the remaining 50% of the intervention costs which the Company is

seeking to include in rates. We agree with CWS that its participation in the Mid South dockets in particular was beneficial and recognize that our decision in the Heater case further defined and clarified regulatory policy on the gain on sale issue. Whether to allow one public utility to intervene and participate in an individual docket initiated by or against another public utility is a troublesome question, particularly when the costs of such participation are subject to being passed on to consumers who may not themselves have any direct interest in the matter. For that reason, the Commission must consider the ratemaking consequences of such interventions on a case-by-case basis. The 50%-50% sharing adopted by this Order is based on the facts of this case and our conclusion that the participation of CWS in both the Mid South and Heater cases, but particularly in the Mid South dockets, was in the public interest and beneficial to the Commission, CWS, and the Company's customers. That being the case, a 50%-50% sharing is reasonable and appropriate. The fact that CWS is being denied the right to recover 50% of its requested intervention costs should serve as an incentive to cause the Company to intervene in future cases only where its interest is so direct and compelling that it is willing to incur 50% or more of the costs at shareholder, and not ratepayer, expense. Therefore, the Commission concludes that $2,073 of these costs should be included in the test year level of operating expenses and that $8,290 in deferred charges should be included in rate base for purposes of this proceeding.

The next area of difference between the parties with respect to deferred charges relates to VOC testing costs. Mr. Wenz stated in rebuttal testimony that the unamortized balance of $51,865 for VOC testing costs should be included in rate base to recognize that the funds for these tests have been provided by the Company's investors. Mr. Wenz stated in rebuttal testimony that VOC testing expenditures should be treated consistently with other deferred charges such as tank painting. He stated that VOC testing costs are amortized and recovered in rates over a period of three to five years. Mr. Wenz acknowledged under cross examination that his calculation of VOC testing deferred charges differed from his calculation of tank painting deferred charges. He testified that the inclusion of an average unamortized balance of VOC testing costs in rate base would be more appropriate because it is difficult to measure the proper amount to include in rate base due to the three-year and five-year amortization periods for these tests. He further stated that his justification for using an average balance was that since the tests are staggered it would be a complicated calculation to determine, for amortization purposes, at which point in the cycle the VOC tests were taken.

The Public Staff did not include in rate base an amount for deferred charges related to VOC tests. Ms. Haywood testified that the Public Staff has included a representative amount of VOC testing expenses in operating expenses. She stated that the amortization of tank painting relates to the cost recovery of a specific expenditure whereas the inclusion of a representative amount of VOC testing cost does not.

The Commission continues to believe that VOC tests are regular tests and should not be included in deferred charges. Both parties agree that a representative level of VOC testing costs can be calculated and included in operating expenses. Since a normalized level of VOC testing expenses rather than a specific recovery of VOC testing costs has been allowed, there is no unamortized amount to be included in rate base. Therefore, consistent with our

Order in CWS's last rate case, the Commission has determined that the Public Staff adjustment to reduce rate base by $51,865 for VOC costs is appropriate, and that no amount of deferred VOC testing charges should be included in rate base.

Based on the foregoing, the Commission finds that the appropriate level of deferred charges to be included in this proceeding is $567,920, of which $439,771 is allocated to water operations and $128,149 is allocated to sewer operations.

SUMMARY CONCLUSIONS

Based on the foregoing, the Commission concludes that the Company's reasonable rate base used and useful in providing service is $15,493,252, comprised as follows:

Item	Water Operations	Sewer Operations	Total
Plant in service	$25,921,478	$19,330,522	$45,252,000
Accumulated depreciation	(1,988,456)	(1,356,258)	(3,344,714)
Contributions in-aid-of construction	(9,730,348)	(9,492,716)	(19,223,064)
Advances in-aid-of construction	(122,495)	(98,887)	(221,382)
Plant acquisition adj.	(1,787,538)	(1,198,345)	(2,985,883)
Acc. deferred taxes	(720,700)	294,493	(426,207)
Customer deposits	(78,217)	(35,372)	(113,589)
Excess book value	(1,670,755)	(2,610,511)	(4,281,266)
NCUC bonds	41,316	18,684	60,000
Gain on sale and flow back of taxes	(216,693)	(72,935)	(289,628)
Working capital allow.	325,384	173,681	499,065
Deferred charges	439,771	128,149	567,920
Total original cost rate base	$10,412,747	$5,080,505	$15,493,252

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 61-69

The evidence for these findings of fact is contained in the testimony of Public Staff witnesses Larsen and Haywood and Company witnesses Cuddie and Wenz, and in Larsen Revenue Schedules 1-4 of the Public Staff's Final Position.

The parties differ over the level of revenues. The Company calculates total revenues of $7,255,678; the Public Staff of $7,667,378 for a difference of $411,700.

SERVICE REVENUES

The evidence for finding of fact no. 61 is found in the testimony of Company witnesses Wenz and Cuddie and Public Staff witnesses Larsen and Haywood. The Company calculates service revenues of $7,189,400, while the Public Staff calculates service revenues of $7,592,841, for a difference of $403,441. This difference is due to a dispute between the parties with respect to the number of end-of-period customers.

In its application in this case, CWS showed test year pro forma revenues of $7,189,400. As reflected in Revised CJW Schedule D, these were annualized

test year revenues obtained by use of end-of-period billing units. All of the exhibits, schedules, and testimony offered in evidence by CWS in this case consistently contain the same number for test year revenues, calculated in the same way.

The Public Staff testified that it conducted an audit of the Company's books and its application. Public Staff witness Larsen testified that he calculated pro forma revenues that would be generated by the Company's existing and proposed rates. The Public Staff engaged in substantial discovery in this case. The Public Staff prefiled and supported testimony, exhibits, and schedules that required it to state a position on the Company's pro forma level of test year revenues. The evidence of the Public Staff on that point indicates acceptance of the Company's calculation of pro forma revenues. See Rankin Exhibit I, Schedule 3, line 1, column (a).

Prior to the close of the evidentiary hearings in this docket, there was no schedule, exhibit, or testimony suggesting any controversy over the Company's level of test year service revenues. No party, including the Public Staff, proposed any adjustment through testimony or cross-examination which directly contradicted or called into controversy the Company's level of test year revenues. The record, as it existed at the close of the hearing, contained no suggestion that the method of calculating test year revenues followed by either CWS or the Public Staff was in error.

It was only after the evidentiary hearings in this docket were closed on June 12, 1992, that the issue of test year revenues became a matter of controversy. The Commission requested the parties to file financial exhibits reflecting their final positions with respect to net operating income, rate base, and capitalization by June 19, 1992. On June 18, 1992, the Public Staff made two filings in this docket entitled Motion for Extension of Time to File Numbers and Public Staff's Notice of Agreement with Company Regarding Certain Matters. In its motion for an extension of time to file numbers, the Public Staff stated that, in attempting to calculate its final numbers, it discovered that the end-of-period customer numbers in the Company's exhibits differ significantly from the numbers testified to by CWS witness Cuddie. The Public Staff further stated that it could not calculate its final numbers until it had received a reconciliation from the Company. Therefore, the Public Staff requested that all parties be granted an extension of time until June 26, 1992, to file final numbers in this case. The Commission granted the requested extension of time to all parties by Order dated June, 22, 1992.

On June 26, 1992, CWS and the Public Staff filed their final positions with respect to net operating income, rate base, and capitalization as required by the Commission. In a cover letter to its filing, the Public Staff stated that its final position and numbers used the end-of-period customer figures presented by CWS through the testimony of witness Cuddie.

On July 6, 1992, the Public Staff filed a motion requesting the Commission to consider three alternative procedures to resolve the discrepancy in the different numbers provided by CWS for its end-of-period customer count. The three options suggested by the Public Staff were to (1) reopen the hearing for additional testimony, (2) extend the period of time for the parties to file proposed orders, or (3) continue to require the parties to file proposed orders

as scheduled on July 10, 1992, but allow the Public Staff to review the reconciliation it was to be provided by CWS and then make a supplemental filing on the customer issue. On July 8, 1992, CWS filed a response to the Public Staff's motion for alternative procedures and urged the Commission to adopt the third alternative suggested by the Public Staff. CWS stated that it presented the Public Staff with a reconciliation on July 7, 1992, between the numbers used in the Company's application to compute revenues and those provided from the stand by witness Cuddie. On July 9, 1992, the Commission entered an Order requiring the parties to file their proposed orders by July 10, 1992, and allowed the Public Staff until July 15, 1992, to make a supplemental filing with respect to the appropriate number of end-of-period customers for use in calculating test year revenues.

On July 15, 1992, the Public Staff made its supplemental filing in response to our Order of July 9, 1992. The Public Staff stated that it had reviewed the reconciliation provided by CWS, but that it could not accept the Company's numbers for end-of-period customers and had been unable to reach agreement with CWS on the proper end-of-period customer numbers to use for calculating pro forma revenues in this case. On July 17, 1992, CWS filed a response to the Public Staff's supplemental filing of July 15, 1992, in which it asserted that the only alternative is for the Commission to use the revenues contained in the schedules of the Public Staff and the Company that are a part of the record in this case.

Only after the record in this case was closed has an allegation been made that some adjustment for test year pro forma revenues is perhaps appropriate. The genesis of the post-hearing position taken by the Public Staff with respect to test period revenues is a series of questions and answers during the cross-examination of CWS witness Cuddie on her direct prefiled testimony. During her direct testimony, Ms. Cuddie was initially asked a series of questions having to do with end-of-period customers on cross-examination by the Attorney General. The purpose of that line of questions is not entirely clear from the record, but it appears that the Attorney General was attempting to compare the Company's customers at the end of the test year in this case with those at the end of the test year in its last general rate case.

Following the Attorney General, the Public Staff asked questions of witness Cuddie that appeared to be in the nature of clarification:

CROSS-EXAMINATION BY MR. DROOZ:

Q. Ms. Cuddie, the customer numbers that you just provided to the Attorney General, are those the number of water and sewer customers used to calculate pro forma revenues?

A. Yes. Those are the numbers.

Q. And likewise you would recommend that those be the numbers the Public Staff use to calculate pro forma revenues?

A. I believe those are the numbers that they were provided.

Q. And I missed the two set of numbers. Is it 17,548 water?

A. Yes.

Q. And 7,937 sewer?

A. Yes.

Q. And then 2,266 water availability?

A. Yes.

Mr. Drooz: Okay. Thank you. That's all I have.

The controversy on this issue was generated by witness Cuddie's statement that "those [are] the number of water and sewer customers used to calculate pro forma revenues." (Emphasis added). Ms. Cuddie's response to the question posed by the Public Staff leaves completely open the extent to which the customer numbers may have been adjusted, refined, discounted, added to, or subtracted from in the process of obtaining pro forma revenues.

As far as the Commission can determine, there was no subsequent mention made in the record of any disagreement over the level of test year revenues. In fact, the Public Staff, subsequent to Ms. Cuddie's direct testimony, sponsored its own expert testimony, with supporting exhibits and schedules, containing revenue levels which were in agreement with those offered by CWS.

Absent more compelling evidence, Ms. Cuddie's testimony regarding customer numbers made in response to questions without an apparent intent to lead toward an adjustment to test year revenues is insufficient to contradict the exhibits, schedules, and prefiled testimony offered by both the Public Staff and CWS as to the appropriate level of pro forma test year revenues.

In the motion for alternative procedures filed by the Public Staff on July 6, 1992, the Public Staff alleged that it originally accepted the numbers on end-of-period customers reflected in the Company's schedules, but because of "contradictory responses to several data requests," pursued the matter at the hearing. The Commission is puzzled as to why the Public Staff waited until the hearings took place to raise an issue of such importance and then raised it in such an oblique fashion. Further, if both the Public Staff and Attorney General wished to pursue the issue at the hearing, why did they not directly raise it through their own expert testimony or through cross-examination of Mr. Wenz, since he was the witness for CWS who sponsored the relevant exhibits and testified on rebuttal after Ms. Cuddie.

Furthermore, the Commission notes that a similar disparity exists in the testimony offered by Public Staff witness Andy Lee in Docket No. W-354, Sub 81. On page 4 of his testimony, Mr. Lee states that the Company was serving 17,122 water customers, 7,011 sewer customers and 2,331 availability customers at the end of the test year. Mr. Lee also detailed the billing units on Lee Exhibit 9, pages 1, 2 and 3 of his supplemental testimony. An analysis of that exhibit shows that when the monthly billing units are added together and divided by 12, there are 15,696 water customers, 6,106 sewer customers and 2,349 availability customers. The lower customer numbers (billing units) were used for determining revenues.

It is apparent to the Commission that factors exist, such as disconnected "connections" or the connection of multiple units on a master meter, that can result in different customer counts for both the Company and the Public Staff at different times for different purposes. In fact, Mr. Larsen, on page 34 of his prefiled testimony and in his Exhibit 13, raises a third method of counting customers, called customer equivalents. However, the one constant is that billing units were used to calculate revenues by both CWS and the Public Staff in their prefiled expert testimony. That testimony was never disavowed or changed in any way during the course of the hearing.

We also note that Mr. Wenz reconciled the revenue generated during the test year and agreed to by the parties by using billing units (Revised CJW Schedule D, 1 of 4), buttressing further the Company's position that calculations using billing units, as was done by both CWS and the Public Staff in this case, are in fact proper.

The Commission concludes that the most credible evidence of test year pro forma revenues is that contained in the application and the testimony and exhibits offered by CWS witness Wenz and Public Staff witnesses Larsen and Haywood. Ms. Cuddie's testimony on end-of-period customers, whether or not used to calculate pro forma revenues, is not direct evidence of pro forma revenues. The crucial question of whether or not intermediate adjustments were made to obtain billing units from end-of-period customers was not explored by the Public Staff, either through cross-examination of CWS witnesses Cuddie or Wenz or through revised testimony by Public Staff witnesses Larsen and Haywood. Whatever concerns Ms. Cuddie's answers raised with the Public Staff, there was no follow-up prior to the close of the record. The evidentiary record is now closed. Based on the evidence found to be the most credible, the Commission determines that the Company's test year pro forma service revenues are $7,189,400.

While we conclude that the record as it currently exists supports the Company's position on the issue of test year revenues, we encourage the Public Staff and CWS to continue their dialogue on this matter because the revenue impact of the issue is so large and significant. If, through further investigation of this issue and after having unsuccessfully attempted to resolve the matter through further discussions with the Company, the Public Staff remains convinced that its position is correct and can be supported by evidence not already in the record, it may, of course, petition the Commission to reopen the hearings to receive further evidence. The Commission is hopeful that this issue can be resolved through further investigation and discussion by the parties. Any petition to reopen the hearing, limited solely to the issue of test period revenues, should be filed not later than 30 days from the date of this Order. Otherwise, the issue should be addressed, if differences of opinion continue to exist, in the Company's next general rate case.

MISCELLANEOUS REVENUES

The first issue involves the revenues and expenses from the billing and collection services for the City of Charlotte (City). The Company states that expenses should be allocated out of the rate case to account for this service.

According to the Public Staff, an agreement exists between Water Service Corporation and the City relating to billing and collecting services for the

City's sewer customers in three subdivisions (Lawyer's Station, Mallard's Crossing, and Courtney) in which CWS provides the water service and the City provides the sewer service. Although the Applicant claims that this agreement is through Water Service Corporation, it uses all the data and resources (customer usage information, office employees, etc.) of CWS to provide this service.

The Company stated that Water Service Corporation uses an "insignificant amount of resources of CWS (Carolina Water)." for this service. However, the Applicant states that the only cost to Water Service Corporation is one hour per month of one person's time summarizing this information.

During cross-examination, witness Larsen explained the Public Staff's reasoning for this adjustment:

> Q. And isn't only the real legitimate adjustment that can be made one to identity the costs that are incurred in providing these billing services and to take them out?
>
> A. Yes, but I think we should also consider the value of this information.
>
> Q. You mean the allocation of the expense out ought to be based on how valuable it is?
>
> A. Well, this information is obviously a value to the City of Charlotte at the tune of $2.00 per customer per month and for Carolina Water to give this information away we believe they are subsidizing Water Service Corporation, or whoever is receiving these revenues.

Witness Larsen further explained in his testimony that as of the end of the test year, the Company maintained 556 accounts and was compensated $4.00 bi-monthly per customer for this service. Therefore, the annual revenue is $13,344 (556 x $4.00/2 mos. x 6 billing periods).

The Commission notes that CWS has acquired through its regulated operations information of value to CMUD, and has incurred the billing expense which also is of value to CMUD, but has allowed an unregulated affiliate to receive the benefit of revenues from CMUD without any compensation to CWS. The Commission concludes that this revenue should belong to CWS because it is through CWS's regulated operations that the information of value to CMUD is obtained. It is reasonable to allocate this revenue 70% ($9,341) to water and 30% ($4,003) to sewer. In so ruling, the Commission concludes that there should be no adjustment to remove expenses for providing this service to CMUD.

The next issue involves the following miscellaneous charges:

- Reconnection Charges - Water
- New Account Fee - Water
- New Account Fee - Sewer
- New Account Fee - Water and Sewer

The Applicant's current reconnection fee for water service that is discontinued for good cause or at the customer's request is $22.00, and the proposed is $27.00. Also, the new customer account fee for water is currently

$22.00 and proposed is $27.00; the new account fee for sewer is $16.50, whereas the proposed is $22.00. The Public Staff recommended that these fees remain unchanged.

Witness Larsen explained that while he did not disagree with the actions required to perform these services, he did disagree with the estimated time involved. Since the operators visit the systems on a daily basis, witness Larsen argued that the operators' time should not include travelling to and from the system. By removing the travel time, witness Larsen concluded that a cost of $22.34 is justified. Since this result is very close to the existing $22.00 charge, witness Larsen recommended that no change in any of these water fees be allowed. He also stated the sewer new account fee should remain unchanged because it takes even less time than setting up a water new account.

The Company maintains that its calculation of the time involved is appropriate and that the fees as requested should be approved. The Commission determines that even though an operator may visit a system for operational purposes on a frequent basis, the need to travel to the system for connection purpose requires additional time. The Commission agrees with the Company on this matter and, therefore, the Commission determines that the requested increases for these charges should be approved.

The Company has also requested to include the following language pertaining to Sewer Reconnection Charge in its tariff:

> Where an elder valve has been previously installed, a reconnection charge of $27.00 shall be due. Customers who ask to reconnect with 9 months of disconnection will be charged the monthly sewer charge for the service period they were disconnected.

Neither the Company nor the Public Staff addressed this matter in its testimony. The Commission is aware that similar language pertaining to the "9 months of disconnection" has been approved for Water Reconnection Charges; however, the Water Reconnection Charges were approved in previous proceedings based on evidence presented at that time.

CWS included the above language on its application. However, they did not address the merits of this request in their prefiled testimony or at the hearing. The Public Staff did not address this matter at any time. CWS is responsible for defending and justifying its request, which it failed to do in this matter.

Based on the above, the Commission is of the opinion that CWS requested to modify its Sewer Reconnect Charges, as stated above, should be denied.

The Company also requested an increase from $7.00 to $10.00 for the Returned Check Charge. The Public Staff agreed with the proposed charge of $10.00.

The Commission concludes that the proposed returned check charge of $10.00 is fair and is in line with the amounts charged by other utilities in the state of North Carolina.

The Company has also asked that a water meter testing fee of $20.00 be approved for customers who request meters be tested more frequently than every

two years (unless the meter is found to be inaccurate, in which case the fee will be waived) be allowed. The Public Staff noted that although Commission Rule R7-22(b) only allows a charge of $2.50 for a residential meter (and greater charges for larger meters), they believed that this amount was outdated. The Public Staff agreed with the proposed charge.

The Commission agrees with the proposed charge and also notes that the following language from NCUC Rule R7-22 is still controlling:

> If a customer requests a test of a water meter more frequently than once in a twenty-four (24) month period, the Company will collect a [Twenty Dollar ($20)] service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24 month period without charge.

The last miscellaneous revenues issue involves the management fees. The Company included $10,250 of "management fees" in miscellaneous revenues that it received during the test year pursuant to contracts with developers in the Riverbend, Southwoods, Wolf Laurel, and Cabarrus Woods subdivisions. CWS collects these fees at a specified rate for each subdivision every time a new customer connects. The Public Staff recommended that in addition to these fees, $8,475 which was booked to Utilities, Inc., for the same services should also be included as management fees since Utilities, Inc., has already been paid by CWS for management services related to CWS operations. The Company did not rebut the Public Staff's adjustment.

The Commission is of the opinion that management fees of $10,250 plus $8,475 for a total of $18,725 should be included in miscellaneous revenues. It is reasonable to allocate this amount 70% or $13,108 to water operations and 30% or $5,617 to sewer operations.

UNCOLLECTIBLE REVENUES

Witnesses for both the Company and the Public Staff agree that the appropriate rate of uncollectible revenues is 1.22%. The difference in the level of uncollectible revenues between the Company and the Public Staff results from the different levels of service revenues and miscellaneous revenues recommended by each party.

The Commission concludes that the appropriate rate of uncollectible revenue is 1.22%. Based upon its conclusions elsewhere herein regarding revenues, the Commission concludes the appropriate level of uncollectibles is $59,389 for water operations and $30,387 for sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate end of period level of gross service revenue is $4,745,041 for water operations and $2,444,359 for sewer operations; miscellaneous revenues are $122,876 for water

operations and $46,359 for sewer operations. The Commission also concludes that it is appropriate to reduce these revenues by $59,389 for water operations and $30,387 for sewer operations as uncollectible revenue.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NOS. 70-95

The evidence supporting these findings of facts is found in the testimony of Public Staff witnesses Larsen and Haywood and Company witness Daniel, Cuddie and Wenz.

The following differences remain between the Public Staff and the Company concerning operation and maintenance expenses:

Item	Public Staff	Company	Difference
Salaries & Wages	$1,093,934	$1,178,587	$(84,653)
Purchased Power	754,324	754,324	0
Purchased Water	61,634	61,634	0
Maintenance & Repair	826,845	826,845	0
Maintenance Testing	155,670	204,023	(48,353)
Chemicals	174,803	174,803	0
Transportation Expense	185,021	195,432	(10,411)
Operating Exp. - Plant	(335,756)	(361,889)	26,133
Outside Services - Other	144,180	145,791	(1,611)
Water service charges	145,430	145,430	0
Total	$3,206,085	$3,324,980	$(118,895)

As the chart shows, the Public Staff and the Company agreed on the amounts for purchased power, purchased water, maintenance and repair testing, chemicals, and water service charges. Therefore, the Commission concludes the appropriate level for these items are those set forth by both parties.

SALARIES AND WAGES-O&M

This issue involves the allocation of salary expense and vehicles expense to the non-regulated contract water and sewer systems. Several disagreements arose over this issue between the Company and the Public Staff. In total, the Company has allocated 3.13 employees to the operations of the 4 contract water and 14 contract sewer systems, whereas the Public Staff has allocated out 4.41 employees.

According to witness Larsen's evaluation of the contracts:

> The contracts require the owner of the system (client) to pay for repairs that are outside the scope of normal maintenance and also to pay for chemicals, electric power for the plant, and testing fees. The contract operator (Water Service Corporation) provides the system with a certified operator and completes all monthly reports that must be submitted to DEH for water systems, or DEM. In addition, the operator performs routine maintenance on the facility, monitors lift stations (if applicable), collects and analyzes samples in the field and transports other samples to laboratories for analysis, arranges and supervises repair services that are outside the scope of routine maintenance, is responsible for procuring chemicals, and maintains

correct chemical feed rates and levels. Also, the operator will repair the plant in the event of any malfunction, damage, or loss of any part of the facility during normal operation hours. Action that is required at times other than during normal inspection is subject to a $40 per hour charge to the client.

The annual revenue from these contract operations is $156,756.

Carteret Systems

The first area of difference relates to the ten sewer systems and one water system in the Carteret County area. The Company allocated 1.5 employees (Jeff Pruitt - full time and John Cunningham - half-time) to these plants. During his field investigation, witness Larsen discovered that Isaac Boyd, another full-time operator, operates one of these ten systems. In addition, witness Larsen reviewed the monthly monitoring reports for the sewer plants and learned that Pruitt is listed as the Operator In Responsible Charge (ORC) on only 62% of the reports, Cunningham on 25% and Boyd on 13%. Since Pruitt is full-time and is listed as ORC for 62% of the reports, witness Larsen stated that it is reasonable that Boyd should be allocated at 21.0% (13%/62%) for these plants.

Witness Larsen applied the same reasoning to laboratory sampling time for these plants. Pruitt as a full-time employee on these plants is responsible for 19% of the lab sampling, and Boyd is listed as responsible for 78% of the lab sampling. Witness Larsen assumed that sampling only takes about one twentieth (1/20) of the operator's time, and concluded that Boyd should be assigned to these plants 20.8% of the time (78%/19% x 1/20). Witness Larsen added that laboratory sampling frequency for these contract systems ranges from 3 to 12 samples per month. Assuming 1/20 of the operator's time for this function is reasonable. Witness Larsen averaged the ORC and lab sampling allocations, which are very close to begin with, and arrived at 20.9% that should be removed for Boyd.

The Company testified that being the ORC of a system has "little, if any, relation to the amount of time an operator actually spends operating a plant."

Clearly, Mr. Boyd is the ORC for some of these contract plants since he signs as the ORC on monitoring reports sent to DEM every month. It is inconceivable that he would sign the monitoring reports without taking time to familiarize himself with what is going on at the plant and at least occasionally making personal inspections. In addition, lab sampling is time consuming, and it is performed by Boyd as well as Pruitt and Cunningham. Given that Boyd is working on these contract plants as ORC and doing lab sampling for them, some of his time should be allocated to these contract operations. Moreover, the field investigation showed that Boyd operates one plant, in addition to signing the monitoring reports and doing lab sampling for other plants. The Company's allocation of zero time for Boyd is unreasonable. The Public Staff's allocation of 20.9% of his time is reasonable on the record evidence.

The Company argued that the 1.5 operator allocation approved in Sub 81 was appropriate in this case because there are two fewer contract plants in the Carteret area than at the time of Sub 81. This is not a compelling argument. The evidence in this case shows that Pruitt, Cunningham, and Boyd all three work

on these contract plants. Moreover, CWS has about 3 systems per operator and multiple levels of management for its regulated operations, which shows that its allocation of 7 systems per operator (10 sewer and 1 water divided by 1.5 operators) and zero levels of management for the Carteret contract plants is understated.

The Company also stated that past Commission orders in Subs 69 and 81 regarding this issue should dictate how the Commission rules here. The Commission notes its own Order in Sub 81 that refers back to the Sub 69 case in which the Company questioned Public Staff witness Lee:

> 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....

(Docket No. W-354, Sub 81, Order Granting Partial Rate Increase, 80 NCUC Reports at pp. 413-14.)

> Further in that Order, the Commission found:
>
> 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.

(Id. at p. 414.)

The Commission notes that in this docket, the Public Staff performed an investigation into this issue, including on-site visits to the contract plants and discussions with the contract plant operators and their managers, and has presented expert testimony concerning the facts about the operations of these plants. Therefore, the Commission finds the Public Staff testimony deserves greater weight than in past cases.

The Commission concludes that based upon the first-hand information provided by witness Larsen as well as reasonableness of the adjustments, 20.9% of the salary of Isaac Boyd should be allocated out of the Company's operating expenses along with the full salary of Jeff Pruitt and one-half salary of John Cunningham.

Topsail Green

The next area of conflict is the Topsail Green contract water and sewer system located in Pender County. The Company allocated out 25% of the salary of Edward Hairston, an operator in training who is assigned to this water and sewer system. In addition to this adjustment, the Public Staff recommended that 25% of the salary of Tony Baldwin, who is an operator in this area, be allocated out.

According to witness Larsen, Hairston is only a trainee, has no water certification, and only has a Grade I sewer certification. This is confirmed by Daniel Exhibit 3, although apparently Hairston did obtain a C-well water license

by the time rebuttal was filed. DEM requires that the ORC possess a certification level equal to or higher than the level of the plant the ORC is operating. Topsail Green is a Grade II sewer plant; therefore, Hairston cannot be the ORC. Also, the Public Staff's field investigation revealed that Tony Baldwin has replaced Kenneth Hamrick as the operator of this system. Kenneth Hamrick, who is a Carolina Water employee currently operating non-Carolina Water systems in Cumberland County, was listed as the ORC for this system during the test year.

In addition, witness Larsen discovered that while Baldwin and Hamrick are full time employees with benefits such as retirement and health insurance, Hairston is listed as part-time, only earned $3,520 during the test year, and is proformed out at the same annual pay. Therefore, the Company's adjustment to remove a portion of Hairston's salary only amounts to $880 (25% of $3,520) and does not include any benefits. This contract plant has a monthly revenue of $800, or $9,600 annually, while the Company is only accounting for $880 of annual salary expense.

The Commission gives great weight to witness Larsen's testimony that a Company manager directly told him that Tony Baldwin operated the Topsail Green system. The Commission also notes that Hairston is a trainee and is apparently being trained 25% on contract plants and 75% on regulated systems. The Public Staff's allocation of 25% of the operator's salary -- Tony Baldwin -- in addition to the trainee's salary, is reasonable. The Company's allocation of only $880 annual salary expense to run a contract water and sewer system which has annual revenues of $9,600 is unreasonable.

Supervisor Time - Carteret Systems and Topsail Green

Joe Lawrence is the CWS Area Manager who supervises the CWS employees who work on the Carteret County contract systems and on Topsail Green. The Public Staff allocated out 36.7% of Lawrence's salary because a total of 2.2 of the six employees for whom he is responsible work on contract systems. Since these employees are under direct supervision of Lawrence, the Public Staff argued that his salary should be allocated accordingly, which is the methodolgy the Commission used in the last CWS rate case.

The Company did not make any adjustment to Lawrence's salary, stating that there is essentially no supervisory time involved in contract plants. The Commission finds this surprising since the Company has numerous levels of management on its regulated side including Operator - Operating Manager - Area Manager - Regional Manager - Vice President of Operations (North Carolina) - Manager of Corporate Operations - Vice President of Operations (Northbrook, IL) - President and Chief Executive Officer. This is in great contrast to its claim that there isn't even one level of management on its unregulated systems. The Commission notes that in the Company's last rate case that 3/16 or 18.8% of Lawrence's salary was allocated to the contract plants. The Commission's decision at that time was based upon the fact that Lawrence was the manager of Cunningham and Pruitt. The Public Staff's recommendation of the removal of 36.7% of Lawrence's salary is based upon the same logic of employee/supervisor relationship. Moreover, witness Larsen stated that in addition to managerial duties, Mr. Lawrence assisted in obtaining some of these contract plants. Finally, the Public Staff's Daniel Rebuttal Cross-examination Exhibit 3 shows

that Lawrence as Area Manger/Project Manager is assigned responsibility for contract plants on a CWS organization chart. On this organization chart, Mr. Lawrence is responsible for 4 regulated systems, compared to 11 contract systems, which indicates that a 36.7% allocation to contract systems is more likely to be too low than too high. Based on the foregoing, it would be inappropriate to allocate none of Mr. Lawrence's time to contract operations as the Company recommends. The Commission agrees with the Public Staff's adjustment to allocate out 36.7% of the salary of Joe Lawrence.

Ocean Sands

The next area of discussion in the contract plants is the Ocean Sands system located in Currituck County. This system is quite large and has 440 water and 440 sewer customers. In addition to the normal contract operator responsibilities, the Company also reads the individual meters on behalf of Currituck County, which owns the system. The Company also has two franchised water and sewer systems in this area: Corolla Light with 227 water and 195 sewer customers and Monteray Shores with 54 water and 49 sewer customers. The Company assigns one operator to each of these systems and one operator to Ocean Sands.

The Oceans Sands water system has several wells, treatment equipment consisting of chlorination and soda ash chemical feed equipment and manganese greensand filters, and hydropneumatic storage. The sewer system has 6 lift stations, a 300,000 gpd wastewater treatment plant, five rotary disposal fields and one drain field. The Corolla Light water system has several wells, treatment equipment consisting of chlorination equipment and manganese greensand filters, and a 150,000 gallon elevated storage tank. The sewer system has six lift stations, two sewer plants for a total of 180,000 gpd, two rotary fields and one drain field. The Monteray Shores water system has several wells, treatment equipment consisting of chlorination and polyphosphate sequestration chemical feed equipment, and hydropneumatic storage tanks. The sewer system has six lift stations and a 180,000 gpd treatment plant that has four rotary fields.

The Company has assigned 100% of the salary of Billy Hodges to the Oceans Sands system, but Hodges is not listed as a Carolina Water employee so no adjustment has been made. According to witness Larsen, Corolla Light is operated by Joel Norris, the operating manager for this area, and the Monteray Shores system is operated by Matt Palmiter, an operator in training, who works the Oceans Sands system as well.

Due to the larger size of the Ocean Sands system (660 customer equivalents vs. Corolla Light with 325 and Monteray Shores with 79) as well as the complexity and added responsibilities of it (i.e., meter reading), the Public Staff recommended that, in addition to Hodges' salary being excluded, one fourth or 25.0% of Palmiter's salary be allocated to this contract plant for time worked on it.

The Public Staff also allocated out a portion of the salary of Norris, since he is an operating manager and supervises employees as well as operates systems. The Public Staff assumed that Norris spends at least one-fourth of his time in a supervisory position over Hodges and Palmiter; and therefore, recommended that 15.6% of Norris' salary be allocated to the Ocean Sands system. The Public Staff arrived at this adjustment by multiplying 25% supervisory time by the ratio of

contract employees supervised (1.25/2.0). This adjustment is consistent with the Commission's methodology in the Company's last general rate case and the Commission's decision for the supervisory time of Joe Lawrence.

The Commission accepts the results of the Public Staff's investigation which revealed that Palmiter is an operator in training and works on both the Monteray Shores system and the Ocean Sands system. Considering that Ocean Sands is much larger than Monteray Shores and Corolla Light, as well as the other facts in this case, the Commission concludes that the Public Staff's allocation of 25% of the salary of Matt Palmiter to Ocean Sands is reasonable. Consistent with the methodology used by the Commission in the last CWS rate case for supervisor time, and consistent with Mr. Larsen's recommendation, the Commission also concludes that 15.6% of Mr. Norris' salary should be allocated to supervision of contract plant operators at Ocean Sands.

Wolf Laurel/Sherwood Forest Contract Operations

The last area of dispute was the Wolf Laurel sewer system and the Sherwood Forest sewer system. In its application, the Applicant listed Diane Coughlin, a part-time employee, as the operator of the Wolf Laurel contract system. Although the Company has allocated out Coughlin at one-eighth time or 12.5% for this system, she worked less than 400 hours in the test year (average 7.5 hours per week) and is proformed out at the same level. Therefore, the allocation to this sewer plant only amounts to $331 annual salary, whereas the revenues are $10,836.

The Public Staff's investigation reveals that Coughlin has no water or sewer certification, and Bennie Shelton, another Carolina Water operator in the area, visits the system daily and also is listed on the monitoring reports as the person collecting the samples. The Public Staff recommended that 12.5% or one hour per day of Shelton's salary be allocated to this system. This is consistent with the Company's allocation of one-eighth of an operator (full-time) to this plant. Coughlin at one-eighth time amounts to less than one hour per week.

In addition, the Public Staff explained that Aubrey Deaver, Area Manager, is listed as the ORC for Wolf Laurel since this system is a Grade II plant and Shelton is only a Grade I operator whereas Deaver is a Grade IV. The Public Staff's investigation further revealed that Deaver visits this system weekly; consequently, the Public Staff recommended that 2.5% of Deaver's salary or one hour per week be assigned to this contract system.

The Company lists Nick Daniels as the operator for the Sherwood Forest contract sewer system at 8.3% or one-twelfth time. The Public Staff agreed with this adjustment. However, Daniels does not possess any water or sewer certification and Deaver is listed as the ORC. Since the Sherwood Forest system is comprised of a sand bed filter and is a relatively simple operation, the Public Staff recommended that Deaver be assigned to this plant at only 2.5% or one hour per week.

In addition to these adjustments, the Public Staff recommended that another 4.9% of the salary of Deaver be allocated out since Deaver is the supervisor over a total of three and one-eighth employees (Full Time - Bennie Shelton, Nick Daniels, and Avery McKinney, and 1/8 time - Diane Coughlin). By adding up 12.5%

for Coughlin (Wolf Laurel), 28.3% for Daniels (the Company has allocated 20% for the operation of a Tennessee system and 8.3% to the Sherwood Forest system), and 12.5% for Shelton, dividing this sum by the total (312.5%), and multiplying by the Company's allocation of Deaver to Carolina Water (28.6%), the Public Staff arrived at 4.9%. In summary, the Public Staff calculated that Deaver should be allocated out 9.9% (2.5% + 2.5% + 4.9%) more than the Company stated.

The Company agreed in rebuttal with all of the above listed adjustments for these two plants except the supervisory time of Aubrey Deaver. Mr. Daniel argued again that contract operations do not require supervisory time.

The Commission agrees with the Public Staff's adjustment to allocate 4.9% of Deaver's time for supervision of contract plant operators. This adjustment is consistent with the methodology used for supervisor time in the last rate case, and it is a small amount of time which is quite fair to CWS, for supervision of operations at two contract sewer plants.

Overall Review

CWS has allocated 3.13 operators to 14 sewer and 4 water contract systems and not all of these operators were full time at the time of allocation. Witness Larsen determined that this was 6.7 contract systems per full time operator equivalent. This appears inadequate to the Commission. The Public Staff's allocation of 4.4 operators (not full time equivalents) to contract systems still provides a significantly higher systems per operator ratio than the Company has on its regulated side. Also the Public Staff has allocated very little supervisor time -- less than one full time equivalent (which is included in the 4.4 number) -- to all the contract operations. Even accepting that contract plants involve less operator time and much less supervisor time than regulated operations, the Public Staff's allocations are fair and reasonable.

TRANSPORTATION EXPENSES

This issue has to do with the allocation to remove a portion of the CWS transportation expense because it is incurred in contract and non-CWS operations. The Commission concludes that the allocations that apply to transportation expense should be the same as the allocations of the operators. The Public Staff testified that vehicle expense is directly related to the time spent on particular systems by the employees assigned to those vehicles. In its rebuttal testimony, the Company agreed with the theory of the Public Staff's adjustment, although CWS did not agree with all the specific allocations and adjustments to salaries. The Commission concludes that this methodology is appropriate. Having elsewhere found that the Public Staff's adjustments and allocations to salaries are reasonable, the Commission concludes that the $10,411 adjustment to remove transportation expense is proper.

PIED PIPER EMERGENCY OPERATIONS

This issue pertains to the allocation of operating expenses for the Pied Piper emergency operator water system. CWS is the emergency operator trustee of Pied Piper. Public Staff witness Larsen stated that 15.4% of the salary of the CWS operator who runs this system should be removed from pro forma expenses in

this case. On the other hand, Company witness Daniel stated that the customers of Carolina Water should subsidize this operation.

During cross-examination, Public Staff witness Larsen reiterated the Public Staff's position by stating that upon review of the Pied Piper annual report, many other operating expenses have already been allocated out. Witness Larsen went on to say that an emergency operator system should be a "stand alone system" and if a rate increase is necessary for Pied Piper, then the Company needs to apply for it.

According to Company witness Daniel, the CWS view of emergency operations is based upon the precept that the customers of one utility should help the customers of another utility by subsidizing it.

The Commission notes that Pied Piper is under a separate docket (W-893, Sub 1) and has rates ($15.00 per month) that differ from the CWS uniform rates. The Commission concludes that emergency operator systems should be "stand alone" systems and have separate accounting. There is no good reason why CWS customers should subsidize the customers of Pied Piper. Therefore, the Commission concludes that the removal of 15.4% of the salary of Howard Allen for purposes of setting CWS rates is appropriate.

RAINTREE/GENOA

This issue involves the operator expenses for the Raintree/Genoa water systems. These water systems account for 807 customers and include Raintree, Lakewood, Southern Plaza, Rollingwood, Robin Lakes, Foxfire, and Hickory Hills. These systems were sold in March of 1992 to a Sanitary District in Wayne County. While the Public Staff's adjustment removed one and one-half employees for this change, the Company contended that only one employee should be removed and he had already been removed.

According to witness Larsen, Wyman McDaniel was the operator of these systems and was not responsible for any other system. In addition, witness Larsen recommended the removal of one half of the salary of Joel Clark, McDaniel's supervisor. To support his argument, witness Larsen explained that the Applicant's other systems in this area are operated by Chris Lee of Carolina Water and include Willowbrook - water and sewer, White Oak - water and sewer, Kings Grant - sewer, and Ashley Hills - sewer. These four remaining systems only account for 495 customer equivalents, much less than the 807 of Raintree/Genoa. Witness Larsen concluded that since Clark now only supervises one employee (Lee) instead of two (Lee and McDaniel), that one-half of his salary should be excluded.

The Company stated that only one operator's salary should be excluded due to the loss of the Raintree/Genoa systems; namely that of Ken Hamrick. According to the Company, McDaniel and Clark now operate the Vander systems which only include four systems. The previous operator of the Vander systems was Tony Baldwin, who was transferred to the coast to replace Hamrick. Now, according to

the Company, Hamrick is the only operator of the Clearwater systems, owned by CWS Systems, Inc. The net effect of all these changes, according to CWS, is that only one operator has been removed from working on CWS regulated operations as a result of the sale of the eight Genoa/Raintree water systems.

On redirect, witness Larsen discussed the net effect of CWS's allocation:

Q. How many salaries have they now allocated out for the sale of these eight systems and 807 customers?

A. One.

Q. Do you believe that is sufficient amount?

A. No, I do not.

Witness Larsen also explained that only one operator was assigned to the Clearwater Systems.

Q. How many water systems are there under the name Clearwater?

A. There are 12 systems in four different counties.

Q. Are those systems operated by someone from Carolina Water Service to your knowledge.

A. Yes, they are.

Q. And who is that according to the company?

A. Ken Hamrick, H-a-m-r-i-c-k..

Q. To your knowledge, is his salary the only salary they have allocated out to the Clearwater Systems?

A. To my knowledge, it is, yes.

The Clearwater systems belong to an affiliate company, CWS Systems, Inc.

The Commission notes that the Company has an overall ratio of approximately one operator for every three systems. DEH requires no more than one ORC for every five water systems. Although the Commission realizes that some systems are more complex and may require more attention than other, the Company's allocation of two full-time employees (McDaniel and Clark) for the Vander Systems which account for a total of four water systems, while at the same time only allocating one operator for twelve Clearwater systems is very inconsistent.

The Commission concludes that witness Larsen's adjustment is reasonable. Even though McDaniel and Clark may be working 100% on CWS regulated systems, the sale of eight water systems would mean at least 1.6 operators would no longer be needed under DEH requirements. Larsen removed salaries for 1.5 operators. In addition, CWS's claim that only one full time equivalent operator is assigned to the twelve rundown Clearwater water systems plainly shows that not enough

operators have been allocated to these non-CWS systems for which CWS supplies the labor. For the foregoing reasons, the Commission adopts the Public Staff adjustment to remove 1.5 operator salaries in connection with the sale of the Genoa/Raintree systems.

MAINTENANCE TESTING

This issue involves the proper level of maintenance testing expense. Although the Company and the Public Staff agreed on the level of sewer testing expense, they differed on water testing expense. The Commission will discuss each type of water test separately.

Bacteriological

While the Public Staff agreed with the frequency of the testing and the number of tests claimed by the Company, they disagreed with the cost of this test. In its proformed cost, the Applicant used a cost per test of $18.00. This was based on a sewer effluent fecal coliform bacteria test instead of a water coliform bacteria test and, therefore, is incorrect. During his review of the invoices, witness Larsen discovered that the Company pays $10.00 to $25.00 per test, depending on which lab is used. In his calculations, witness Larsen used $15.42, which is the weighted average of all the costs, and he determined that $17,394 is the proper level for this account. The Applicant had requested $21,600. The Company did not rebut the Public Staff's adjustment. The Commission concludes that the Public Staff's adjustment is reasonable.

TTHM (Total Trihalomethanes)

Although the Public Staff agreed with the number of samples, the frequency of the testing, and the cost of each test, they disagreed with the annual level of this expense. Witness Larsen pointed out that DEH requires that each water system providing disinfection (chlorination) perform TTHM tests in four consecutive quarters. After this first year of testing, the utility is only required to test once a year provided that the first four tests are in compliance. The Company calculated the annual amount assuming the quarterly testing on an ongoing basis, which is not required. The Public Staff amortized three years of testing (first year - quarterly, second and third years - annually) and determined that an annual cost of $10,400 should be allowed. (The Company had calculated a level of $22,100.) The Public Staff used a three-year period for amortization since this is the typical and usual time period assumed between rate cases.

The Company did not offer any rebuttal evidence to Mr. Larsen's adjustment for TTHM testing cost. Therefore, the Commission concludes that the Public Staff's level of expense is proper.

Lead and Copper

Witness Larsen explained that DEH requires that lead and copper testing begin in July of 1992 for water systems with populations greater than 3,300. (DEH translates connections to population by assuming 3.5 people for each connection.) Systems with populations less than 3,300 do not have to begin testing until July 1993. CWS's only systems with populations over 3,300 are Pine

Knoll Shores and Sugar Mountain, in which two series of 40 tests are required on each system for a total of 80 per system. After the first year, the sampling is annually instead of semi-annually and the number of tests, provided the results are within compliance, are 20 each rather than 40 as in the first year. This reduces the testing from 80 samples per system in the first year to only 20 samples per system in the future years.

The Applicant has included all of its systems in calculating this expense, and initially assumed the maximum (first year) sampling level. The Public Staff included Pine Knoll Shores and Sugar Mountain because the effective date of this requirement (July 1992) for those systems is so near the close of hearing date that it can be considered a known and actual change in testing expense. However, this test does not apply to Carolina Water's other systems until July 1993, and the Public Staff did not consider this sufficiently near the close of hearing to be a known and actual change in testing expense. It is quite possible that the requirement will change between now and July 1993, as it did with VOC tests or that the number of Carolina Water systems which will incur this expense will change by then.

In calculating this expense, witness Larsen figured 80 tests per system the first year (for Pine Knoll Shores and Sugar Mountain only), 20 the second and consecutive years, and a three-year amortization period similar to the TTHM adjustment. The Public Staff's calculated level is $3,000 while the Company's is $42,000.

CWS witness Daniel disagreed with Mr. Larsen's adjustment on the grounds that the lead and copper tests which do not take effect for systems with less than 3,300 customers until July 1993 are known and measurable changes in the test year expense level.

The Company's reasoning on the lead and copper test expense for systems with less than 3,300 customers is faulty for two reasons:

1) It is an expense that will not even begin until over a year after the close of the hearings in this case, so CWS would overcollect by recovering a "representative" level of lead and copper test expense for smaller systems beginning this August.

2) The rule does not become effective until July 1993 for such systems, and this creates uncertainty about the proper expense level because the requirement could become less stringent in terms of number of tests, as happened with VOC tests, or through sales or acquisitions the number of CWS systems subject to the test could change.

The Commission agrees that the Company should be allowed the annual expense of this testing requirement for the systems it must test beginning in 1992; however, it should not be allowed rates for expenses that do not currently exist and that will not exist for the next year, and that are uncertain in that they may change. This future expense, if it ever comes to pass as speculated, must be recovered in rates in future proceedings, not with rates in this proceeding. Therefore, the Commission determines that the $3,000 expense level for this test is appropriate.

VOC

The Company requested $28,782 for this expense. The Public Staff, through witness Larsen, calculated that the proper expense for this test should be $19,429. The Public Staff included the effects of the DEH's "new" VOC less stringent requirements whereas the Company ignored this fact.

According to the updated information provided by witness Larsen at the hearing, the new VOC testing requirements are as follows:

"Regulated" VOC's

Less than 150 population	1 test per 5 years
150 to 500 population	2 tests per 5 years
Greater than 500 population	2 tests per 3 years

"Unregulated" VOC's 1 test per 5 years

The "old" VOC testing requirement the Company used assumed four quarterly tests per well and sampling once every three years for systems with population greater than 500 and once every five years for systems with a population less than 500.

The Commission concludes that the new VOC testing requirement is the proper one to use and that the level calculated by the Public Staff, $19,429, is the proper level of expense.

Inorganic and Radiological

The Public Staff and the Company agree on the level of expense for these two tests. The Commission concludes that the $5,333 amount for inorganic and $1,300 for radiological is the proper annual level for these tests.

Overall

In summary, the Commission concludes that the proper level for all water tests is $56,856.

OPERATING EXPENSES CHARGED TO PLANT

Witnesses for both the Company and the Public Staff used the same methodology in calculating operating expenses charged to plant. The difference between the parties arises due to the difference in salaries and wages as recommended by the parties as discussed in the Evidence and Conclusions for Findings of Fact Nos. 71 and 80.

The Commission agrees with the methodology used by both parties in calculating operating expenses charged to plant. The Commission further agrees with Mr. Larsen's allocation methodology which reduces salaries and wages.

Consistent with the Commission's determination of operators' salaries, the Commission concludes that the appropriate level of operating expenses charged to

plant to be included in this proceeding is $335,756, of which $248,881 is for water operations and $86,875 is for sewer operations.

OUTSIDE SERVICES - OTHER

The parties differ on the level of outside services - other. The difference is a result of the Public Staff's adjustment for the removal of $1,611 for legal fees related to the Company's attempt to purchase the ROE water system. Public Staff witness Haywood testified that the Commission has not approved an application for transfer and that, for that reason, the legal fees incurred by CWS should not be included in this general rate case.

The Commission has thoroughly reviewed the adjustment proposed by the Public Staff to outside services - other. The Commission concludes that the costs related to the Company's attempt to purchase the ROE water system are not proper utility expenditures to be included in the Company's cost of service in view of the fact that an application for transfer has never been approved by the Commission. Furthermore, we note that CWS presented no rebuttal testimony on this issue, but instead chose to deal with the matter through cross-examination of Public Staff witness Haywood. We find witness Haywood's testimony in support of her proposed accounting adjustment to be dispositive of the issue. Hopefully, the Company will ultimately recoup the legal fees in question through the consent judgment, which the Company references in its proposed Order, against the owner of the ROE water system. Based on the foregoing, the Commission concludes that the proper level of outside services - other is $144,180, of which $99,282 is allocated to water operations and $44,898 is allocated to sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of operation and maintenance expenses is $3,206,085, of which $2,051,285 is applicable to water operations and $1,154,800 is applicable to sewer operations

GENERAL EXPENSES

The following chart indicates the differences between the Public Staff and the Company for general expenses:

Item	Public Staff	Company	Difference
Salaries & Wages	$187,907	$200,802	$(12,895)
Office Supplies & Other	155,089	155,089	0
Rate Case Expense	111,879	136,405	(24,526)
Pension & Other	329,370	350,558	(21,188)
Rent	132,098	132,098	0
Insurance	175,531	175,531	0
Office Utilities	146,911	146,911	0
Meter Reading	3,037	3,037	0
Miscellaneous	120,653	120,653	0
Water Service Charges	145,428	145,428	0
Interest on Deposits	8,263	8,263	0
Alloc. from Sewer Systems	(8,300)	0	(8,300)
Alloc. of Northbrook Exp.	(171,654)	(1,322)	(170,332)
Total	$1,336,212	$1,573,453	$(237,241)

As shown above, the Company and the Public Staff agreed on the amounts for office supplies, rent, insurance, office utilities, meter reading, miscellaneous, water service/charges and interest on customer deposits. Therefore, the Commission finds these amounts appropriate in the determination of general expenses.

SALARIES AND WAGES - GENERAL

This issue involves the allocation of indirect expenses shared among the various Utilities, Inc., affiliates. While using the same methodology as the Company, Public Staff witness Larsen updated the allocations to include all systems operated out of North Carolina offices or with the Company's personnel. The Company agreed with the Public Staff's allocations except for one area: the office allocation of the of the Connestee Falls system (a separate subsidiary of Utilities, Inc.). Therefore, this discussion will only include this contested issue.

The Public Staff's allocation of the Connestee Falls system is similar to the other allocations, that is, it is computed on a customer equivalency basis.

According to witness Wenz:

> Connestee Falls is presently served by an office and customer service representative at an on-site location. This office will not be eliminated for several months. Incorporating the billing function at an alternative CWS office will not occur until 1993.

The Commission notes that this situation is in conflict with the Company's continuous claim of "economies of scale" since it would be cost effective to incorporate the administrative functions of this system into the Company's existing office and staff. The Commission is also concerned that this change in office expense allocation is in the Company's hands, but the Company apparently does not intend to make any changes until the rate case is over. CWS expects to eliminate the Connestee Falls office in the next year and perform its functions from other existing CWS offices. This gives the Company a higher operating expense for this rate case than it expects to incur.

The Commission concludes that the allocations of the Public Staff are fair and reasonable and should be applied in their entirety. The Company has stated that it will eliminate the Connestee Falls office, which means this non-CWS system will be served by CWS employees in the CWS Charlotte office. This known change justifies an allocation. Therefore, the Commission accepts the Public Staff's updated allocation of office salaries.

RATE CASE EXPENSES

The differences between the parties are as follows:

Item	Public Staff	Company	Difference
Legal Fees	$ 50,914	$ 97,123	($46,209)
WSC Personnel	83,617	86,377	(2,760)
Customer Notices	19,066	19,066	0
Travel	5,688	8,410	(2,722)
Outside Witnesses	0	9,450	(9,450)
Audit and Filing	3,704	3,704	0
Subtotal	162,989	224,130	(61,141)
Amortize over three years	54,330	74,710	(20,380)
Amortization of Sub 69	8,691	8,691	0
Amortization of Sub 69 Appeal	13,671	13,671	0
Amortization of M-100 Sub 113	1,959	1,959	0
Amortization of Sub 81	24,232	24,232	0
Amortization of Miscellaneous	8,997	13,142	(4,145)
Total Sub 111	$111,880	$136,405	$(24,525)

The first area of disagreement between the Company and the Public Staff relates to the amount of legal fees incurred for this proceeding.

Ms. Haywood testified that $50,914 is the proper amount because this is the amount approved by the Commission in Docket No. W-354, Sub 81. To support this position Ms. Haywood testified that public hearings in this case were limited to six, while twice as many were held in Sub 81. She testified that the number of witnesses in this case was four instead of seven in Sub 81. Ms. Haywood testified that rate of return has been stipulated in this case while it was contested in Sub 81. Ms. Haywood testified that the hourly rates for the Company's attorney have decreased since the last case.

On rebuttal, Ms. Cuddie testified for CWS that the full request $97,123 should be allowed. The difference in legal expense is $46,209. Due to the filing of rebuttal there are five company witnesses and two outside engineering witnesses. Ms. Cuddie provided a specific breakdown of the legal expenses for the case. Ms. Cuddie stressed that CWS rate cases are precedential for the industry and are enthusiastically contested by the Public Staff.

The Commission determines that the legal expense portion of rate case expense should be $97,123. It is inappropriate to establish the level of an expense to recover through rates based upon the level approved by the Commission in another case that was litigated two years ago. The Commission notes that the Public Staff has not identified any expense that is unreasonable or unnecessary. While some features of this case required less time than in Sub 81, others required substantially more. There were many procedural disputes and negotiations during discovery. In addition, a hearing was held in Sylva, a remote and distant location. The issues in the case are many and complex. The consumer advocates relied upon five attorneys during the technical portion of the case. A number of other attorneys appeared at the field hearings. A fundamental issue raised by the Public Staff in this case involves the issue of including in

rate base plant with capacity for future growth. Resolution of this issue requires legal analysis of G.S. 62-133 and the cases interpreting that statute.

CWS has presented a detailed breakdown of the actual and projected legal expense in this case and the Commission concludes that the level of legal fees proposed by the Company in the amount of $97,123 is appropriate.

The next area of disagreement between the parties relates to the amount of WSC personnel salaries and travel expense to be included in rate case expenses. The Public Staff is recommending that $2,760 of WSC personnel salaries and $2,722 of travel costs be removed from rate case expense for Sub 111. These amounts relate to the forty hours of time for two WSC personnel who attended the customer hearings in North Carolina and the related travel expense. The Public Staff contends that the WSC personnel did not provide any additional benefits to the North Carolina ratepayers than the Vice-President and Regional Director of Operations, Carl Daniel, was capable of providing to CWS customers. In other words, Ms. Cuddie did not answer any customer questions or concerns that Mr. Daniel could not have sufficiently handled.

Ms. Cuddie testified that CWS deems it necessary to have WSC Northbrook representatives present at the hearings. Only one WSC representative from the Northbrook office attended each of the four smaller hearings, and two attended the two largest hearings. CWS sent these WSC representatives to evaluate comments of the customers in light of the continuing effort to maximize customer service. The WSC Northbrook representatives fielded customer questions and demonstrated to customers the importance of their concerns by being present to hear them.

The Commission has carefully considered the evidence relating to the appropriate amount of WSC personnel costs and travel costs related to this proceeding. The Commission concludes that the evidence presented by both parties has merit and is faced with the determination of adopting an appropriate level of these costs. Accordingly, the Commission concludes that the differences between the parties of $2,760 for WSC personnel and $2,722 in travel costs should be divided equally in determining a reasonable and appropriate level for use in this proceeding. Therefore, the Commission concludes that the appropriate level of WSC personnel costs is $84,997 and travel costs is $7,049.

An additional area in dispute is the outside witness fees paid by Carolina Water Service in this proceeding. The Company has included $9,450 in rate case expense for two outside witnesses, Dale Stewart and Frank Seidman, whom the Public Staff believes provided little or no benefit for CWS ratepayers. As Ms. Haywood mentions in her supplemental testimony, Mr. Stewart testified in the Sub 81 rate case. Ms. Haywood also testified that Mr. Stewart's testimony is almost identical to his testimony in Sub 81 for which he was paid $1,000. However, for his testimony in this proceeding, Mr. Stewart was paid $4,450 for essentially the same testimony. During cross-examination, Ms. Cuddie also agreed that Mr. Stewart's testimony was essentially identical to the testimony offered in Sub 81. The Public Staff believes that Mr. Stewart's fee for providing the same testimony should be disallowed in this proceeding. The other witness, Frank Seidman, was paid $5,000 for his testimony in this proceeding. As Ms. Haywood states in supplemental testimony, the issues in Frank Seidman's testimony are duplicative of CWS's testimony on the excess plant issues. In addition, as mentioned in Ms.

Haywood's supplemental testimony, the Public Staff contends that it is not reasonable for CWS to hire a Florida consultant to testify to North Carolina regulatory standards.

CWS maintains that the outside expert rebuttal testimony is essential to rebut the issues the Public Staff has raised. Mr. Stewart addressed the issue of the design criterion for elevated tanks which the Public Staff has raised for the third time. Mr. Seidman rebuts the Public Staff position on the excess plant adjustments, which the Public Staff has raised for the third time. CWS sought to avoid the expense for these two witnesses and the cost of their attendance at the hearing by limiting or eliminating the issues they were to rebut on the ground that the issues already had been finally adjudicated. When the Commission rejected CWS's position, CWS asserts that it had no choice but to use its best efforts to rebut the Public Staff testimony.

The Commission has carefully considered the evidence of the parties in this proceeding and concludes that the cost for witness Stewart's testimony should be limited to $1,000 for the purposes of this proceeding for the reasons set forth by the Public Staff. Further, the Commission concludes that the cost of the testimony of witness Seidman should be allowed for the reasons set forth by CWS.

The final area of disagreement relates to the amortization of miscellaneous rate case expenses. As detailed in Evidence and Conclusions for Finding of Fact No. 58, the Commission has determined the proper level of the intervention costs. Therefore, the Commission finds that the amortization of these legal fees in the amount of $2,073 should be included in rate case expense for the purpose of this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of rate case expense for the purpose of this proceeding is $132,268, of which $91,080 is allocated to water operations and $41,188 is allocated to sewer operations.

PENSION AND OTHER BENEFITS

The differences between the parties relate to the differences in salary levels. Based on the Commission's level of salaries, the Commission finds that the level of pension and other benefits is $329,370, allocated $226,387 to water operations and $102,983 to sewer operations, is appropriate for use in this proceeding.

SEWER SYSTEMS EXPENSE

Another difference between the Public Staff and the Company concerns expenses related to several sewer systems. The Public Staff believes that the Company should exclude the revenues and expenses of four sewer systems (Farmwood 20 and 21, Windsor Chase, and Habersham).

As discussed in Evidence and Conclusions for Findings of Fact Nos. 22 and 23, the Commission concludes that the revenues and expenses related to the four sewer systems should not be excluded for the purposes of this proceeding. Based on the foregoing, the Commission concludes that $8,300 should not be removed from sewer operation expenses for the four sewer systems.

NORTHBROOK EXPENSES

The final component of expenses on which the Company and the Public Staff disagree is Northbrook or Water Services Corporation (WSC or Northbrook) charges. The Public Staff included a level of $490,068 while the Company included a level of $660,400 a difference of $170,332. The Public Staff recommends that the level of WSC expenses be maintained at the level found appropriate in Sub 81. Ms. Cuddie, in rebuttal testimony, stated that "these costs are prudent, reasonable and properly included in the cost of service in this proceeding." Ms. Cuddie further cited several reasons for the 35% increase over the Sub 81 level, including inflation, a new general ledger software system, increased insurance costs, the inclusion of four new administrative positions, and customer growth. Ms. Cuddie also stated that the Public Staff "has not given any evidence that these expenses are improper." According to Ms. Cuddie, "all of the Northbrook expenses are prudent, reasonable and necessary to support the utility companies including CWS."

The Public Staff provided many compelling reasons for its adjustment. First, the Public Staff stated that the expenses allocated to North Carolina from WSC have increased over 35% since the Sub 81 rate case. Public Staff Cuddie Rebuttal-Cross Examination Exhibit 1 shows that from CWS's last rate case to this proceeding expenses to North Carolina from Northbrook have increased by a much greater percentage than the overall increase CWS has requested. The Public Staff stated that it is unreasonable to expect North Carolina ratepayers to fund an increase of this magnitude. Ms. Haywood stated in prefiled testimony that CWS is the only water or sewer company that operates from out-of-state headquarters. She testified that administrative salaries allocated to North Carolina have increased by 56.85% since the last rate case, and that does not include benefits. Ms. Haywood testified that this salary level for administrative services is unreasonable. She also stated that transportation expenses are unreasonably high because the headquarters are located in Illinois.

Another area the Public Staff addressed during the hearing related to various items such as gifts and a Christmas party, the costs of which have been allocated to CWS. The Public Staff stated its belief that North Carolina ratepayers should only have to pay for the level of WSC expenses found reasonable in Sub 81 and that this amount will cover truly necessary and reasonable expenses of CWS.

The Public Staff made the adjustment to freeze WSC expenses at the level found reasonable by the Commission in Sub 81 due to all of the unnecessary and unreasonable expenses mentioned above. The Public Staff believes that the level of WSC expenses the Company is proposing to include in this case is overinflated and should be held at the level found reasonable in the last rate case, Sub 81.

During the hearing, the Public Staff addressed the fact that customer equivalents in North Carolina have changed significantly since the end of the test year. The majority of Northbrook expenses are allocated to North Carolina based on the ratio of customer equivalents in North Carolina as compared to the total number of customer equivalents in all states. The Public Staff pointed out that two systems, Connestee Falls and Carolina Trace, have been acquired since the end of the test year. These two systems have around 3,000 customers and have been "placed" under Utilities, Inc. Therefore, if Northbrook expenses were allocated including these new systems in the allocation, CWS would receive less expense and Utilities, Inc. would pick up some expense for these two systems. Public Staff Cuddie Rebuttal Cross-Examination Exhibit 4 details the Public Staff's calculation of customer equivalents after the inclusion of Providence West, Carolina Trace, and Connestee Falls and the exclusion of Raintree and Pied Piper. Ms. Cuddie, however, maintained the importance of the test year concept and refused to update her customer equivalent calculation despite these known changes.

The Commission recognizes that WSC charges appear to be overstated for various reasons. These reasons include the magnitude of the increase since Sub 81, the increase in customer equivalents in North Carolina, the Public Staff's discovery of unnecessary expenses such as the Christmas party, expensive paintings and pool maintenance, and the fact that the Company did not allocate any WSC indirect expenses to the contract sewer systems the Company operates. These factors lead the Commission to conclude that WSC expenses are overstated and that it is reasonable to adjust such level of expenses so as to arrive at a more reasonable and representative level for inclusion in the cost of service in this case. The Commission is not convinced by CWS's attempt to show that Heater Utilities' administrative expenses are so high that it should approve the requested level of Northbrook expenses. The Public Staff and the Attorney General both introduced cross-examination exhibits that severely undermined Ms. Cuddie's testimony on this point.

The Commission concludes, that based upon a thorough analysis of the record, the level of Northbrook expenses have increased at an unreasonable level and should be adjusted so as to arrive at a reasonable and representative level for inclusion in the cost of service in this proceeding. As pointed out by witness Cuddie, many of the expenses of WSC are allocated to the various Utilities, Inc., subsidiaries based upon a customer equivalent weighting applied evenly to all companies. According to witness Cuddie, the increase in customer equivalents between the Sub 81 proceeding and this proceeding is 9% due to growth. The Commission is not persuaded that an increase in the level of Northbrook expenses of 35% since the last case is reasonable. In fact, such an increase is patently unreasonable. Accordingly, the Commission concludes that an increase in the level of Northbrook expenses in the range of 9% is more reasonable and equates to the increase in customer equivalents during this time period. Therefore, the Commission concludes that the level of Northbrook expenses found to be appropriate in Sub 81 of $490,068 should be increased by 9% to a level of

$534,174 to be included as a reasonable and representative level for inclusion in the cost of service in this proceeding.

A final area of disagreement between the parties concerning Northbrook expenses is the adjustment the Company made to reduce expenses related to the contract it has with CMUD. The Company has removed $1,322 from Northbrook/WSC expenses in its schedules of final position.

Having concluded elsewhere herein to include the revenues from the CMUD billing and collection service, the Commission finds that the $1,322 adjustment made by the Company to be inappropriate.

OTHER OPERATING REVENUE DEDUCTIONS

The issues involving other operating revenue deductions are depreciation expense, payroll taxes, the regulatory fee, and gross receipts, state and federal income taxes. Each is discussed below.

DEPRECIATION EXPENSE

The next area of disagreement between the parties concerns depreciation expense. The Public Staff and the Company agree on the depreciation rates used to calculate depreciation for all classes of water and sewer plant items. However, the amounts of depreciation expense proposed by the parties differ due to different amounts of plant in service. In addition, the Company has included in depreciation expense one year of amortization expense on the Mt. Carmel WWTP. Therefore, the Company has included $7,233 in depreciation expense.

Based on the Commission's conclusions in the Evidence and Conclusions for Finding of Fact No. 7, the Commission finds that the appropriate level of depreciation expense is $357,545 for water operations and $167,582 for sewer operations for the purpose of this proceeding.

PAYROLL TAXES

The differences between the Public Staff and the Company concerning payroll taxes relate to the different allocation percentages used by the two parties in allocating out salaries of CWS personnel in North Carolina due to time spent on contract systems and other non-CWS operations

The Commission agrees with Mr. Larsen's allocation methodology for CWS personnel as detailed in the Evidence and Conclusions for Findings of Fact Nos. 71 and 80. Therefore, the Commission agrees with the Public Staff's adjustment to reduce payroll taxes and concludes that the appropriate level of payroll taxes to be included for the purposes of this proceeding is $136,306, of which $93,684 is allocated to water and $42,622 is allocated to sewer.

REGULATORY FEE

The next area of difference between the Public Staff and the Company concerns regulatory fee. The difference between the Company and the Public Staff arises from the parties' disagreement over revenues. The Commission having determined the appropriate level of revenues, concludes that the appropriate

level of regulatory fee to be included in this proceeding is $4,328 for water operations and $2,214 for sewer operations.

GROSS RECEIPTS TAXES

The next area of disagreement between the parties relates to gross receipts taxes. The difference between the Company and the Public Staff results from the parties' disagreement over revenues. The Commission having determined the appropriate level of revenues, concludes that the appropriate level of gross receipts tax to be included in this proceeding is $192,341 for water operations and $147,620 for sewer operations.

STATE INCOME TAXES

The next area of difference between the parties concerns the level of state income taxes. The difference between the Company and the Public Staff arises from the parties' disagreement over revenues and expenses. The Commission having determined the appropriate level of revenues and expenses, concludes that the appropriate level of state income tax to be included in this proceeding is $47,247 for water operations and $14,034 for sewer operations.

FEDERAL INCOME TAXES

The next item of disagreement between the parties relates to the level of federal income taxes. The difference between the Company and the Public Staff arises from the parties' disagreement over revenues and expenses. The Commission having determined the appropriate level of revenues and expenses, concludes that the appropriate level of federal income tax to be included in this proceeding is $191,212 for water operations and $56,797 for sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of other operating revenue deductions is $1,356,425, of which $913,479 is applicable to water operations and $442,946 is applicable to sewer operations.

ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION

The evidence on this item is found in the prefiled testimony of Public Staff witness Haywood and Company witness Wenz. The Company is proposing to accrue AFUDC on projects after construction has been completed. Under the Company's proposal, the Company would accrue AFUDC for an indefinite period of time from the date construction is completed until the Company files a rate case and the costs are included in rate base. According to Mr. Wenz, this mechanism would alleviate an inequitable situation where customers are receiving the benefits of capital projects without bearing the costs. Additionally, the Company believes that this treatment would result in less frequent rate cases which would result in cost savings to customers.

The Public Staff contends that AFUDC should cease to accrue when a project is completed in accordance with the Uniform System of Accounts. Ms. Haywood stated that the Uniform System of Accounts defines AFUDC as:

"The allowance for funds used during construction which includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used... The cost of the property placed in operation or ready for service will be treated as "Utility Plant In Service" and allowance for funds used during construction there on as a charge to construction shall cease..."

(emphasis added.)

Public Staff witness Haywood stated that the Public Staff does not believe the resulting decrease in rate case expense would outweigh the potential for rate shock when accrued AFUDC is brought into rate base. She also stated that to her knowledge the Commission has never allowed any utility to continue accruing AFUDC on a capital project for an indefinite period after completion of the project

The Commission rejects the Company's assertion that customers are receiving benefits of capital costs without bearing the costs. Rates established by the Commission are deemed just and reasonable and are set to recover all costs including capital costs.

The Commission agrees with the Public Staff that the accrual of AFUDC beyond completion is unreasonable and in direct conflict with the Uniform System of Accounts definition of AFUDC. In addition, the Commission has never allowed any other water or sewer utility to accrue AFUDC beyond completion of a project. Therefore, the Commission finds that the Company should not be allowed to accrue AFUDC on projects after completion.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 96

Capital structure and cost of capital were stipulated by CWS and the Public Staff, and no other party contested the stipulation. Therefore, the Commission concludes that the stipulation is reasonable and proper and should be adopted for purposes of this proceeding, subject to the rate of return penalty of 1.0% on common equity adopted by the Commission. This rate of return penalty is based upon our finding that the quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems. If the Company's quality of service were adequate, CWS would have been entitled to a 12.0% rate of return on common equity. The penalty imposed by the Commission in this case will not result in a confiscatory rate of return. The Commission has determined that allowing an 11.0% rate of return on common equity and a 10.14% rate of return on the Company's rate base will allow CWS to recover all of its operating expenses, including depreciation and taxes, and still have an opportunity to recover $1,571,598 for the benefit of its sole shareholder to cover the cost of Utilities, Inc.'s debt and equity. This is not confiscatory, particularly in view of today's extremely low interest rates. A 1.0% penalty for inadequate service will reduce the Company's allowed rate increase by approximately $120,000 on an annual basis, which is not arbitrary or unreasonable when compared to the Company's total authorized North Carolina jurisdictional annual service revenues of approximately $7.6 million.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 97

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 111
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
COMBINED OPERATIONS
For the Twelve Months Ended June 30, 1991

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues:			
Service Revenues	$7,189,400	$460,280	$7,649,680
Miscellaneous Revenues	169,235	20,252	189,487
Uncollectibles	(89,776)	(5,863)	(95,639)
Total Operating Revenues	7,268,859	474,669	7,743,528
Operating Revenue Deductions:			
Operation, Maintenance and General Expenses	4,615,092	-	4,615,092
Depreciation & Amortization	525,127	-	525,127
Taxes other than Income Taxes	523,013	24,221	547,234
State Income Taxes	61,281	34,909	96,190
Federal Income Taxes	248,009	141,283	389,292
Amortization of ITC	(1,005)	-	(1,005)
Total Operating Revenue Deductions	5,971,517	200,413	6,171,930
Net Operating Income for Return	$1,297,342	$ 274,256	$1,571,598

SCHEDULE II
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUB 111
STATEMENT OF RATE BASE AND RATE OF RETURN
COMBINED OPERATIONS
For the Twelve Months Ended June 30, 1991

Item	Amount
Plant in Service	$45,252,000
Less - Accumulated Depreciation	(3,344,714)
Contributions in-Aid-of Construction	(19,223,064)
Advances in-Aid-of Construction	(221,382)
Plant Acquisition Adjustments	(2,985,883)
Accumulated Deferred Income Taxes	(426,207)
Customer Deposits	(113,589)
Excess Book Value	(4,281,266)
Gain on Sale and Flow Back of Taxes	(289,628)
Add - NCUC bonds	60,000
Working Capital Allowance	499,065
Deferred Charges	567,920
Total Rate Base	$15,493,252
Rates of Return:	
Present	8.37%
Approved	10.14%

SCHEDULE III
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUB 111
STATEMENT OF CAPITALIZATION AND RELATED COSTS
COMBINED OPERATIONS
For the Twelve Months Ended June 30, 1991

Item	Ratio %	Original Cost Rate base	Embedded Cost	Net Operating Income
		Present Rates		
Long-term Debt	55.60	$8,614,248	9.46	$814,907
Common Equity	44.40	6,879,004	7.01	482,435
Total	100.00	$15,493,252	-	$1,297,342
		Approved Rates		
Long-term Debt	55.60	$8,614,248	9.46	$814,907
Common Equity	44.40	6,879,004	11.00	756,691
Total	100.00	$15,493,252	-	$1,571,598

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 98 and 99

This issue concerns the need for system-specific data from the Company, and the related issue of whether uniform rates are reasonable. Two formal intervenors as well as many customers desired system-specific rates and the

Public Staff requested system-specific data in a motion. The Commission denied that motion and did not require the Company to supply system-specific data for this proceeding.

The Public Staff recommends that the Company be required to provide system-specific data in its next general rate case. Intervenors Whispering Pines and Pine Knolls Shores likewise request system-specific data and desire that rates for those systems be set based on the cost of service for those systems. The Public Staff notes that the Company has not been required to provide system-specific data although the Public Staff and some of the customers have requested it. Public Staff witness Larsen testified that until such information is evaluated and investigated, the Public Staff cannot make any recommendations concerning system-specific or regional rates or judge whether rates for any specific system are unlawfully discriminatory. Mr. Larsen further testified that, in the absence of system-specific data, the Public Staff cannot determine the extent of cross-subsidization nor can it quantify whether there is unreasonable discrimination in the rate structure.

CWS adheres to the position that it is unnecessary to require the Company to incur the time and expense to provide system-specific data unless and until the Commission has decided to alter its policy that the Company charge uniform rates. The Company maintains that the advisability of maintaining or altering the ratemaking concept of setting rates uniformly can be addressed and determined without system-specific data.

The Commission concludes the CWS should not be required to provide system-specific data based on the record in this case. The issue of uniform rates is being addressed by the Commission in a generic proceeding, Docket No. W-100, Sub 13. The Public Staff had earlier requested that the Company be required to submit system-specific data for each of its systems in this case. The Commission denied that motion, noting that the issue was under consideration in the generic docket. For that reason, we again conclude that the more suitable forum in which to initially address the uniform rates concept is in the generic docket. Depending on the outcome of our investigation in that docket, we will then be in a position to order companies like CWS to provide system-specific data if we so decide. We agree with the Company that the wisdom of the uniform rate concept can be initially examined without first obtaining information showing which systems generate revenues higher than their cost of service and which generate revenues lower than their cost of service. Therefore, it would be premature to require CWS to begin to develop allocations, assign costs, and maintain its books and records so that system-specific data can be provided in its next general rate case. The generic docket should be decided prior to requiring any regulated water and/or utility to begin to develop system-specific data.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 100 AND 101

This issue has to do with the metering of the approximately 1,010 presently unmetered customers. The Public Staff favors the metering of all customers while the Company questioned the wisdom of such action.

The Commission notes that in the Applicant's last rate case, the Commission required the Company to publish a meter feasibility study. The Company states that it would cost around $175 per connection to add meters to the existing

unmetered customers. The Company also indicates that there are potential future customers in the subdivisions without meters. The Public Staff did not believe the metering of these potential future customers would be as costly since it can be done at the same time as the connection is made to the system.

Commission Rule R7-22 encourages metering, and it is inequitable for some customers to be charged a metered rate while others are charged a flat rate. Therefore, the Commission adopts the recommendation of witness Larsen that individual meters should be installed to all customers. The Commission concludes that CWS shall meter all unmetered customers by December 31, 1996. Furthermore, CWS shall file a time table for metering all unmetered customers by September 30, 1992.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 102

This issue involves the filing of contracts between CWS and developers. The Public Staff stated that a number of such contracts have not yet been filed with the Commission. In Docket No. W-354, Sub 69, the Commission explained why such contracts should be filed with the Commission. In Docket W-354, Sub 81, the Commission stated that CWS should provide the Public Staff with copies of any missing contracts. Witness Larsen testified in this case that these contracts were needed to determine whether tap fees and plant impact fees are being charged properly.

As listed in Public Staff Wenz Rebuttal Cross-Examination Exhibit 3, the Commission files do not contain contracts for the following subdivisions:

Hearthstone
Mossy Creek/Sugar Mountain
Ski Country
Mount Carmel - Section 5A
Farmwood - Section 20
Farmwood - Section 21
Hidden Hills
Riverbend/Lakemere
Riverbend/Pier Pointe
Riverbend/Lockbridge
Riverbend/Plantation Landing
Riverbend/Canebrake
Sugar Top
Pelican Pointe
Williams Station
Beacon Reach
Cedarwood Village
Brandonwood

The Commission concludes that contracts for these subdivisions, if they exist, and all other outstanding contracts should be filed within 30 days of the date of this Order. Also, all new contracts in the future should be filed within 30 days from signing. All contracts should be filed with the Chief Clerk of the Commission and a copy of each contract should be served on the Public Staff. If any agreements are reached with developers regarding the provision of utility service, but are not written or signed prior to being acted on, CWS shall file

with the Commission a detailed written description of the terms of the agreement within 30 days of entering into the agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 103

This issue has to do with the uniform tap fee and the plant impact fees. According to the Public Staff, the Company, in its Sub 39 rate case, requested and received approval to charge its uniform tap fees and plant impact fees to all new connections otherwise approved by the Commission. The Public Staff raised a concern in the next rate case, Sub 69, that the Company was not uniformly applying its tap and modification fees. Public Staff witness Larsen testified that the Commission required the Company to file copies of all contracts and that the uniform tap and modification fees are supposed to be charged unless the contract provides otherwise and that provision is approved by the Commission. Public Staff witness Larsen recommended that the tap fees and plant modification fees approved in this rate case be required in all situations from this point forward, except where the Commission has already approved a different level in the past for specific contracts. CWS witness Wenz testified on rebuttal that CWS does collect tap fees and plant impact fees in all situations where the Commission has already approved a different level for a specific contract. For that reason, the Company takes the position that it is unnecessary for the Commission to require CWS to charge the tariffed tap and plant impact fees except where the Commission approves a different level.

The Commission agrees with the Public Staff on this issue and concludes that the Company should charge the uniform tap fee and plant modification fee in all of its service areas unless it receives prior Commission approval to deviate from the uniform fees. This requirement should apply to both existing and new service areas. The filing by CWS of contracts that provide for non-uniform fees does not constitute Commission approval of such fees.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 104 AND 105

The evidence for these findings of fact is found in the testimony of Public Staff witness Larsen and Company witness Cuddie. The Commission points out that the wording of G.S. 62-153(a) is not discretionary. The statute mandates that a utility "shall file with the Commission copies of contracts with any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company." Clearly Water Service Corporation is such a company. The informal, unwritten agreements regarding contract operations and billing for the City of Charlotte have not been reduced to writing and then filed with the Commission, despite the clear requirement of the statute. Accordingly, CWS should be required to reduce these informal agreements to writing, if no written agreements currently exist, and then file them for Commission approval pursuant to G.S. 62-153.

This decision is consistent with previous decisions in other cases involving informal agreements. For instance, several companies, including CWS, have presented the Commission with franchise applications in the past few years that did not include written contracts. In each case, the Commission required the utility to either produce a contract or a memorandum detailing the agreement for the Commission to consider. E.g., Docket No. W-354, Sub 78. Therefore, the

Commission concludes CWS should likewise produce written agreements for consideration pursuant to G.S. 62-153.

The statute allows the Commission to disapprove prejudicial contracts. The Commission will determine whether hearings should be scheduled on these contracts after they are filed and intervenors have had an opportunity to file motions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 106

The Commission notes that it might be possible to avoid much of the controversy over contract allocations in future cases if CWS were to adopt an appropriate methodology to keep track of how much time its operators, part-time employees, managers, and others spent on regulated CWS operations, regulated operations of affiliate companies (like Clearwater and the Fairfield systems), and non-regulated operations like the contract plants. Witness Larsen recommended the use of time sheets. The Commission concludes that the Company shall undertake a study to determine an appropriate methodology to properly allocate employees' time who do not work exclusively on CWS jurisdictional operations. The reasonableness of such methodology and the results thereof shall be considered in the Company's next general rate case proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 107

This finding flows from the previous findings. The Commission concludes that these rates are fair and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That CWS shall 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 service revenues of $220,519 and an increase in sewer service revenues of $239,761. CWS is also authorized to increase miscellaneous revenues in the amount of $16,676 for water operations and $3,576 for sewer operations as more particularly set forth herein.

2. That the Schedule of Rates, attached as Appendix A, is approved for water and sewer service rendered by CWS. These rates shall become effective for service rendered on and after the effective date of this Order. The Commission holds that this Schedule of Rates has been filed as required by G.S. 62-138.

3. That CWS shall file a report, as discussed in the Evidence and Conclusions for Findings of Fact Nos. 5 and 6, by September 14, 1992, that describes in detail all service and water quality problems and specifies what corrective actions CWS is taking or plans to take. Additionally, CWS shall undertake corrective actions expeditiously.

4. That a copy of the attached Appendices A and B shall be delivered by CWS to all its customers, in conjunction with the next billing statement after the effective date of this Order.

5. That CWS shall file the attached Certificate of Service, properly signed, and notarized, within 10 days of completing the requirement of Ordering Paragraph No. 4.

6. That CWS shall file with the Commission, within 30 days of the effective date of this Order, all contracts identified by the Public Staff in Wenz Rebuttal Cross-Examination Exhibit No. 3 as not having been previously filed. In addition, CWS shall, within 30 days of the effective date of this Order, file any other contracts it has entered into with developers through the date of this Order that have not previously been filed. CWS shall henceforth file all contracts with developers with the Commission within 30 days of signing or, in the case of informal agreements or contracts that are effective without signing, within 30 days from the date agreement is reached. The requirements of this paragraph shall apply to all contracts, including those covering contiguous expansions.

7. That CWS shall, within 30 days from the effective date of this Order, reduce to writing and file its contracts with Water Services Corporation covering (a) the billing and collecting services for the City of Charlotte and (b) its contract water and sewer operations. In addition, CWS shall file any other contracts with affiliated corporations as required by G.S. 62-153 as follows: for existing contracts, within 30 days of the effective date of this Order; and for new contracts, within 30 days of their execution or, if no execution occurs, their effective date. This requirement shall apply to all contracts, including informal agreements which shall be reduced to writing and filed.

8. That CWS shall charge its uniform tap and plant modification fees in all subdivisions except those in which the Commission has given explicit approval by written Order to charge otherwise. To ensure that all parties and the Commission know exactly where those exceptions are, CWS shall file a list of all systems where the uniform fees are not charged within 30 days of the effective date of this Order.

9. That CWS shall meter all customers who are now flat rate customers by December 31, 1996. Upon completion of the metering project, CWS shall charge all customers its metered rates. CWS shall file a report by September 30, 1992, showing a timetable for metering all unmetered customers.

10. That CWS may not continue to accrue AFUDC after construction of a project has been completed. This accounting proposal is disapproved.

11. That CWS shall undertake a study to determine an appropriate methodology to properly allocate employees' time who do not work exclusively on CWS jurisdictional operations. The reasonableness of such methodology and the results thereof shall be considered in the Company's next general rate case proceeding.

12. That CWS is hereby granted temporary operating authority to provide sewer utility service in the Farmwood 20 and 21, Habersham, and Windsor Chase Subdivisions. CWS shall file applications for certificates of public convenience and necessity to serve these subdivisions not later than 30 days from the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of July 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioner Allyson K. Duncan, dissents in part.

APPENDIX A

SCHEDULE OF RATES
for
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
for providing water and sewer utility service in
ALL ITS SERVICE AREAS IN NORTH CAROLINA

WATER RATES AND CHARGES

METERED SERVICE:		
Base Facility Charges		
A.	Residential Single Family Residence	$ 9.45
B.	Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	$ 9.45
C.	Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	$ 8.45
D.	Commercial and Other (Based on Meter Size): 5/8" x 3/4" meter	$ 9.45
	1" meter	$ 24.00
	1-1/2" meter	$ 47.00
	2" meter	$ 76.00
	3" meter	$ 142.00
	4" meter	$ 236.00
	6" meter	$ 472.00
USAGE CHARGE:		
A.	Treated Water/1,000 gallons	$ 2.92
B.	Untreated Water/1,000 gallons (Brandywine Bay Irrigation Water)	$ 2.00
FLAT RATE SERVICE:		
A.	Single Family Residential	$ 20.53
B.	Commercial (per single family equivalent)	$ 20.53
AVAILABILITY RATES:		
Applicable only to property owners in Carolina Forest and Woodrun Subdivisions in Montgomery County		$ 2.00
CONNECTION CHARGES [1]:		
A.	5/8" meter	
	Hound Ears Subdivision	$ 300.00
	Sherwood Forest Subdivision	$ 950.00
	Wolf Laurel	$ 925.00
	All Other Service Areas	$ 100.00
B.	Meters Larger Than 5/8"	Actual Cost

WATER AND SEWER - RATES

PLANT IMPACT FEE [1]:	
A. Residential (5/8") Meter	
Hound Ears, Sherwood Forest, and Wolf Laurel Subdivisions	None
All Other Service Areas	$ 400.00
B. Commercial and Others (Per Single Family Equivalent - payable by developer or builder)	$ 400.00
METER TESTING FEE [2]:	$ 20.00
NEW WATER CUSTOMER CHARGE:	$ 27.00
RECONNECTION CHARGES [3]:	
If water service is cut off by utility for good cause:	$ 27.00
If water service is disconnected at customer's request:	$ 27.00

SEWER RATES AND CHARGES

METERED SERVICE:	
A. Base Facility Charge (Based on Meter Size)	
5/8" x 3/4" meter	$ 10.00
1" meter	$ 25.00
1-1/2" meter	$ 50.00
2" meter	$ 80.00
3" meter	$ 150.00
4" meter	$ 250.00
6" meter	$ 500.00
B. Usage Charge/1,000 gallons	$ 4.75
C. Minimum Monthly Charge	$ 29.50
FLAT RATE SERVICE:	
Per Dwelling Unit [4]	$ 29.50
COLLECTION SERVICE ONLY: (When sewage is collected by utility and transferred to another entity for treatment)	
A. Single Family Residence	$ 11.00
B. Commercial (per single family equivalent)	$ 11.00
CONNECTION CHARGE [1]:	
A. Residential	
Hound Ears Subdivision	$ 300.00
Corolla Light Subdivision	$ 700.00
All Other Service Areas	$ 100.00
B. Commercial and Others	Actual Cost
PLANT IMPACT FEES [1]:	
A. Residential	
Hound Ears and Corolla Light	None
Brandywine Bay Subdivision	$1,456.00
B. Commercial and Others (Per single family equivalent- payable by developer or builder)	$1,000.00

NEW SEWER CUSTOMERS CHARGES [5]: $ 22.00

RECONNECTION CHARGES [6]:
If sewer service is cut off by Utility for good cause: Actual Cost

MISCELLANEOUS UTILITY MATTERS

BILLS DUE: On billing date

BILLS PAST DUE: 21 days after billing date

BILLING FREQUENCY: Bills shall be rendered bi-monthly in all service areas except for availability charges in Carolina Forest and Woodrun Subdivisions which will be billed semi-annually.

CHARGES FOR PROCESSING NSF CHECKS: $ 10.00

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.

1/ These fees are subject to the Gross Up Multiplier provisions for Contributions in Aid of Construction of the North Carolina Utilities Commission, Docket No. M-100, Sub 113. Also these are the fees that are subject to collection from all service areas unless specified differently by contract approved by and on file with the North Carolina Utilities Commission.

2/ If a customer requests a test of a water meter more frequently than once in a 24 month period, the Company will collect a $20 service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24 month period without charge.

3/ Customers who request to be reconnected within nine months of disconnection at the same address shall be charged the base facility charge for the service period they were disconnected.

4/ Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor building the unit.

5/ These charges shall be waived if sewer customer is also a water customer within the same service area.

6/ The utility shall itemize the estimated cost of disconnecting and reconnecting service and shall furnish this estimate to customer with cut-off notice. This charge will be waived if customer also receives water service from Carolina Water Service within the same service area.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-354, Sub 111, on this the 31st day of July 1992.

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-354, SUB 111

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in All of its Service Areas in North Carolina	NOTICE TO THE CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order assessing a penalty and authorizing Carolina Water Service (CWS) to charge new rates for water and sewer utility service in all its service areas in North Carolina. A copy of the new Schedule of Rates is attached and these rates are effective for service rendered on and after the effective date of the Order.

In approving a partial rate increase, the Commission found that the quality of service provided by CWS to its customers is inadequate and unacceptable in many of its service areas as a result of poor water quality and/or serious service problems. Due to such findings, the Commission assessed a penalty in the amount of 1% on the rate of return on common equity which will reduce the Company's allowed rate increase by approximately $120,000 on an annual basis.

Due to different previously existing rate schedules, some customer bills in certain service areas will increase more than others. The new rates reflect an overall increase of 4.6% for water operations and 9.8% for sewer operations. The Company had requested an increase of 13.9% for water operations and 18.5% for sewer operations.

The Commission reached its decision after considering testimony and evidence presented by the customers, the Company, and the Public Staff at public hearings in Boone, Charlotte, Beaufort, Fayetteville, Sylva, and Raleigh.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of July 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers ~~issued by Order~~ of the North Carolina Utilities Commission in Docket No. W-354, Sub 111, and said Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1992.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-354, Sub 111.

Witness my hand and notarial seal, this the _____ day of _____ 1992.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

COMMISSIONER DUNCAN, DISSENTING:

I dissent from that part of the Commission's Order which allows CWS to recover from its customers 50% of the requested intervention costs in the Heater and Mid South cases. I would not allow the recovery of any of these costs. To do so is, in my opinion, wrong on these facts, a poor policy decision and even poorer precedent.

The majority concludes that the Company's decision to participate in the dockets in question was reasonable and prudent and resulted in at least indirect benefit to the customers of CWS. There is little, if any support, for this purely conclusory statement. I see no benefit to CWS customers from these interventions, either direct or indirect. Nor is the majority able to specifically point to any. Vague references to the fact that actions were taken in "the public interest," or that they helped to define regulatory policy, are not enough, in my view, to justify imposing the associated costs on ratepayers.

The majority goes to great lengths to show that the intervention of CWS in the Mid South docket was of benefit to the Commission: "The participation of CWS in the Mid South docket was beneficial in that it assisted the Commission in arriving at a fully-informed decision." (emphasis added). "'Only as a result of the extensive proceedings in these dockets, including the intervention of Carolina Water, [emphasis in original] has the Commission learned of the extent of Mid South's service obligations in the Bradfield development. . .'" (latter emphasis added.) However, the fact that the interventions were of benefit to the Commission does not necessarily mean that they were beneficial to the ratepayers.

The Majority is not offering to pay for the services it concedes were rendered to the Commission; they are simply passing them on to the category of persons in this proceeding who received the least from them, i.e., the ratepayers.

If there were any logic in forcing ratepayers to pay half the cost of the Mid South intervention, surely there can be none in forcing them to pay half the costs of the intervention in Heater. The Commission denied the CWS motion to intervene in Heater on the grounds that CWS had no interest that would justify it. CWS was, however, allowed to file an amicus curiae brief, and found a developer, Brian & Watson, to intervene on its behalf. CWS's attorney, Edward Finley, represented Brian & Watson, and now CWS is seeking to recover the legal fees incurred by the developer. IF CWS had no interest sufficient to justify its intervention in Heater, then it has no basis for seeking to recover the costs associated with that intervention. The Majority piously states that "[r]egulatory policy was refined in the Heater case." Regulatory policy is refined in virtually every case. Does this mean that CWS has carte blanche to attempt to intervene in every pending docket and, even though it cannot show an interest, pass half those costs on to its ratepayers?

Finally, the Majority's decision sets unfortunate precedent. The Majority appears to recognize that the CWS interventions were motivated at least in part by its desire to acquire additional systems and franchises. I find it difficult to see why CWS's acquisitiveness needs any encouragement. Also, I find it at least somewhat inconsistent to penalize CWS on its rate of return because of its inadequate service to its current customers, on the one hand, and to simultaneously force those customers to pay for half the legal fees associated with acquiring new ones, on the other.

The effects of the Majority's decision will not end here. The Mid South proceeding in which CWS was allowed to intervene is still ongoing. In fact, much of the litigation occurred after the close of the test year in this case. Thus, under the Majority's decision, the ratepayers can look forward to subsidizing greater costs associated with the intervention after the next rate case--which is probably imminent.

For the foregoing reasons, I do not find the Majority's decision on this issue to be well founded.

Commissioner Allyson K. Duncan

DOCKET NO. W-354, SUB 111

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in All of its Service Areas in North Carolina	FINAL ORDER ASSESSING RATE OF RETURN PENALTY AND GRANTING PARTIAL RATE INCREASE

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, September 9, 1992, at 2:00 p.m.

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

APPEARANCES:

FOR CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA:

Edward S. Finley, Jr. and James L. Hunt, Attorneys at Law, Hunton and Williams, Post Office Box 109, Raleigh, North Carolina 27602

FOR THE TOWN OF PINE KNOLL SHORES:

Kenneth M. Kirkman, Attorney at Law, Kirkman and Whitford, P.A., Post Office Drawer 1347, Morehead City, North Carolina 28557

FOR THE VILLAGE OF WHISPERING PINES:

Jean C. Brooks, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Suite 2000, 230 N. Elm Street, Greensboro, North Carolina 27402

FOR THE PUBLIC STAFF:

David T. Drooz and A. W. Turner, Jr., 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:

Ted R. Williams, Associate Attorney General, Utilities Division, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On December 23, 1991, Carolina Water Service, Inc., of North Carolina (CWS, Company, or Applicant) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust its rates and charges for water and sewer utility service in North Carolina. CWS requested that the proposed rates become effective February 1, 1992. On January 23, 1992, the Commission issued an Order Establishing General Rate Case, Suspending Rates, Scheduling Hearing and Filing Dates, and Requiring Public Notice. Public hearings were scheduled in Boone, Charlotte, Beaufort and Fayetteville in addition to Raleigh. The Order also gave evidentiary value to "[w]ritten statements that are sent to the Public Staff or Commission that clearly identify the customer, his or her address, and his or her concerns." The test year was established as July 1, 1990 - June 30, 1991.

On January 16, 1992, the Attorney General filed a Notice of Intervention. On January 30, 1992, the Public Staff and CWS filed a stipulation on rate of return and capital structure. After receiving suggestions from CWS on February 3, 1992, and February 7, 1992, the Commission issued an Order Modifying Notice to the Public on February 11, 1992.

On February 5, 1992, the Public Staff filed a motion incorporating into the rate case its request for system specific data. On February 26, 1992, the Commission issued its Order denying the Public Staff's motion for system specific data.

On February 24, 1992, the Public Staff requested an additional public hearing in the mountains. The Public Staff amended this request on February 26, 1992. On February 28, 1992, CWS filed its opposition to this request. On March 4, 1992, the Commission scheduled an additional public hearing in Sylva.

On March 9, 1992, CWS filed revised Schedules A, B, C, and D as required by the Order Establishing General Rate Case.

On March 12, 1992, the Attorney General moved the Commission to schedule additional public hearings. The Public Staff had one day earlier commented that more hearings were not necessary, and CWS filed its opposition to the Attorney General's motion on March 17, 1992. On March 24, 1992, the Commission denied the motion.

On March 20, 1992, CWS prefiled its direct testimony. On March 26, 1992, the Town of Pine Knoll Shores moved to intervene, and that motion was granted on April 13, 1992. On April 14, 1992, the Public Staff prefiled its testimony.

On April 20, 1992, CWS moved for interim rates. That motion, which was opposed by the Public Staff on April 21, 1992, and by the Attorney General on April 24, 1992, was denied by the Commission on May 1, 1992.

On April 28, 1992, the Public Staff filed a Motion to Compel Responses to Discovery. On April 30, 1992, CWS filed its response opposing the motion and requesting an extension of time for filing its rebuttal testimony. On May 2, 1992, the Public Staff filed its response to the Company's filing. On May 5, 1992, the Commission granted the Public Staff's motion and CWS's request for an extension.

On May 5, 1992, the Village of Whispering Pines moved to intervene. The Commission allowed that intervention by Order dated May 13, 1992.

On May 7, 1992, CWS prefiled its rebuttal testimony. The following day the Public Staff filed a Motion in Limine. CWS responded to that motion on May 13, 1992. The Commission entered its Order Ruling on Motion in Limine on May 15, 1992.

On May 11, 1992, the Public Staff filed a Motion for Imposition of Sanctions for Refusal to Comply with Commission Discovery Order. The following day the Public Staff moved for further discovery. That same day CWS filed its Response to Motion for Imposition of Sanctions. On May 13, 1992, the Attorney General joined in the Public Staff's motion for imposition of sanctions.

On May 14, 1992, the Commission issued its Order Rescheduling Hearing and Requiring Responses on Discovery. The next day the Public Staff filed a Notice of Further Discovery. On May 19, 1992, CWS filed a Response to Discovery.

On May 22, 1992, the Company filed a Further Response to the Public Staff's Motion in Limine. The Commission issued a Further Order on the motion in limine on June 4, 1992. On May 28, 1992, the Public Staff and CWS prefiled their supplemental testimony. The same day CWS moved for Leave to File the Rebuttal Testimony of John B. Cromwell. The following day the Public Staff filed its response opposing CWS's motion. On June 3, 1992, the Commission issued its Order denying the motion of CWS.

On June 1, 1992, CWS filed a Motion in Limine. On June 3, 1992, the Public Staff filed its response. On June 4, 1992, CWS filed a response to the Public Staff's response. This CWS filing was withdrawn and replaced by an Amended Reply on June 9, 1992. On June 5, 1992, the Commission issued its Order ruling on the motion.

On June 8, 1992, the Commission, at the request of CWS, issued subpoenas for Diane Dalton and James Thompson. The same day the Public Staff moved to bar these new witnesses and the Attorney General moved to quash the subpoena for James Thompson. On June 9, 1992, the Commission made a bench ruling that quashed the Thompson subpoena but allowed the Dalton subpoena.

On June 9, 1992, CWS filed a proposed order dealing with confidential information. The Commission approved the proposed order, which was issued on June 15, 1992.

Public hearings were held as scheduled. The following public witnesses appeared and testified:

Boone
March 24

Dolores Dietz, George Scheitlin, William Tyrl, Andrew Schuller, Charles Pabian, James Wood, Charles Compton, Robert C. Langston, Gaylord Williams, Barry Noll, Harvey Bauman, Rodney C. Walker, and Carus Schimdt

Charlotte
March 25

Lee Myers, Alex Sabo, Tommy Odom, Joseph H. Constant, Donna Savage, Ken Benzmiller, John Marks, Tad Prewitt, David A. Gant, Sr., Sonya Flores, Laura Davis, Roger Rummage, Nina DeBergalis, Leah Le Clere, Kelly Brown, Mitez Ormond, Rita Ehlers, Jess Riley, Brendon Lee Almond, Daniel Pape, David Hammond, Robert Broome, Frank Herron, Jeff Le Clere, Stephen R. Hargett, Thomas E. Johnson, Robert W. Mann, Louise Green, Michael Ray Allen, Rob Thomas, and Wanda Fuller

Beaufort
March 26

Art Cleary, Bill Ritchie, Mary Kanyha, Dave Hasulak, George Walton, Charles Allen, Barney Zmoda, Gene Hollowell, Rick Heal, Paul Maxson, George Wilkerson, A. C. Hall, R. W. Soderberg, Grady Fulcher, Clyde Lynn, Clay Dulaney, and Ray Brown

Fayetteville
April 8

Mary Davis, Sheree Croft, John Croft, George Langston, Joe Cormier, John R. McCary, Bruce Cox, Flora McCary, Joe Strickland, Grover L. White, Patricia White, Archie Blackwell, Bill Branham, and William Scott

Sylva
April 14

Earl Carson, Richard Randle, Ray Burrow, E. B. Trueblood, Jr., Betty Mortlock, C. L. Hollifield, H. E. Roche, James Poleski, Roger Misleh, D. L. Gump, Herbert Gibson, Ken Jarvis, Wayne Dygert, James Tanner, and Richard Randle

Raleigh
May 18

Senator Beverly Perdue, Representative Michael Decker, Paul K. Jarvis, Dianne MacAlpine, Representative Richard Morgan, Roy Anderson, Jerald T. Howell, Louise Rulon, Charles S. Pulliam, Charles S. Allen, Leon Clay, Charlie Baker, Bill Ritchie, David Dickey, William B. Heffner, Jr., Richard Sutton, Milton J. Arter, Donald P. Dise, Charles Morris, Byron K. Harris, Tony D. Wilson, and John Price

In addition to these persons who appeared at the hearings, the Commission takes notice of the letters filed by customers in this docket. The Commission has considered these letters as evidence in this case pursuant to the agreement of the parties.

The hearing in chief was held before a three-member Hearing Panel in Raleigh on June 9-12, 1992. The Applicant presented direct testimony of Carl J. Wenz, Director of Regulatory Accounting; Patricia M. Cuddie, Manager of Regulatory Accounting; and Carl Daniel, Vice-President and Regional Director of Operations.

The Public Staff presented the testimony of Jan A. Larsen, Utilities Engineer; William E. Carter, Jr., Director of Accounting; and Linda Petrie Haywood, Supervisor of the Water Section of the Accounting Division. In addition, J. C. Lin, Head of the Plan Review Branch of the Division of Environmental Health, appeared at the request of the Commission.

CWS presented the rebuttal testimony of witnesses Wenz, Cuddie, and Daniel; Andrew H. Dopuch, Manager of Corporate Operations for Utilities, Inc.; Patrick J. O'Brien, Vice President of Finance; Dale C. Stewart, a principal with Land Design Engineer Services, Inc.; and Frank Seidman, a principal with Management and Regulatory Consultants, Inc.

On July 31, 1992, the Commission Hearing Panel, consisting of Commissioners Duncan, Tate, and Wright, entered a Recommended Order in this docket authorizing CWS to increase its rates and charges by $480,532 on an annual basis and assessing a rate of return penalty against the Company for providing inadequate service in many of its service areas.

On August 3, 1992, CWS, pursuant to G.S. 62-135(a), notified the Commission of the Company's intent to place into effect, after giving ten (10) days' notice to its customers, the rate increase approved in the Recommended Order. CWS attached an undertaking to refund to its notice and requested the Commission to accept that undertaking. In addition, CWS also attached a proposed notice to customers for Commission review and approval. On August 5, 1992, the Commission entered an Order in this docket approving the undertaking to refund and notice to customers filed by CWS.

On August 11 and 12, 1992, the Town of Pine Knoll Shores and CWS, respectively, filed exceptions to the July 31, 1992, Recommended Order. CWS also requested the Commission to convene a hearing to allow the Company to present additional evidence on the topic of service adequacy. On August 17, 1992, exceptions were filed by the Village of Whispering Pines, the Attorney General, and the Public Staff. Also on August 17, 1992, the Public Staff filed a response to the request of CWS for further hearing.

By Orders dated August 20, 1992, and September 2, 1992, the Commission scheduled an oral argument to consider all of the exceptions filed by parties to this proceeding and CWS's motion requesting an evidentiary hearing on the topic of adequacy of service. Upon call of the matter for oral argument at the appointed time and place, all parties were present and represented by counsel. The Commission then proceeded to hear oral arguments from the parties.

Other motions and pleadings have been filed in this docket and other Orders ruling on various matters have been issued by the Commission.

Based on the application, the testimony and exhibits, the exceptions to the Recommended Order, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT
GENERAL MATTERS

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.

2. 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.

3. The test period appropriate for use in the proceeding is the 12 months ended June 30, 1991.

4. The Applicant's present and proposed rates are as follows:

WATER UTILITY SERVICE:	Present Rates	Proposed Rates
Grandview Subdivision:		
First 2,000 gallons per month	$ 7.50	n/a
All over 2,000 gallons per 1,000	$ 1.90	n/a
Base Charge, zero usage per month	n/a	$ 10.00
Usage Charge per 1,000 gallons	n/a	$ 3.50
Olde Point Subdivision:		
Base Charge, zero usage per month	$ 5.00	$ 10.00
Usage Charge per 1,000 gallons	$ 0.74	$ 3.50
Providence West Subdivision:		
Base Charge, zero usage per month	$ 6.25	$ 10.00
Usage Charge per 1,000 gallons	$ 1.58	$ 3.50
All Other Service Areas:		
Residential - Metered		
Base Charge, zero usage per month	$ 9.00*	$ 10.00*
Usage Charge per 1,000 gallons	$ 2.83	$ 3.50
Residential - Unmetered		
Flat rate, per month	$ 19.75	$ 25.00
Metered - Commercial and Other		
Commercial and Other - Metered		
Base Charge, zero usage per month		
5/8" x 3/4" meter	$ 9.00	$ 10.00
1" meter	$ 22.50	$ 25.00
1-1/2" meter	$ 45.40	$ 50.00
2" meter	$ 72.00	$ 80.00
3" meter	$135.00	$150.00
4" meter	$225.00	$250.00
6" meter	$450.00	$500.00
Usage charge per 1,000 gallons	$ 2.83	$ 3.50
Usage charge for untreated water in Brandywine Bay per 1,000 gals.	$ 2.00	$ 2.50
Commercial and Other - Unmetered		
Flat Rate per month (Per single family equivalent)	$ 19.75	$ 25.00

* Base Charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually. Where service is provided through a master meter and a single bill is rendered for the master meter, as in a condominium complex, the existing base charge is $8.00 per month and the proposed base charge is $9.00.

SEWER UTILITY SERVICE:	Present Rates	Proposed Rates
Olde Point	$ 18.00	$ 32.66
All Other Service Areas		
Residential		
Flat Rate, per month	$ 26.32	$ 32.66
Commercial and Other		
Base Charge, zero usage per month		
5/8" x 3/4" meter	$ 9.00	$ 10.00
1" meter	$ 22.50	$ 25.00
1-1/2" meter	$ 45.40	$ 50.00
2" meter	$ 72.00	$ 80.00
3" meter	$135.00	$150.00
4" meter	$225.00	$250.00
6" meter	$450.00	$500.00
Usage charge per 1,000 gallons of water usage	$ 4.25	$ 5.55
Minimum bill per month	$ 26.32	$ 32.66
Customers who do not take water service from Carolina Water (Per single family equivalent)	$ 26.32	$ 32.66
Sewer Collection Service		
When sewerage is collected by the Utility and transferred to a government body or agency, or another entity, for treatment, the Utility's rates are as follows:		
Residential - monthly charge	n/a	$ 16.00
Commercial - monthly charge per single family equivalent	n/a	$ 16.00

OTHER MATTERS

Reconnection Charge:		
If water service is cut off by utility for good cause:	$ 22.00	$ 27.00
If water service is disconnected at the customer's request:	$ 22.00	$ 27.00
Charge for Processing NSF Checks:	$ 7.00	$ 10.00
New Water Customer Charge:	$ 22.00	$ 27.00
New Sewer Customer Charge: (Waived if customer also receives water utility service)	$ 16.50	$ 22.00
Meter Testing Fee:	n/a	$20.00*

* If a customer requests a test of a water meter more frequently than once in a 24-month period, the Company will collect a $20 service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24-month period without charge.

Note:

No changes are proposed for presently approved Connection Charges, Plant Impact Fees, and Availability Rates. Also, no changes are requested for the date by which bills are past due, or for the finance charge for late payments.

5. The quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems.

6. CWS needs to improve the overall quality of service the Company offers to its customers in North Carolina. The Company should be penalized in this case by means of a rate of return penalty for inadequate service.

RATE BASE

7. The appropriate level of total plant in service is $45,006,659 of which $25,755,108 is applicable to water operations and $19,251,551 is applicable to sewer operations.

8. The state design criterion for the wastewater treatment capacity of the Brandywine Bay, Cabarrus Woods - Stonehedge - Cambridge - Steeplechase, and the Danby - Lamplighter South - Woodside Falls systems is 400 gallons per day (gpd) per dwelling unit. It is appropriate to use this state design requirement as the basis for evaluating how much capacity is "used and useful" for each customer.

9. The state design criteria for water systems (per residential equivalent connection) which are appropriate for use in this proceeding are as follows:

Elevated water storage tanks: 200 gallons per day

Wells: 400 gpd = 0.556 gpm (gallons per minute) based upon a 12 hour pumping day.

It is appropriate to use these state design requirements as the basis for evaluating how much capacity is "used and useful" for each customer.

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. 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 $165,600. 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 $107,640. The net investment to include in rate base (prior to reduction for tap fees and plant modification fees paid directly by customers) is $142,360.

12. 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 $208,170. 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 $135,311. The net investment to include in rate base (prior to reduction for tap fees and plant modification fees paid directly by customers) is $273,427.

13. The net investment of the Company in the Cabarrus Woods elevated storage tank is $367,459. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $251,048. 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 $163,181. The net investment to include in rate base (prior to reduction for tap fees and plant modification fees paid directly by customers) is $204,278.

14. The net investment of the Company in the Cabarrus Woods sewage treatment plant is $626,597. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $268,434. 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 $174,482. The net investment to include in rate base (prior to reduction for tap fees and plant modification fees paid directly by customers) is $452,115.

15. The net investment of the Company in the Cambridge lift station is $138,000. This entire investment should be included in rate base.

16. 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 $123,017. 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 $79,961. The net investment to include in rate base (prior to reduction for tap fees and plant modification fees paid directly by customers) is $129,039.

17. 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 $56,420. 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 $36,674. The net investment to include in rate base is $33,326.

18. 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 $26,076. 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 $16,950. The net investment to include in rate base is $18,050.

19. The net investment of the Company in the Sherwood Forest water system is $26,500. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $21,200. 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 $13,780. The net investment to include in rate base is $12,720.

20. 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 $6,333. 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 $4,116. The net investment to include in rate base is $5,211.

21. The investments for the new wells in Sugar Mountain, Sherwood Forest, and Wolf Laurel are used and useful for end of period customers and should be included from the Company's rate base in this proceeding.

22. The Company is providing sewer utility service in Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions. The Company served 316 customers in these subdivisions at the end of the test period.

23. On May 7, 1991, the Commission entered an Order in Docket No. W-354, Sub 91, and Docket No. W-778, Sub 6, approving a Settlement Agreement and Release which provided, in pertinent part, that CWS was released from any and all claims and demands, whether known or unknown, that the Commission has, or may have, arising out of ". . . acquisitions, whether by contiguous extensions or otherwise, that have been expressly noted in any previously decided CWS rate applications . . . "

24. It is not appropriate to reduce the Company's rate base by $212,000 or require refunds in this proceeding with respect to the Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions in view of the Settlement Agreement and Release approved by the Commission on May 7, 1991, in Docket No. W-354, Sub 91, and Docket No. W-778, Sub 6. CWS should be granted temporary operating authority, nunc pro tunc, to provide sewer utility service in these subdivisions and should be required to file applications for certificates of public convenience and necessity.

25. The Public Staff's removal from CWS's rate base of transportation costs related to non-jurisdictional operations is appropriate.

26. It is appropriate to include in plant in service the expenditure on the Wolf Laurel well and tank.

27. The Public Staff prefiled contradictory testimony regarding $19,494 for the Carronbridge force main.

28. It is appropriate to include the unamortized portion of the loss related to the extraordinary retirement of the Mt. Carmel wastewater treatment plant (WWTP) in plant in service for purposes of this rate proceeding.

29. The appropriate level of accumulated depreciation for use in this proceeding is $3,344,714, of which $1,988,456 is applicable to water operations and $1,356,258 is applicable to sewer operations.

30. The appropriate level of contributions in-aid-of construction for use in this proceeding is $19,223,064, of which $9,730,348 is applicable to water operations and $9,492,716 is applicable to sewer operations.

31. The appropriate level of advances in-aid-of construction for use in this proceeding is $221,382, of which $122,495 is applicable to water operations and $98,887 is applicable to sewer operations.

32. For purposes of this proceeding, the plant acquisition adjustment is $2,985,883, of which $1,787,538 is applicable to water operations and $1,198,345 is applicable to sewer operations.

33. The appropriate level of accumulated deferred income taxes (ADIT) for use in this proceeding should be $568,943, of which $784,037 is applicable to water operations and ($215,094) is applicable to sewer operations.

34. It is not appropriate to include in rate base the ADIT associated with the CIAC applicable to the Monteray Shores system.

35. It is appropriate to include in rate base the ADIT associated with the CIAC for the Olde Point System.

36. For purposes of this proceeding, the amount of customer deposits is $113,589, of which $78,217 is applicable to water operations and $35,372 is applicable to sewer operations.

37. The appropriate amount of excess book value to be deducted in calculating the rate base in this proceeding is $4,281,266, of which $1,670,755 is applicable to water operations and $2,610,511 is applicable to sewer operations.

38. An amount of $60,000 for NCUC bonds should be included in rate base in this proceeding, of which $41,316 is applicable to water operations and $18,684 is applicable to sewer operations.

39. Gain on sale and flow back of taxes of $289,628 should be deducted from rate base for purposes of this proceeding, of which $216,693 is applicable to water operations and $72,935 is applicable to sewer operations.

40. It is appropriate to split the gains on the sales of the Beatties Ford and Genoa/Raintree systems equally between the stockholders and remaining ratepayers.

41. It is appropriate to split the loss on the sale of the Mt. Carmel system equally between the stockholders and remaining ratepayers.

42. The Purchase Acquisition Adjustments should be deducted from the original cost of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems in calculating CWS's net investment in these systems for the purpose of calculating the amount of gains or losses on the sales of these systems.

43. It is inappropriate to reduce the gains or losses on the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems by "compensation to management."

44. It is inappropriate for the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems to be reduced by personal Federal and Illinois income taxes that stockholders may have to pay based on the fact that their portion of the gains is paid to them in the form of dividends.

45. The costs of Docket No. W-354, Subs 82, 86, 87 and 88 should be split equally between the stockholders and remaining ratepayers.

46. It is inappropriate to reduce the ratepayers' portion of the gain on the sale of the Beatties Ford system by the loss of revenue from the date of the Commissions' Order in Docket No. W-354, Sub 81, to the date that the system was sold.

47. It is inappropriate to reduce the ratepayers' portion of the gain on the sale of the Beatties Ford system by the "loss of operating income" from the date of the sale of the system to the estimated date of the Commission's Order in Docket No. W-354, Sub 111.

48. It is inappropriate to reduce the ratepayers' portion of the gain on the sale of the Genoa/Raintree systems by the "loss of operating income" from the date of the sale of the system to the estimated date of the Commission's Order in Docket No. W-354, Sub 111.

49. The total net gain on the sale of the Beatties Ford system is $424,940. Of this amount, $212,470 should be assigned to the stockholders and $212,470 should be assigned to the remaining ratepayers.

50. The total net gain on the sale of the Genoa/Raintree systems is $131,595. Of this amount, $65,798 should be assigned to the stockholders and $65,797 should be assigned to the remaining ratepayers.

51. The total net loss on the sale of the Mt. Carmel water system is $28,383. Of this amount, $14,192 should be assigned to the stockholders and $14,191 should be assigned to the remaining ratepayers.

52. The amount of cost-free capital resulting from net gains on the sales of the Beatties Ford, Genoa/Raintree, and Mt. Carmel systems that should be deducted in calculating the original cost rate base in this proceeding and future rate proceedings is $264,076. This amount represents 50% of the total net gains and losses of $528,152 resulting from the sales of these systems.

53. The amount of cost-free capital resulting from the flow back of taxes paid through the gross-up of CIAC related to the Beatties Ford system that should be deducted in calculating the original cost rate base in this and future CWS rate proceedings is $21,747.

54. The amount of cost-free capital resulting from the flow back of taxes paid through the gross-up of CIAC related to the Genoa/Raintree systems that should be deducted in calculating the original cost rate base in this and future CWS rate proceedings is $3,805.

55. The appropriate level of working capital allowance is $498,807, of which $325,206 is applicable to water operations and $173,601 is applicable to sewer operations.

56. The appropriate level of deferred charges is $559,630, of which $434,062 is applicable to water operations and $125,568 is applicable to sewer operations.

57. The appropriate level of unamortized tank maintenance costs for purposes of this proceeding is $215,849.

58. The appropriate level of unamortized deferred rate case expense to include in rate base relating to Sub 111 is $145,293 and no amount relating to intervention costs should be included.

59. No amount of unamortized VOC testing costs should be included in deferred charges.

60. CWS's reasonable rate base used and useful in providing service is $15,096,627, consisting of utility plant in service of $45,006,659, NCUC bonds of $60,000, working capital allowance of $498,807, and deferred charges of $559,630, reduced by accumulated depreciation of $3,344,714, contributions in-aid-of construction of $19,223,064, advances in-aid-of construction of $221,382, plant acquisition adjustment of $2,985,883, accumulated deferred income taxes of $568,943, customer deposits of $113,589, excess book value of $4,281,266, and gain on sale and flow back of taxes of $289,628.

REVENUES

61. The appropriate level of end-of-period service revenues is $7,189,400, of which $4,745,041 is applicable to water operations and $2,444,359 is applicable to sewer operations.

62. The revenues from the billing and collection service contract with the City of Charlotte should be assigned to CWS for ratemaking purposes.

63. It is appropriate to include $18,725 in miscellaneous revenues for management fees.

64. CWS should be permitted to increase the following miscellaneous charges:

Reconnection Charges - Water
New Account Fee - Water
New Account Fee - Sewer
New Account Fee - Water and Sewer

65. The Company's request for an increase in the returned check charge should be approved.

66. The Company's request for a water meter test fee should be approved.

67. The appropriate level of miscellaneous revenues is $169,235, of which $122,876 is applicable to water operations and $46,359 is applicable to sewer operations.

68. The appropriate level of uncollectibles is $89,776 of which $59,389 is applicable to water operations and $30,387 is applicable to sewer operations.

69. Total revenues to be reflected in this proceeding are $7,268,859, of which $4,808,528 is applicable to water operations, and $2,460,331 is applicable to sewer operations. Gross service revenues are $7,189,400, of which $4,745,041 is applicable to water operations, and $2,444,359 is applicable to sewer operations. Miscellaneous revenue is $169,235, of which $122,876 is applicable to water operations and $46,359 is applicable to sewer operations. Total revenues are reduced by uncollectible revenue of $89,776, of which $59,389 is applicable to water operations, and $30,387 is applicable to sewer operations

OPERATION AND MAINTENANCE EXPENSES

70. The appropriate level of operation and maintenance expenses is $3,206,085, of which $2,051,285 is applicable to water operations and $1,154,800 is applicable to sewer operations.

71. The Public Staff's allocations of payroll expenses and vehicle expenses for non-regulated contract plant operations is appropriate. It is therefore appropriate to reduce salaries and wages by $84,653.

72. The operator's salary for the Pied Piper emergency operator system should be allocated out of the CWS rate case.

73. It is proper to remove the salary and vehicles of one and one-half field employees due to the sale of the Raintree/Genoa water systems.

74. The appropriate annual level of testing fees is $98,814 for sewer operations and $56,856 for water operations.

75. The appropriate level of maintenance and repair expenses is $826,845.

76. It is appropriate to allocate $7,173 of water and $3,238 of sewer transportation expenses to contract sewer systems and other systems not included in this proceeding.

77. The appropriate level of operating expenses charged to plant is $248,881 for water operations and $86,875 for sewer operations to reflect the allocation of salaries and wages discussed in Findings of Fact Nos. 71 and 80.

78. The appropriate level of outside services -- other is $144,180, of which $99,282 is applicable to water operations and $44,898 is applicable to sewer operations.

GENERAL EXPENSES

79. The overall level of general expenses under present rates appropriate for use in this proceeding is $1,406,934, of which $922,912 is applicable to water operations and $484,022 is applicable to sewer operations.

80. The Public Staff's allocation of common operating expenses for systems owned by other Utilities, Inc., subsidiaries in North Carolina is fair and should be used in determining the appropriate level of these expenses. It is therefore appropriate to reduce salaries and wages by $9,198 for water operations and $3,697 for sewer operations.

81. The appropriate level of rate case expenses for use in this proceeding is $130,195, of which $89,652 is applicable to water operations and $40,543 is applicable to sewer operations.

82. The total amount of rate case expenses should be amortized over a three-year period.

83. The appropriate level of pension and other benefits is $226,387 for water operations and $102,983 for sewer operations.

84. It is inappropriate to reduce general expenses applicable to sewer operations by $8,300 for revenues and expenses related to the wastewater treatment plants serving Farmwood 20 and 21, Windsor Chase and Habersham Subdivisions.

85. It is inappropriate to remove $1,322 from Northbrook expenses related to CMUD contract operations

86. For purposes of this proceeding, it is appropriate to reduce general expenses by $127,548 related to Northbrook office expenses allocated to North Carolina.

OTHER OPERATING REVENUE DEDUCTIONS

87. The appropriate level of depreciation expense for use in this proceeding is $519,826, of which $354,218 is applicable to water operations and $165,608 is applicable to sewer operations.

88. It is appropriate to include the amortization associated with the extraordinary retirement of the Mt. Carmel WWTP in the cost of service for sewer operations in this proceeding.

89. It is appropriate to reduce payroll taxes by $5,875 applicable to water operations and $2,317 applicable to sewer operations to reflect the reduction in salaries and wages.

90. Based on the other findings and conclusions set forth in this Order, the appropriate level of regulatory fees is $4,328 for water operations and $2,214 for sewer operations.

91. Based on the other findings and conclusions set forth in this Order, the appropriate level of gross receipts taxes is $192,341 for water operations and $147,620 for sewer operations.

92. Based on the other findings and conclusions set forth in this Order, the appropriate level of state income taxes is $48,576 for water operations and $14,893 for sewer operations.

93. Based on the other findings and conclusions set forth in this Order, the appropriate level of federal income taxes is $196,590 for water operations and $60,275 for sewer operations.

94. The overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $5,975,187, of which $3,891,056 is applicable to water operations and $2,084,131 is applicable to sewer operations.

95. It is inappropriate for the Company to continue the accrual of AFUDC after the construction of a project has been completed.

OVERALL COST OF CAPITAL

96. The following capital structure and cost rates are appropriate for determining the overall cost of capital in this case:

Capital Structure	%	Cost Rate	Weighted Cost
Debt	55.6%	9.46%	5.26%
Equity	44.4%	11.00%	4.88%
Overall Weighted Cost			10.14%

Because the quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems, the Company has been assessed a rate of return penalty of 1.0% on common equity. If the Company's quality of service were adequate, CWS would have been entitled to a 12.0% rate of return on common equity. Using a weighted average for the Company's cost of debt and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 10.14% to be applied to the Company's original cost rate base. Such rate of return will enable CWS, by sound management, to produce a fair return for its sole shareholder, maintain its facilities and service in accordance with the reasonable requirements of its customers, and compete in the market for capital on terms which are reasonable and fair to its customers and its existing shareholder.

RATES, FEES, AND OTHER MATTERS

97. The Commission finds that the Applicant's rates should be changed by amounts which, under pro forma adjustments, will produce an increase in annual service revenues of $396,356 and an increase in annual miscellaneous revenues of $20,252. These increases will allow CWS the opportunity to earn an 10.14% overall rate of return on its rate base, which the Commission has found to be reasonable upon consideration of the findings herein.

98. By Order entered in Docket No. W-100, Sub 13, on August 17, 1990, the Commission initiated a generic investigation of the uniform rate methodology employed by many water and sewer companies in North Carolina.

99. It was appropriate for the Commission to review the subject of system-specific data and rates in a generic proceeding prior to requiring CWS and any other water and/or sewer company to begin to develop allocations, assign costs, and begin maintaining their books and records so that system-specific data can be provided. By Order entered in Docket No. W-100, Sub 13 on September 11, 1992, CWS has been required to file system-specific data in conjunction with its next application for a general rate increase.

100. The Company should install individual water meters to the approximately 1,010 presently unmetered customers.

101. The installation of these meters should be completed by December 31, 1996.

102. The Company should file all contracts it has with developers that have not been previously filed with the Chief Clerk of the Commission within 30 days of the date of this Order, and should file future contracts and agreements within 30 days of signing an agreement.

103. The Company should charge the approved uniform tap fee and plant modification fee in all of its service areas unless it receives prior Commission approval to deviate from the uniform fees. Filing a contract with the Commission does not constitute approval of non-uniform fees. This requirement should apply to both existing and new service areas.

104. With regard to the billing and collecting services for the City of Charlotte, the Company should reduce to writing its informal agreement with Water Service Corporation and then submit such agreement or contract to the Commission for approval under G.S. 62-153.

105. With regard to its contract operations, the Company should reduce any informal agreements to writing and then submit its contracts and agreements with Water Service Corporation and any other affiliated entities to the Commission for approval under G.S. 62-153.

106. The Company shall undertake a study to determine an appropriate methodology to properly allocate employees' time who do not work exclusively on CWS jurisdictional operations. The reasonableness of such methodology and the results thereof shall be considered in the Company's next general rate case proceeding.

107. The attached Schedule of Rates is fair and reasonable and will allow the Company a reasonable opportunity to earn the authorized rate of return.

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

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; and the testimony and exhibits of the witnesses. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters that they involve are essentially uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is contained in the Company's application and in the Commission's official files. This finding of fact is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence supporting these findings of fact is contained in the testimony, petitions and letters of the customers and the testimony of Company witness Daniel and Public Staff witness Larsen. At the time CWS filed its exceptions to the Recommended Order on August 12, 1992, the Company requested the Commission to schedule a hearing where it could present additional evidence on the topic of service adequacy. On August 17, 1992, the Public Staff filed a

response in opposition to CWS's motion for further hearing. The Public Staff asserts that a further hearing on adequacy of service would be redundant as well as a drain on the time and resources of the Commission and the Public Staff. On August 27, 1992, CWS filed a reply in support of its request for a further hearing. CWS asserts that if a further hearing is held, it will subpoena certain named officials from DEHNR responsible for overseeing the service that CWS provides across the State of North Carolina. Alternatively, if a further hearing is denied, CWS requests leave to take depositions of the named employees of DEHNR and submit those depositions for consideration by the Commission.

The Commission finds good cause to deny CWS's motion for a further hearing and the Company's alternative request to submit the depositions of DEHNR personnel. In arriving at the decision to deny a further hearing, the Commission has considered the attachments submitted by CWS in conjunction with its exceptions. We agree with the Public Staff that the information set forth in those documents is very similar to evidence of record already offered by the Company. It does not change our decision. The extent of the serious service problems experienced by the customers of CWS in many of the Company's service areas was clearly demonstrated by the testimony of the customers who testified at the public hearings and through their letters, petitions, and responses to customer surveys. CWS was certainly aware of this evidence and, in response thereto, presented direct and rebuttal testimony and exhibits on the adequacy of service offered by the Company. There is no compelling justification to now reopen the hearing or to allow the Company to take and offer the depositions of DEHNR personnel. Instead, it is now time to recognize the problems and develop proposed solutions.

The Commission will discuss each subdivision where the customers testified at the hearings about service problems and the Company's response.

Crystal Mountain

In addition to customer letters received by the Commission, three customers testified at the public hearing regarding the quality of water and, more specifically, the lead problem within the distribution system. One customer described the water as "chocolate brown" and also said that the Company provided "inadequate, despicable service." Other customers testified that there was "mud" in the water, that the quality has deteriorated, and that the Company has a lack of responsiveness.

In addition to these service problems, there was also lead contamination within the Crystal Mountain distribution system. Company witness Daniel stated that the Company supplied bottled water to the residents for cooking and drinking and conducted an extensive system sampling and testing program in an attempt to isolate the source of contamination but found that the contamination was spread throughout the system. The Company stated that the lead could not be eliminated without replacing all of the mains which would be at a high cost. Ultimately, the Company was able to remedy the problem by installing treatment equipment.

Charlotte Area - Overall

Mr. R. Lee Myers, Mayor of Matthews, and Mr. Alex Sabo, Commissioner for the Town of Matthews, presented testimony regarding the proposed rate increase

and the quality of water being provided to the citizens of Matthews by the Company. Although neither Mr. Myers nor Mr. Sabo are customers of the Company, they made several statements on behalf of their constituents regarding water quality such as that the customers cannot drink the water, the water causes medical problems, and water pressure is poor.

Mr. Tommy Odom also presented testimony on behalf of his father, Senator Odom. Mr. Odom read a letter into the record written by his father, and this letter was submitted to the Commission as an exhibit.

A large number of customers also testified at the Charlotte hearing to protest the proposed rate increase and to register service and quality complaints.

In addition to these complaints, the Commission has received over 25 complaint letters detailing service problems from customers in this area.

According to the Company, all their systems providing service within the Matthews area meet EPA, North Carolina Division of Environmental Health (DEH), and Mecklenburg County Health Department regulations.

Lamplighter Village South

Two customers in this service area complained that a leak reported to the Company was not repaired in a timely fashion and that the water was hard and had a bad taste. According to CWS, the Company followed up in a very responsible manner and repaired the leak in both cases. The Company did not respond to the quality complaints.

Woodside Falls

One customer testified that the water has a "bad taste and odor" and "white 'crud' that forms on my faucets and in my hot water heater and everywhere else." Rather than respond directly to this customer's complaint, the Company stated that since the last rate case, a number of improvements have been made at the sewer facility serving Woodside Falls Subdivision. The Company has also replaced well pumps in wells 1, 2, and 3 and installed two new wells and water softening and filtration equipment.

Cabarrus Woods/Victoria Park

Three customers, in addition to their opposition to the proposed rate increase, presented testimony regarding quality of service. These complaints included stains on water fixtures, hard water, water that "tastes like chlorine mixed with iron" and that "stains my dishes brown, the inside of my dishwasher is brown and the reservoir tank of my toilets are black."

According to the Company, service orders were issued for these customers regarding the hardness level and other complaints. The Company stated that they personally met with these customers and explained that the water quality within the Cabarrus Woods/Victoria Park subdivision meets all EPA and state regulations.

Lamplighter Village East

One customer testified that he had to replace two commodes, a kitchen sink, and two lavatories. In addition, this customer described the water as "so black I could hardly--you could hardly see the bottom of the sinks and the commode." In addition, this customer stated that the Company's personnel "are very rude."

The Company explained that a service order was issued following the customer hearing, and a service representative followed up with this customer. The Company also mentioned that since the last rate proceeding, substantial improvements have been made at the sewer plant to ensure that the plant discharge is within allowable discharge limits, and approximately $26,000 has been spent to replace the hydropneumatic water storage tank with the ASME approved code tank, a new well house building, booster pumps, and a complete upgrade of the electrical system.

Chesney Glen

One customer stated that he had to "replace every washer, every toilet filler, everything in the house at least once because it's been rotted out." In addition, this customer testified that the water may be responsible for causing dermatitis, a skin allergy, as well as excessive calcium levels within his body.

According to CWS, the Company followed up on this customer's comments during the rate proceeding. The Company stated that one customer mentioned that her main concern was the water rates and not water quality. The Company went on to say that the water quality within Chesney Glen is well within the EPA and DEH drinking water regulations.

Mallard Crossing

One customer who resides near the well presented testimony that the water leaves "white chalk" on spigots, the "commodes have rings in them," and the "sinks have stains in there."

According to the Company, the water being provided to the customers of Mallard Crossing meets all EPA, state and Mecklenburg County drinking water regulations.

Eastwood Forest

Two customers presented testimony regarding cloudy and/or discolored water and service interruptions without notification. Sonya Flores, a representative of Eastwood Forest, offered a petition into the record and made a statement concerning the quality of service:

> First of which is, quite frankly, the water reeks of chlorine, it's cloudy, and speaking for all the customers, we have to purchase water--bottled water. We simply can't drink the tap water as it tastes unsatisfactory to all of us. Furthermore, the customer service at Carolina Water is very poor. They continually threaten us with service charges when we have problems with our service. . . .

> We are frequently without water. We are frequently having water interruptions and at times we have water interruptions and it may be hours. I know a couple of years back there were times it would be almost days that we would be without water. When our water comes back on, we will get maybe the first five or ten minutes water usage after we've had a water outage it runs mud. . . .

In addition to water quality complaints, this customer stated that the answering service is "very rude, very unfriendly, and very uncourteous."

According to the Company, the service interruptions were caused by water main cuts by Union County which was at the time installing sewer mains within the Eastwood Forest Subdivision. The cloudy and/or discolored water was apparently a result of the water main breaks. Union County has completed its sewer main installation, and since that time the Company says it has not received any complaints of service interruptions within the Eastwood Forest subdivision. The Company did not respond to the statements about poor customer service and chlorine smell.

Zemosa Acres

Mr. Frank Herron, president of the Homeowners Association, presented a petition signed by residents of Zemosa Acres opposing the proposed rate increase. In addition to stating that "odors and bad tastes are common complaints," Mr. Herron stated that there have been leaks in the Zemosa Acres Subdivision that have been ongoing for six months at a time and that there was a major leak located on the corner of Hanover and Channing Circle during the night of the hearing.

According to CWS, the Company followed up with Mr. Herron on April 7, 1992, and explained that CWS personnel had excavated several areas where they suspected leaks only to find underground springs. The Company also expressed concern about how important it is to repair a leak within Zemosa Acres, since the Company purchases bulk water from Cabarrus County via a master meter and resells it in Zemosa Acres. Although any water lost because of a leak results in lost revenues to the Company, a water loss during the test year can increase the Company's expense for purchased water. In addition the Company informed Mr. Herron about its flushing policy, which is a minimum flushing every six months in all systems.

Williams Station

One customer testified during the customer hearings in opposition to the proposed rate increase and complained about problems related to hardness. This customer stated that "there's some type of precipitant in the water that accumulated on . . . glass in the showers."

The Company followed up with this customer. The Company noted that hard water is typically composed of calcium and magnesium and usually is an aesthetic concern, but it presents no health risk. The Company also noted that it does not soften the water in Williams Station and leaves the option open for customers to install their own home water softeners. The Commission notes, however, that the Company has installed softeners on other systems.

Habersham

One customer from the Habersham Subdivision testified during the customer hearing and complained of low pressure and water that is "muddy," "dingy," and has particles in it.

CWS testified that during the follow up to this customer, the Company was told that the water quality was back to normal. The Company opined that the discolored water this customer experienced occurred during the time of flushing the system.

Saddlewood

One customer provided testimony opposing the proposed rate increase as well as complaining of "murky water" and air in the lines. In addition, this customer stated that the Company's technician (operator) did not return several calls. According to this witness, ". . . if you call to complain about something, you can't ever get them to return the calls."

CWS responded by saying that during follow-up to this customer, the Company discovered that the milky water or air in the lines no longer existed.

Cambridge

One customer testified that the quality of his water was "horrible." In addition, this customer stated that the water leaves scales on his sink and a white powder on his glass shower. The Company did not provide a written response to this complaint.

Brandywine Bay

The Commission has received over 35 letters that specifically cited quality problems in Brandywine Bay. These complaints included staining of water fixtures and a rotten egg smell to the water. In addition, many of these customers are purchasing bottled water and must replace their water heater elements and ice makers yearly.

According to the Company, the water meets all state and EPA limits.

Pine Knoll Shores

Several customers presented testimony at the customer hearings concerning quality complaints. Mr. Grady Fulcher, property manager of Beacon Reach, presented testimony opposing the proposed rate increase and stated that a lot of the residents do not drink the water due to sediment and/or smell. However, he also stated that he has seen improvement over the past three years.

The Company noted that Mr. Fulcher presented testimony at the last rate proceeding regarding discolored water at his swimming pool location. The Company contended that the discoloration resulted from infrequent usage of his service line, and the Company installed a blow-off line within the existing water main which corrected the problem. Mr. Fulcher noted the correction in his testimony in this proceeding.

Riverbend

Several customers from the Riverbend community presented testimony in opposition to the proposed rates and to the water quality. Arthur S. Cleary, the Mayor of Riverbend, testified that the quality of the water has ruined appliances and leaves a black residue inside dishwashers.

The Company responded by stating that the water provided to the Riverbend residents meets all state and federal standards.

Tanglewood South

Several customers from the Tanglewood South Subdivision provided testimony opposing the proposed rate increase and issued complaints regarding water quality. These complaints include water that is "slimy feeling," that "smells and tastes like detergent," and that leaves a "black scum" on water fixtures. In addition, customers testified that the water had ruined their toilets and the flushing system inside the toilet had to be replaced frequently. Also, customers testified that the water has ruined their clothes.

The Company stated that it followed up all the customers who testified, and tests were conducted. According to the Company, these tests indicate that all results are within compliance of the EPA and state regulations.

Bent Creek

Customers presented testimony that the quality of service was "lousy," such as that the water is brown at times, there are outages, and the customers buy bottled water for drinking.

The Company stated that it followed up with the one customer who testified about "lousy" service and learned that he had no quality or service problems, but was upset with the water and sewer rates.

Watauga Vista

Five customers from Watauga Vista Subdivision testified during the rate proceeding, including the testimony of Mr. E.B. Trueblood, Jr., the Chairman of the Water Committee for the Watauga Vista Owner's Association. According to witness Trueblood water quality problems do exist:

> The water is drawn from a deep well on the property and is not filtered. The resulting small rocks, pebbles, rust, and sediment ruins clothing during washing, clogs filters, and at times, stops water flow almost completely. Such problems result in expensive plumbing costs to the home owner.

In addition, other customers stated that the water was "muddy," "rust colored," had "flakes of rust" in it, had sediment in it, ruined commodes and left black residue in the commodes.

CWS responded by stating that the customers' complaints and water samples presented as evidence came as a total surprise since, based on its records, the

Company has had very few complaints from this area. After further investigation following the hearing, the Company learned that many of the customers who had complaints, instead of calling the Company's toll free office number, contacted Howard Allen, the operator for this area directly. Also, according to the Company, CWS employed another operator who resides just a few miles from Watauga Vista to handle some of the complaints locally. The Company states that it will advise the customers to contact the Sugar Mountain office regarding all complaints and will conduct a full-scale evaluation of the water system and take appropriate action to make improvements where necessary.

Bear Paw

Customers presented testimony stating they have experienced quality problems such as "high iron oxide" and sediment in water heaters. In addition, customer testimony revealed that, due to the quality of the water, white laundry eventually turned tan-colored.

According to the Company, the Bear Paw water supply system consists of four wells, two of which have very low iron levels and two of which contain excessive iron. However, when all four wells are combined, the water supply does not exceed the iron content limits. It is the Company's opinion that the intermittent discolored water mentioned by these two customers is caused by an accumulation of iron in the mains. Therefore, the Company stated that it has increased the frequency of flushing and has also added a phosphate sequestering agent. This treatment should help alleviate the iron problems by holding the iron in suspension so that it will not be objectionable. According to the Company, polyphosphate sequestration treatment coupled with flushing has corrected iron problems in many other systems owned by CWS.

Wolf Laurel

Three customers presented testimony opposing the proposed rate increase and stated they were either not aware of or did not benefit from any of the improvements made to the Wolf Laurel water system. One customer also mentioned low pressure but stated that was "summer before last."

According to the Company, it has made extensive improvements to the water system serving Wolf Laurel. These improvements include such things as three 65,000 gallon water storage tanks; replacing leaking concrete tanks; drilling four wells, the rehabilitation of three wells, including well houses, pumps, etc.; two new booster stations; six pressure reducing stations; more than 4,400 feet of water main to loop the system for better operations; and 30 blow-offs to properly flush the system. In addition, CWS located and/or replaced approximately 180 water main valves.

Wood Run

One customer testified concerning service problems such as muddy water, air in the water, and water shortages. The Company stated that the wells have a history of decreasing yield over time and that water is difficult to obtain in this particular area. The Company also stated that it has "attempted on several occasions to advise the Public Staff concerning water capacities" without

success. The Commission notes that the Public Staff has not recommended any wells or any other plant item be excluded from rate base for the Wood Run system.

Abington

Two customers, including the President of the Abington Homeowner's Association, presented testimony and a petition and cited problems such as hard water and sediment in the water.

Olde Pointe

One customer testified that "several customers have complained about sewage back-up and the quality of water since their acquisition of the utility."

Summary

The Commission is particularly sensitive to customer complaints regarding quality of service in view of the dramatic rate increases the customers of CWS have experienced since 1985. A summary of the average bill (based upon 5,200 gallons of usage per month) is listed below:

	Average Bill		Percent Increase	
Date of Increase	Water	Sewer	Water	Sewer
February 1985	$14.20	$16.00	n/a	n/a
March 1986	$17.40	$18.00	22.5%	12.5%
February 1989	$19.96	$20.50	14.7%	13.9%
June 1990	$22.52	$25.10	12.8%	22.4%
July 1991	$23.72	$26.32	5.3%	4.9%
July 1992 (Proposed)	$28.20	$32.66	18.9%	24.1%

February 1989 - July 1992 (3.5 years) Increase

Present water bill (5,200 gal.)	=	18.8% increase
Present sewer bill	=	28.4% increase
Proposed water bill (5,200 gal.)	=	41.3% increase
Proposed sewer bill	=	59.3% increase

Furthermore, the Commission concludes that the number of customers who appeared and testified at the public hearings in this docket may not be indicative of the full extent of service problems. In order to minimize rate case expense, the number of customer hearings was restricted in this proceeding. The Commission received requests from customers for additional hearings, but scheduled only one additional hearing, which was held in Sylva. The Commission believes that the customer complaints voiced during the public hearings account for only a sampling of the service problems. Witnesses at several hearings testified that many customers have given up coming to public hearings since they came year after year and no improvements were made and their rates always went up. There have been over 500 protest letters filed with the Chief Clerk and over 2,000 signatures on petitions. Although many of these letters only opposed the requested rates, approximately 120 customers addressed water quality and/or service problems. For instance, customers made the following claims in their letters to the Commission:

In Brandywine it is essential to own and use a water softener, one that hides or absorbs the taste and smell and prevents plumbing fixtures from accumulating rusty stains.

As an example of the quality of water which Carolina Water Service delivers to me let me tell you that my son, when born two years ago, was made ill every time he drank the tap water, causing us to buy bottled water to mix baby formula. Even today, I have to choke down glasses of tap water because of the taste and the small particles suspended in the fluid.

Since Carolina Water Service has had control of the system, nothing has been done to "clean up" the water quality...I purchase six to ten gallons of water weekly for drinking and cooking use.

During the two week period from January 10, 1992 to January 24, 1992, the water not only wasn't safe to drink but it so stained my spa we have lost part of the finish. . . .

The water quality is terrible--it smells of chlorine and other nauseous odors, and the taste is impossible.

Very poor quality of water with odor, taste, and color problems.

. . . we now have to take a shower because if you fill the tub, the smell is so strong you get a headache before your (sic) finished.

We are constantly told by plumbers that we have the worst water they have seen in our County.

It is not drinkable unless boiled which we do for all water that we ingest.

The water service and quality has never been satisfactory and seems to get worse as time goes on. . . I have been told that I will have to replace all the pipes in the house as we started having pin holes.

We have not drunk water from the tap for two years. We buy bottled water. We have to scrub our toilet bowls with pumice stone every week to clean the stains.

I am using, at additional utility expense, a water softener. Without it would be likened to taking a shower with lard instead of soap.

The water from the tap is not clear - the water has a bad taste - the water has an odor to it - ice cubes are slimy after they are used from an ice bucket.

We purchase new poly trays every 2 - months due to corrosion. . .

. . . the water is not drinkable and leaves mineral crud around my faucets and sinks. The sewer is not adequate either because I constantly have a backup in my toilets.

The water is awful. We have to buy bottled water to drink, and a water softener which does not help a great deal. The color of the water is cloudy and the smell is worse.

The water supplied is very poor quality with a disagreeable odor, color, and taste. .

The water system at times has been deplorable, smelly and discolored as well as foul tasting.

It tastes terrible. . .

Many of us are forced to purchase bottled water to drink because of the materials floating in the water. Fixtures such as sinks, tubs, showers, ice makers, dishwashers, toilets, as well as faucets need to be replaced on a fairly frequent basis, due to the minerals and calcium in the water.

The quality of the water has been poor for the past several years, i.e., mud and iron.

In addition to paying for this foul smelling, inferior water, we have to pay for a private water softening and purification system.

For ten years we have bought bottled water to drink. The color of the water is cloudy, it smells, and tastes horrible.

The water from the tap is unfit to drink! When we wash clothes, after the washer fills it is impossible to open the lid because the odor from the water is so strong it makes you sick.

Although I must say the quality of the water and the courtesy of the staff at Carolina remains unchanged. They are the rudest, nastiest people I have ever dealt with.

The appearance of our water is terrible. A dirty glass is cleaner than our water with all the particles and unwanted mineral floating in it. On several occasions, the water has been too dirty to wash clothes.

It has a profound dirty odor that is nauseating.

The odor is extremely obnoxious, the color is that of swamp water, and the taste makes one sick to their stomach.

Following are excerpts from petitions and a resolution filed with the Commission which address water quality deficiencies:

I did not realize that the water quality was so bad in River Bend. I would never drink water out of the faucet, I even purchase bottled water to freeze ice cubes. The dishwasher can hardly be used because of the lime and calcium contents. - Signed by 26 customers.

Many water customers still find the water quality delivered by the Belvedere system to be unsatisfactory due to periodic excessive chlorine taste, and evidence of both rust and sand in the water delivered. - Signed by 208 customers.

We are outraged by the proposed water rate increase for several reasons. The first of which is that quite frankly, the water reeks of chlorine, it's cloudy and speaking for all customers, we have to purchase bottled water. We simply can't drink the tap water as it tastes unsatisfactory to all of us. - Signed by 43 customers in the Eastwood Forest Mobile Home Park.

The quality of water provided by Carolina Water Service within the Town of Matthews is consistently poor. - An excerpt from resolution presented by the Mayor of Matthews.

In addition to the testimony and letters provided by consumers, the Commission has considered the Company's own customer surveys. According to many of these survey reports, presented as Public Staff Dopuch Cross-Examination Exhibit 5, customers are not receiving the quality of water that the Company contends it provides. Most of those customers whose responses are set forth in the Public Staff's cross-examination exhibit rate the quality of the water provided by CWS for taste, appearance, and pressure as ranging from average at best to fair or poor at worst. For instance, customers responded to the survey with the following comments in response to what CWS could do to improve service:

Quit raising rates & get the hardness out of the water. The scale build up is ruining everything

The water is not fit to drink. We must bring jugs from Charlotte. It spots dishes, it spots cars when washed. The price charged far exceeds the quality of the water

Filter your H2O - My house is 3 years old & the water has ruined my fiberglass tub & bathroom sink. Your rates are outrageous & your water is terrible - We can only hope Cabarrus County will annex us into city H2O

Considering the quality of water and the rate that is being charged it should be a criminal offense

Improve quality of water. It tastes terrible. I don't even like to use it for cooking and I have to use bottled water for coffee because the tap water is so bad. Also, your water price is extremely high.

The water is staining our clothing & fixtures. Black residue is appearing. At the cost of $50 per month I can hardly tolerate the quality of water and feel it should be 100 times better.

Tap water is frequently cloudy or muddy leaving mineral stains in sinks and toilets.

Our water is so bad if we make tea with it we have to scrape oily scum off the top of it. Water this poor should not cost 2 or 3 times what city water cost.

The quality of the water is terrible. I have a new baby and buy bottled water for the formula. We've had the H2O tested and it came back +12 in hardness. The odor is bad, also. I'm embarrassed when we have company and the odor is so strong you can smell it. Also the price is outrageous!! The quality definitely doesn't match the price.

The water tastes bad, is hard, and leaves mineral deposits that have ruined 3 coffeemakers and stained all my sinks. Your prices are too high for this quality of water!

All neighbors I have spoken to unanimously wish to use another water service, and resent the fact that they (we) are forced to use your unsatisfactory service due to our location. Even if our water quality were excellent, the price we pay you would be prohibitive. Unfortunately, we pay prohibitive amounts for filthy water. And this paper is our only say in the matter. I can't even allow my 3 yr. old son to get a glass of water from the sink because it's so dirty it's white (like a thin white paint). This is constantly & when we first moved in, I voiced my concerns of the water's cloudiness to a field representative. I was told the cloudiness was the result of some break in the water in the neighborhood, and that it would be fine by the day's end. It never was fine and is still white. We even have filters and it's horrible. Something must change soon, and we thank you for allowing us the chance to tell you. Please do some improving quickly.

Treat water so it is clear & does not stain clothes, fixtures "red" & so that it tastes good--flush dirty water after you make repairs! reduce horrendous rates!

I think what you charge for water and sewer service is outrageous! The quality of the water is VERY POOR. We do not even trust the water enough to drink it so we buy bottled water. Our white clothes have a rust colored tint and we have only lived here since April 19. I think you have a great monopoly going on the water and sewer business in this area!

We do not drink the water. There has to be a way to have better drinking water. The cost is way too high, especially for such nasty water.

Lower your rates for one thing. They are outrageous--Also water has too much calcium in it--it is too hard--leaves brown rings around tubs & sinks--rates are definitely too high!!

Improve the taste of the water--we have to buy bottled water to drink - Improve the hardness of the water--we have mineral stains we can't remove - The rates are too high for the water quality to be so poor.

The above-quoted comments from letters, petitions, and customer surveys cause great concern to the Commission. It is unacceptable to the Commission that so many customers testified that they cannot drink their water. Those customers pay high rates for water they will not drink and, in addition, pay for bottled water. This is clearly inadequate service. When considered in conjunction with the plethora of testimony offered by customers, the evidence requires that CWS be penalized for inadequate service.

Public Staff witness Larsen testified that "mud" in the water as well as some staining (usually reddish brown) is probably attributable to over-pumping of wells or iron in the water. Black stains are most likely due to high manganese in the water. Corrosion is probably due to low pH of the water, whereas white powder and scales on water fixtures are due to hard water (high levels of calcium carbonate). Water that has a rotten egg odor contains hydrogen sulfide, which is a gas. A red and/or black "slime" may be iron, manganese, or iron bacteria, a harmless but bothersome type of bacteria. A septic smell may indicate iron bacteria or hydrogen sulfide.

Although most of the service problems are not health hazards (except the lead problem and excessive corrosion), they certainly are serious nuisance problems. As testified by several of the customers, some of these quality problems cost them substantial money due to more frequent replacement of appliances that use the water, the need to install home water filters and softeners, and their purchase of bottled water to drink or cook with.

The Public Staff explained that solutions to these problems do exist in many situations. For example, manganese greensand filters can be used to remove iron and manganese; polyphosphate sequestering agents can be used to sequester or "tie up" iron and manganese in their clear or liquid form, keeping them non-objectional; and soda ash or caustic soda is used to raise the pH level of the water to avoid corrosion.

The Commission is of the opinion that the Company should evaluate the cost of these and other remedies that are not currently being used against the seriousness of the problem for each system. In addition, the Company should respond to each customer complaint received in this case and in the last customer survey, and file a report by Monday, November 30, 1992. This report should state the cause of the problems and what corrective action the Company is taking or plans to take. The Commission also concludes that CWS should do more than just state "the water meets state guidelines" where there is testimony of ruined appliances and clothes and staining of water fixtures. The Company should state the cause of the problem, what remedial options are available, and how much the remedies will cost.

In addition to water quality complaints, the Commission is concerned with the caliber of the Company's public relations. According to the testimony of several customers, the Company's personnel have been rude and impolite. The Commission cautions the Company to be polite and courteous to all customers and fully responsive to their complaints and problems.

On the basis of the entire record in this proceeding, including the unprecedented public outcry through testimony, letters, and petitions alleging inadequate water quality and service from CWS at excessive rates, the Commission

concludes that a rate of return penalty is justified. To that end, the Company's rate of return on common equity will be reduced by 1.0% from 12.0% to 11.0% as a consequence of our finding that the quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems. The Company's assertion that it "is the largest and most professionally operated water and wastewater utility in the state" needs to be reflected in more than words. It must also be reflected in the overall quality of service provided to all customers. The Company needs to do a better job of improving its relations with customers through an improved quality of service and product in many of its service areas and through development of a greater degree of sensitivity to what appear to be never-ending requests for rate increases. The customers of CWS spoke eloquently of their frustrations and anger over service deficiencies and high rates. Those customers have been heard by the Commission. A public utility, such as CWS, which asserts pride in being the best, must live up to the mantle of pre-eminence it assumes. Clearly, the outcry of customers in this case documents service deficiencies and extreme dissatisfaction with CWS sufficient to justify a rate of return penalty resulting from inadequate and unacceptable quality of water and service. To ignore this unprecedented outcry from customers would be unconscionable.

The Commission is also concerned by evidence offered by the Public Staff which indicates that the rates for water and sewer service paid by customers of CWS do not compare favorably with rates paid by customers served by subsidiaries of Utilities, Inc., in other states and the rates of most regulated water and sewer companies in North Carolina. Although we realize that there are reasons why the rates of CWS in North Carolina are not perfectly comparable to the rates charged by other affiliated entities and other water and sewer utilities in this State, they are sufficiently comparable to be worthy of consideration.

Witness Dopuch disagreed with the Public Staff's contention that the rates of CWS in North Carolina are for the most part higher than other Utilities, Inc., subsidiaries. He noted that the general trend of rising rates, the differences in system sizes and operating conditions, the high-quality professionalism of CWS staff; the role of CWS in setting regulatory precedent, and various other factors accounted for the Company's level of rates. Mr. Dopuch also observed that the CWS North Carolina operations faced a wide variety of operating conditions, which led him to conclude that in comparing water systems, "The costs in North Carolina reflect the effect of the combination of variables with relatively average rates." Likewise, witness Dopuch observed that in comparing sewer systems, CWS "has a combination of small and large treatment facilities, full-time and part-time residents, and moderate and stringent treatment requirements. The average bills in North Carolina are the result of this mixture."

According to the Public Staff, the redirect exhibit of Mr. Larsen and the cross-examination exhibits of Mr. Dopuch are relevant on this issue. Of the 336 regulated water and sewer utilities in North Carolina, only 10 water companies and seven sewer companies have rates higher than the present rates of CWS. Only five water companies and six sewer companies have rates higher than the rates proposed by CWS. Witness Larsen testified that the many CWS systems spread across the State represent a composite of the conditions and types and sizes of systems throughout North Carolina.

Public Staff Dopuch Cross-Examination Exhibit 2 shows that the water bill for 5,200 gallons of usage for CWS customers is presently $23.72 per month, and would go to $28.20 under proposed rates. This is 40.4% higher than the average bill for the other Utilities, Inc., subsidiaries under present rates, and 67% higher under proposed rates. For sewer, the comparison shows the present rate for CWS to be 8.6% higher than the average for other Utilities, Inc. subsidiaries, whereas the CWS proposed rate would be 34.8% higher. This exhibit puts Dopuch Exhibits 3 and 4 in perspective and shows that for 5,200 gallons of usage per month, CWS's present rates do not compare favorably with other Utilities, Inc., subsidiaries.

Similarly, Public Staff Dopuch Cross-Examination Exhibit 3 gives perspective to the information on Dopuch Exhibits 5 and 6. This is based on the average monthly bill per customer for each state, as opposed to an average company bill at a constant usage level. CWS's present water bills are 31.9% higher than the weighted average for Utilities, Inc., operations in other states, and proposed water bills would be 56.8% higher. CWS's sewer bills are 20.3% higher than the weighted average bill for Utilities, Inc., operations in other states presently, and would be 49.3% higher under proposed rates.

The Commission has not made any specific ratemaking adjustments in this case based upon rate comparisons. A rate of return penalty would have been imposed on CWS even in the absence of rate comparison evidence. However, comparison of the rates of CWS in North Carolina with those of affiliated companies in other states and other regulated water and sewer utilities in this State provides additional corroboration of the reasonableness of the rate of return penalty for inadequate service imposed in this case. Customers who pay high water and sewer rates have a right to expect service and a product of the highest quality. Furthermore, rate comparisons tend to contradict the Company's claims of economies of scale and efficiency relative to other North Carolina utilities.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-60

The evidence for findings of fact nos. 7-60 is found in the testimony of Public Staff witnesses Larsen and Haywood, which includes her own testimony and that of Jane Rankin which she adopted, and Carter as well as Company witnesses Cuddie, Wenz, O'Brien, Stewart, Seidman, and Daniel. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding:

WATER OPERATIONS:

Item	Company	Public Staff	Difference
Plant in service	$26,131,823	$25,492,027	$(639,796)
Accumulated depreciation	(1,959,356)	(1,988,456)	(29,100)
Contributions in-aid-of construction	(9,730,348)	(9,730,348)	0
Advances in-aid-of construction	(122,495)	(122,495)	0
Plant acquisition adj.	(1,787,538)	(1,787,538)	0
Acc. deferred taxes	(720,700)	(796,643)	(75,943)
Customer deposits	(78,217)	(78,217)	0
Excess book value	(1,670,755)	(1,670,755)	0
NCUC bonds	41,316	41,316	0
Gain on Sale and flow back of taxes	0	(216,693)	(216,693)
Working capital allow.	346,401	318,205	(28,196)
Deferred charges	533,842	408,836	(125,006)
Total original cost rate base	$10,983,973	$9,869,239	$(1,114,734)

SEWER OPERATIONS:

Item	Company	Public Staff	Difference
Plant in service	$19,701,797	$18,803,640	$(898,157)
Accumulated depreciation	(1,343,169)	(1,356,258)	(13,089)
Contributions in-aid-of construction	(9,492,716)	(9,492,716)	0
Advances in-aid-of construction	(98,887)	(98,887)	0
Plant acquisition adj.	(1,198,345)	(1,198,345)	0
Acc. deferred taxes	294,493	201,973	(92,520)
Customer deposits	(35,372)	(35,372)	0
Excess book value	(2,610,511)	(2,610,511)	0
NCUC bonds	18,684	18,684	0
Sewer systems without a franchise	0	(212,000)	(212,000)
Gain on Sale and flow back of taxes	0	(72,935)	(72,935)
Working capital allow.	177,836	168,511	(9,325)
Deferred charges	131,665	114,160	(17,505)
Total original cost rate base	$5,545,475	$4,229,944	$(1,315,531)

As shown in the preceding tables, the Public Staff and the Company agree on several components of rate base for both water and sewer operations. The Company and the Public Staff agree on the amounts for contributions in-aid-of construction, advances in-aid-of construction, plant acquisition adjustments, customer deposits, excess book value, and NCUC bonds. Therefore, the Commission concludes that the appropriate level of contributions in-aid-of construction is $19,223,064, with $9,730,348 applicable to water operations and $9,492,716 applicable to sewer operations; the appropriate level of advances in-aid-of

construction is $221,382, with $122,495 applicable to water operations and $98,887 applicable to sewer operations; the appropriate level of plant acquisition adjustments is $2,985,883, with $1,787,538 applicable to water operations and $1,198,345 applicable to sewer operations; the appropriate level of customer deposits is $113,589, with $78,217 applicable to water operations and $35,372 applicable to sewer operations; the appropriate level of excess book value is $4,281,266, with $1,670,755 applicable to water operations and $2,610,511 applicable to sewer operations; and the appropriate level of NCUC bonds is $60,000, with $41,316 applicable to water operations and $18,684 applicable to sewer operations.

PLANT IN SERVICE

The first component of rate base on which the parties disagree is plant in service. The Public Staff recommends an amount of $25,492,027 for water operations which is $639,796 less than the Company's proposed amount of $26,131,823, and an amount of $18,803,640 for sewer operations which is $898,157 less than the Company's proposed amount of $19,701,797.

This difference in the level of plant in service recommended by the Company and the Public Staff is composed of the following items:

Item	Amount	
	Water	Sewer
1. Excess Capacity	($580,944)	($822,990)
2. Transportation vehicles	(65,302)	(29,564)
3. CWIP	6,450	19,494
4. Mt. Carmel WWTP	0	(65,097)
TOTAL	($639,796)	($898,157)

Many of the differences between the parties regarding the level of plant in service result from disagreements over issues of capacity not fully used at the end of the test year, the design criteria relied upon in installing such capacity and the issues of tap fees and numbers of customers. The Commission will address these four issues generally before addressing each of the specific items of plant in service upon which they bear. Another difference between the parties exists regarding the investment in certain plant facilities which will be addressed in the discussion of each specific item of plant.

EXCESS CAPACITY

State Design Criteria

The proper standard to use for calculating used and useful wastewater treatment capacity at the Brandywine Bay, Cabarrus Woods - Stonehedge - Cambridge - Steeplechase system, and the Danby - Lamplighter South - Woodside Falls system, was not controverted. Both Public Staff witness Larsen and Company witness Dopuch used 400 gpd per residential equivalent connection as the amount of capacity needed for each customer on these systems. Witness Larsen explained that the design criterion for newer systems is 120 gpd per bedroom with a minimum of 240 gpd per residential dwelling unit, and that DEM presumes on average a three bedroom house for each connection, resulting in a current design requirement of 360 gpd per connection. He further stated that this is an

accepted engineering standard, and that it is almost twice the actual average flow of 200 gpd per connection.

The Commission concludes that the standard for evaluating the used and useful portion of the wastewater treatment plants serving the Brandywine Bay, Cabarrus Woods, and Danby Subdivisions should be 400 gpd per connection. This is an established state design standard which has been used in the past CWS cases and is accepted by the parties in this case.

In addition, the Public Staff maintained that the pumping capacity of the wells should be set at 400 gpd per residential connection, which equates to 0.556 gpm (gallons per minute) per connection, in a 12 hour pumping day. While the Company did not disagree that 0.556 gpm was the state design criterion for well supply, it did state that this was a minimum and should not be used to limit its investment in wells.

The appropriate design standard to use in calculating the used and useful capacity of elevated storage tanks in water utility systems is also an issue. Company witnesses Daniel, Dopuch, and Stewart testified that 400 gallons per connection was the proper amount, while Public Staff witness Larsen testified in support of 200 gallons per connection.

This is the third case in which the Commission has been called upon to address this issue. In Docket No. W-354, Sub 69, both the Company and the Public Staff agreed that the design criterion to be used for determining unused capacity for elevated storage tanks was 400 gallons per connection. In Docket No. W-354, Sub 81, the Public Staff argued that the design capacity for an elevated storage tank is 200 gallons per connection. In response to that Public Staff recommendation, CWS presented substantial rebuttal testimony in support of the Commission's decision reached in Docket No. W-354, Sub 69, that 400 gallons per connection should still be the design criterion.

In arguing again for the 400 gpd elevated storage requirement, the Company inferred that this was the Division of Environmental Health's (DEH) minimum design criterion. However, the Public Staff presented an exhibit (Larsen Exhibit 8) which is a letter from W. E. Venrick, Chief of DEH's Water Supply Section, stating:

> ...the Division's policy requires a minimum of 200 gpd. The rules do not require 400 gpd, and this Division has not required water utilities to build that much storage."

In addition to this evidence, Mr. J. C. Lin, the head of DEH's Plan Review Unit testified to this issue:

> Q. In order for a water company to get design approval from your office, what is the minimum amount of elevated storage tank capacity per day per connection that they must have in their plans?
>
> A. The State Rule Regulations require 200 gallons per connection for a system to serve 300 or more connections.

In the last general rate case, the Commission's decision that the design criterion for elevated storage tanks should be 400 gpd was reached by evaluating the available information in that proceeding. The Panel in that case did not have the benefit of the additional information presented in this case. Clearly, the DEH minimum standard stated by its own personnel is 200 gpd and not 400 gpd as previously thought.

The next concern for the Commission is the adequacy of 200 gpd per connection of elevated storage in providing acceptable service. While the Company stated that it needed 400 gpd in elevated storage in order to provide adequate service, the Public Staff pointed out that several of the Company's own systems have less than 400 gpd and some even have less than 200 gpd. The Company was unable to prove that any service problems (water shortage, low pressure, etc.) existed in any of its service areas due to elevated storage design at 200 gpd. Also, witness Lin stated that as the head of DEH's Plan Review Unit, he was unaware of any problems with inadequate storage on CWS's systems:

> Q. Are you aware of any Carolina Water Systems where 200 gallon per day of elevated storage capacity has proven to be inadequate?
>
> A. Not to my knowledge.

Moreover, based on testimony given by CWS witness Stewart, a 1984 contract between CWS and the John Crosland Company regarding construction of a water utility system for the Parks Farm Subdivision plainly showed that CWS contracted for 200 gpd per connection of elevated storage capacity, along with 0.6 gpm per connection of well pumping capacity.

The Commission concludes that 200 gpd per connection is the appropriate standard to use in assessing how much elevated water storage capacity is used and useful. While witnesses for CWS advocated using more than the minimum state design requirement, and Mr. Lin indicated that it was DEH policy to recommend 400 gpd as opposed to the DEH requirement of 200 gpd, the Commission finds that only 200 gpd per connection is used and useful. There are a number of reasons behind this finding.

First, it is apparent, from the contract involving Park Farm Subdivision and the several CWS systems with elevated storage less than 400 gpd per connection, that CWS does not in practice adhere to the 400 gpd standard. Second, no witness could name a CWS system where 200 gpd of elevated storage had caused low pressure or otherwise led to service problems. Third, as discussed in more detail below, building more capacity than presently needed is prudent when growth is expected, but this does not make it presently used and useful. The economies of scale and advance planning that come from installing larger elevated storage tanks are to be commended, but the financing of plant for future customers should come from the developer or the utility, not from existing customers. Fourth, the 200 gpd per connection of elevated storage is the design capacity, but it is not the limit on customer usage. As explained by witness Larsen, each system's wells must be able to pump 400 gpd up to the storage tank in a 12 hour period in addition to the 200 gpd that is already in the tank. Fifth, the Public Staff's Dopuch Cross-examination Exhibit No. 5 illustrates that the actual usage of the Brandywine Bay water system was below the Public Staff's recommended elevated storage level of 200 gpd per connection for the entire two-year period that this

exhibit entailed. Also, this exhibit shows that the pumping capacity was nearly eight times greater than the actual usage (26 million gallons pumping capacity versus 3 million gallons peak usage - in a 60 day period). This demonstrates the adequacy of the 200 gpd storage standard as well as the 400 gpd well pumping capacity.

Finally, the Company claimed that it relied upon the Commission's decision in the past two general rate cases that the elevated storage criteriion should be 400 gpd. The Commission notes that the Company itself does not adhere to its own claimed standard of 400 gpd. Also, the Commission notes that DEH, not the Public Staff and not the Commission, is the appropriate agency from which to obtain plan approval. Had the Company merely contacted DEH, it would have discovered that 200 gpd and not 400 gpd is the appropriate minimum standard for elevated storage tanks. Although the Company alluded to this standard as changing, witness Lin clearly stated that it has always been 200 gpd:

> Q. And as a minimum requirement would it ever be necessary to impose a higher requirement?
>
> A. I have no authority to set the policy but that's our policy since January 1, 1972.
>
> A. And since that time has DEH or DHS ever required more than 200 gallons per day overhead storage?
>
> A. No, no, we always set up 200 gallons per connection for the storage capacity -- the minimum storage capacity. (Emphasis added).

In summary, the Commission concludes that DEH's minimum design standard for elevated storage is 200 gallons per connection, that the DEH design standard for well yields is 400 gpd, and that those design criteria are appropriate for use in this proceeding.

Excess Capacity Methodology

Public Staff witness Larsen recommends that the Commission apply the principle of excluding from rate base plant capacity not needed to serve customers beyond the test year. Mr. Larsen contends that such plant is not being matched with appropriate revenues, expenses and contributions in aid of construction related to the customer growth the "unused" capacity can serve.

Witness Larsen argues that the Commission could include in rate base the cost of plant capacity used to serve customer growth that occurs from the end of the test year to the close of the hearing, but it would be inappropriate to do so without a corresponding update to revenues, expenses and CIAC associated with such customer growth. He testified that there should be no allowance for capacity for future growth beyond the close of the hearing because it is virtually impossible to achieve an accurate matching of revenues, expenses and CIAC for a date beyond the close of the hearing.

CWS advocates the inclusion in rate base of a reasonable capacity margin that anticipates future growth. In rebuttal testimony, Company witnesses Seidman and Dopuch testified that it is virtually impossible for a utility's investment

in service capacity to be equal to the current customer demands as recommended by the Public Staff. Mr. Seidman stated that unused capacity results in part from the fact that utilities must have adequate capacity to meet peak demands. He also noted that unused capacity results from the general policy requirement that a public utility have the necessary capacity to meet reasonably anticipated increases in demand.

Mr. Seidman stated that the Public Staff failed to distinguish between a reasonable capacity margin and excess capacity margin. Mr. Seidman stressed that well-managed utilities all maintain reasonable capacity margins and that the key issue faced by regulators is determining when capacity margin becomes excess capacity. Mr. Seidman stated that if plant investment is prudent and does not result in unreasonable capacity margin, it should be included in rate base.

Mr. Seidman also testified that the Public Staff is misconstruing the definition of "used and useful." He testified that including a reserve does not violate the revenue, investment matching concept. The obligation to serve and the ability to be ready to provide service is a current, not a future, obligation. Therefore, the investment necessary to meet the obligation is a current investment and should be recovered from or "matched" with current revenues.

Company witness Dopuch 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. Mr. Dopuch advocated inclusion of prudent capacity margins and recommended a minimum of five years as a growth projection time frame in evaluating the reasonableness of capacity margins. Mr. Dopuch stressed that the issue of the appropriate capacity margin had been litigated in the Company's prior two general rate cases for the majority of the plant items for which the Public Staff sought adjustments in this case. Mr. Dopuch warned that failure to project into the future for allowance for growth would be extremely shortsighted and would lead to higher rates for customers.

Further, the Public Staff argues that North Carolina is a historical test year jurisdiction, not a future test period or combined historical and future test year jurisdiction. This means, argues the Public Staff, that rate base in this proceeding should consist of plant which serves existing customers and not plant built with capacity to serve future customers too. The Company argued that in North Carolina the test year may be adjusted for known and measurable changes occurring up to the close of the hearing and that investment in plant in service that is actually placed on line by the close of the test year or, at the latest, by the close of the hearing is recognizable under the historical test year concept. CWS further argues that the statute does not require that only the investment on line at the end of the hearing required to serve existing customers may be recognized in setting rates. According to the Company, the Public Staff's interpretation would exclude capacity margin as a matter of law. Thus, the Public Staff's interpretation of the statute is one that is at odds with the Company's interpretation of the statute.

In this case, the plant investment at issue clearly has been completed, not only prior to the close of the hearing, but years prior to the close of the test

year. Consequently, the Company asserts that there is no question that G.S. 62-133 permits inclusion of such investment in rate base.

The Public Staff places substantial reliance upon the holding of the North Carolina Supreme Court in the Carolina Water Service decision, 328 N.C. 299, 401 S.E.2d 353 (1991). In Carolina Water Service, the Supreme Court reviewed this Commission's decision in Docket No. W-354, Sub 69. In the Sub 69 docket, we applied the percentage utilization concept to remove from rate base investment in sewage treatment plant and elevated storage tank capacity allegedly not needed to serve end-of-test-period customers. In its appeal of our decision, CWS argued that our decision constituted error as a matter of law because G.S. 62-133 authorizes inclusion in rate base of plant additions made to meet reasonably anticipated post test period growth. In response to the Company's arguments that the Commission had disallowed this allowance for growth, the Supreme Court stated:

> That is not how we read the order of the Commission. As we read the order, the Commission allowed for capacity larger than presently needed which could reasonably be foreseen to be needed in the near future.

328 N.C. at 307, 401 S.E.2d at 357.

The Public Staff relies upon the Carolina Water decision to support its argument that there should be no capacity larger than that which is presently needed to serve end-of-test-period customers. The North Carolina Supreme Court interpreted our decision in the Sub 69 case as allowing for capacity larger than needed to serve end-of-test-period customers. It is difficult for us to understand how Carolina Water Service provides precedent for the Public Staff's position.

Furthermore, we agree with the Company that Carolina Water Service is not an endorsement by the Supreme Court of a position either for or against the percentage utilization concept. As we read the holding of the Court, it was that:

> It is a question of fact to be decided by the Commission as to what part of the utility's property is "used and useful, or to be used and useful within a reasonable time after the test period." If a finding of fact on this issue is supported by competent, material and substantial evidence in view of the whole record, we cannot disturb this finding.

328 N.C. at 303, 401 S.E.2d at 355 (citations omitted).

As we read the holding in Carolina Water Service, if the Public Staff had appealed the Commission's decision in Docket No. W-354, Sub 81, modifying the percentage utilization concept, the Court would have affirmed that decision as well. Our decision on the factual issues in Sub 81 was supported by competent, material, and substantial evidence in view of the whole record. We note that the Public Staff declined to appeal the Sub 81 Order. We conclude that the holding in Carolina Water Service is not dispositive in this case and that the Court has

left to the Commission ample discretion whether to reject, accept, or modify percentage utilization.

The Public Staff in its testimony implies that little reliance should be placed on the Commission's decision in Docket No. W-354, Sub 81, because that decision was rendered prior to the Supreme Court decision in Carolina Water Service. However, as stated above, we find nothing in Carolina Water Service that is inconsistent with or that casts doubt upon our decision in Docket No. W-354, Sub 81. Indeed, the Full Commission has already been called upon to address the percentage utilization concept as sponsored by the Public Staff subsequent to the Supreme Court's opinion in Carolina Water Service. The Commission addressed the concept in the Final Order of May 31, 1991, in a general rate case for the Carolina Trace Corporation in Docket No. W-436, Sub 4. We stated in that case:

> This and other issues here under review were addressed most recently by the North Carolina Supreme Court in State ex rel. Utilities Commission v. Carolina Water Service Inc. of North Carolina, 328 N.C. 299 (1991). With respect to the propriety of the Commission having included in current rates costs associated with the plant capacity needed to serve future customer demand, the Supreme Court in this decision at page 308 stated as follows:
>
> > "CWS, relying upon Utilities Comm. v. Telephone Co., 281 N.C. 318, 189 S.E.2d 705, argues that the Commission is laboring under the false impression that the current ratepayers cannot be required to pay through rates for plant that can be used for future growth. That is not how we read the order of the Commission. As we read the order, the Commission allowed for capacity larger than presently needed which could reasonably be foreseen to be needed in the near future."
>
> Based on the foregoing and the entire evidence of record, the Commission finds and concludes that it is reasonable and proper in determining the Company's [Carolina Trace Corporation] cost of service for purposes of this proceeding to include an allowance . . . for plant capacity above that marginally needed to serve existing customer demand. This plant capacity can reasonably be foreseen to be needed in the near future and is representative of the level of such capacity that the Company can reasonably be expected to maintain on an ongoing basis. Thus, the inclusion of this capacity is entirely consistent with the ratemaking process, including the requirement that there be a proper matching of revenues and costs.

While the Public Staff has appealed our Order in the Carolina Trace docket, we see no need to retreat from this Full Commission position unless and until the North Carolina Supreme Court rules differently.

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 obtained 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 should be allowed.

A good example of the dangers that would arise if the Commission adopted the Public Staff recommendation is the one we cited in our Order in Docket No. W-354, Sub 81. Under the strict 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. If a utility added a 250,000 gallon tank to meet future anticipated growth and there were only 285 customers on line at the end of test year, rather than the 1,250 customers that could be served by the tank at full capacity, only 22.8% of the investor-supplied cost would be included in rate base.

Under the percentage utilization theory, had the utility installed a much smaller 60,000 gallon tank, 95% of the cost would have been included in rate base. If rates are set by reliance upon the percentage utilization principle in order to recoup their investment economically, utilities might be encouraged to make imprudent engineering decisions that, in the long run, will cost the customers more. In this illustration, 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.

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 concludes that it is entirely inappropriate to arbitrarily assume that all plant capacity over and above that needed to provide service to existing customers is excessive and therefore is not used and useful in providing service at the end of the test year.

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 adjustments to certain items of rate base, based upon the evidence of record, the Commission concludes that it is appropriate, for 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 designing and constructing water and sewer facilities to meet anticipated customer growth. In making 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 the engineering, construction, and maintenance efficiencies which are inherent in meeting reasonably anticipated growth. It is also consistent with our decision in the Sub 81 docket.

Such determination is based further upon the Commission having concluded that, in order to achieve economic efficiency, certain plant facilities cannot be constructed on a piecemeal basis; that it is entirely appropriate and consistent with the public interest for the Company to maintain a reasonable level of reserve capacity; and that the inclusion of an allowance for such required plant capacity in determining the Company's cost of service or overall revenue requirement achieves the most propitious matching of revenues and costs from the standpoint of periodic income determination and public utility rate regulation.

Based upon a thorough analysis of the evidence presented on the issue of the appropriate capacity margin to include in rate base, the Commission has determined, as we did in CWS's last case, that the Public Staff sponsored percentage utilization method should be modified. 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 percentage utilization, the utility is subjected to economic losses by foregoing the return on and the 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, would put in place a disincentive for utilities to take advantage of economies of scale, and thus would raise costs for ratepayers.

Whatever the wisdom of reliance upon matching to apply the percentage utilization principle in the Sub 69 docket, the facts have changed subsequent to that case. In Docket No. W-354, Sub 81, the Commission was not confronted with major post test period plant expansions, and the record on the plant capacity issues was much more complete. The Commission had an opportunity to revisit the advisability of application of the percentage utilization principle by reliance on a matching argument and determined that percentage utilization without modification was unwise. After carefully examining the arguments pro and con on percentage utilization in the two prior cases and after examining the evidence in this case, we conclude that percentage utilization should be modified consistent with our decision in the Sub 81 docket.

Tap Fees

Another area of dispute between the parties concerns whether tap fees and plant impact (or modification) fees should be deducted before or after calculating any disallowance based upon percentage utilization. This issue or

methodology was not questioned in the prior two cases. In the present case, the Public Staff recommended that tap fees and plant impact fees should be treated differently from developer contributions. The Company disagreed.

Witness Larsen explained the reason for deducting tap and plant fees after making the percentage utilization adjustment:

> We deduct customer tap fees [after the excess plant adjustment] since the existing customers who have paid these fees should have their contributions decreasing the plant investment that is used and useful for them, not the entire plant that includes capacity for future customers.
>
> To remove customer tap fees prior to the overbuilt adjustment as the Company has done would be unfair to the customers since these contributions would then cover plant that is not used and useful to the existing customers.

He further testified that prepaid tap fees from the developer should be treated the same as customer tap fees, and not like developer contributions.

The Commission agrees with the Public Staff's position on this issue. When a customer pays a tap fee/plant impact fee, he is paying to offset the cost of plant he uses. It would contradict the very purpose of tap fees and plant impact fees if they were deemed to be paid by a customer on behalf of some potential future customer rather than on his own behalf. Therefore, such fees should be deducted from the used and useful portion of the utility plant cost, not from the utility plant cost prior to excess capacity adjustments.

The issue of prepaid tap fees from the developer was also an issue of disagreement between the parties. The Public Staff treats these fees in the same manner as customer tap fees. With respect to the Cabarrus Woods elevated storage tank and sewer treatment plant, the Public Staff has deducted these prepaid tap fees after making its percentage utilization adjustment.

The Commission concludes that the same logic applies to prepaid tap fees and plant impact fees from the developer because the purpose of the payment -- not the source of the payment -- is most relevant. Customers would have paid tap fees and plant impact fees except that the developer prepaid these fees for them. The prepaid fees still go to offset the cost of plant that is used and useful to those customers. Consistent with this method, the Commission has deducted developer prepaid tap/plant fees in the percentage utilization adjustment subsequent to any disallowance.

Customer Numbers

In its third exception, the Public Staff asserts that Findings of Fact Nos. 11-20 base the percentage utilization on customer numbers that are inconsistent with the customer numbers used for revenue calculations and that if the higher customer number is incorrect for calculating revenue, it is also incorrect for calculating percentage of plant capacity utilized because connections that do not have customers do not utilize any plant capacity. The Company responds to the Public Staff's exception on this point by stating that the Public Staff failed

to sponsor evidence at the hearing setting forth the customer numbers it now claims the Commission should use in making excess capacity adjustments. CWS further asserts that the "reconciliation" cited by the Public Staff in its exceptions is a document which is not a part of the evidence in this case.

The Commission agrees with CWS on this point and concludes that the Public Staff's third exception should be denied. The "reconciliation" cited by the Public Staff is not part of the evidence of record in this proceeding. That being the case, the Commission utilized the customer numbers proposed by the Public Staff in making excess capacity adjustments. The customer numbers sponsored in evidence by the Public Staff, which were never repudiated or contradicted in any way during the hearing, constitute the only credible evidence in the record for purposes of making excess capacity adjustments. Furthermore, the two specific differences cited by the Public Staff in its exceptions for the Brandywine Bay and Danby sewage treatment plants are not material and their ratemaking impact, even if adopted, would be de minimus at best. This discussion applies to all of the customer numbers reflected in Findings of Fact Nos. 11-20.

Brandywine Bay Elevated Water Storage Tank

This issue involves the amount of investment that should be allowed in rate base for the elevated water storage tank in the Brandywine Bay Subdivision. Public Staff witness Larsen recommended that $165,500 of the Company's $250,000 investment in this facility be excluded from rate base, whereas the Company includes its entire investment.

The Public Staff explained that the tank cost $450,000 and that a developer contributed $200,000 specifically for the construction of this tank. To determine the used and useful percentage of the elevated tank's capacity, the Public Staff compared the number of customers on line at the end of the test year (422) to the maximum number of connections the tank can serve (1,250) based on a 200 gpd per connection standard. Therefore, only $84,500 should be included in rate base.

The Commission concludes that $142,360 of the Company's investment in the Brandywine Bay elevated storage tank should be allowed prior to any adjustments for tap fees paid.

In concluding that $142,360 should be allowed in rate base for this elevated storage tank, the evidence in this proceeding indicates that the tank was serving 422 customers at the end of the test year. Using the 200 gallons per connection standard that the Commission has found to be appropriate in this proceeding, this facility is capable of serving 1250 customers. 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 $165,600. 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 $107,640. Accordingly, the amount that should be included in rate base for the Brandywine Bay elevated storage tank,

prior to any adjustments for tap fees or plant modification fees paid is $142,360 ($250,000-$107,640)

Brandywine Bay Sewer Treatment Plant

This issue involves the amount of investment that should be allowed in rate base for the Brandywine Bay wastewater treatment plant. Public Staff witness Larsen recommended that $227,686 of the Company's $447,321 investment in this facility be excluded from rate base, whereas the Company included its investment of $408,738 less tap fees of $84,112.

The Public Staff determined that the total treatment plant cost is $447,321. This is comprised of $408,738 to expand the initial plant, $24,275 capitalized rehabilitation costs, and an initial investment of $14,308. The Public Staff disallowed $227,686 of this investment by using the percentage utilization method and the 400 gpd standard, both of which were discussed earlier. In determining the percentage utilization, the Public Staff compared the number of customers on line at the end of the test year (184) to the number of maximum connections the plant can serve (375).

CWS differed from the Public Staff in its calculation in the following respects. The Company did not include the cost of the original unit or capitalized rehabilitation costs. The Company maintained that the total cost of the effluent line to the golf course ($75,000) as well as the total cost of the holding ponds ($87,387) should be allowed in rate base. In addition, the Company stated that $84,112 in tap fees collected (from customers) should be deducted from plant prior to the calculation of any excess adjustment.

The Commission concludes that the Public Staff is in error in arguing that any percentage utilization ratio should be applied to a cost base that includes the old wastewater treatment plant. In Docket No. W-354, Sub 69, the Commission was confronted with the issue of whether the cost of the old plant should be included in rate base. We determined in that case that the Public Staff recommendation to exclude the cost of the old plant should be rejected. We determined that CWS was in the process of refurbishing the old plant for future use and that it was inappropriate to exclude any portion of it from rate base.

The Company acquired the Brandywine Bay water and sewer systems at a price substantially below the cost of the facilities at the time of acquisition. CWS argues that one reason for its ability to acquire the facilities for such a low price was that parts of the system were not functional. Indeed, the old 50,000 gallon per day wastewater treatment plant was incapable of meeting its NPDES limits and was incapable of providing adequate service to customers. By adding the cost of this old plant to the cost of the new expansion in its percentage utilization calculation, the Public Staff has placed a value on the old 50,000 gallons of capacity equal to the value of the new 100,000 gallons of capacity. However, without the recent, very expensive expansion, the original 50,000 gallons of capacity would be of no use. It was therefore valueless without the expansion. The Commission therefore determines that the recommendation of the Public Staff that percentage utilization be applied to the total cost of the old and new plant must be rejected.

The Commission concludes that $273,427 of the Company's investment in the Brandywine Bay sewer treatment plant should be allowed prior to any adjustments for tap fees paid.

In concluding that $273,427 should be allowed in rate base for this plant, the evidence in this proceeding indicates that the plant was serving 184 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 375 customers. 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 plant under its percentage utilization method would be $208,170. 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 $135,311. Accordingly, the amount that should be included in rate base for the Brandywine Bay sewer treatment plant, prior to any adjustments for tap fees or plant modification fees paid is $273,427 ($408,738 - $135,311).

Cabarrus Woods Elevated Water Storage Tank

This issue involves the amount of investment to include in rate base for the elevated water storage tank in the Cabarrus Woods Subdivision. Public Staff witness Larsen recommended that $250,974 of the Company's $367,459 investment in this facility be excluded from rate base, whereas the Company proposes to include the cost of the tank of $367,459, less developer contributions of $150,500 and $52,179 in tap fees.

The Public Staff disallowed $250,974 of this investment by using the percentage utilization method and the 200 gpd standard. In determining the percentage utilization, the Public Staff compared the number of customers on line at the end of the test year (396) to the maximum number of connections the tank can serve (1,250) based on 200 gpd.

The Commission concludes that $204,278 of the Company's investment in the Cabarrus Woods elevated storage tank should be allowed prior to any adjustments for tap fees.

In concluding that $204,278 should be allowed in rate base for this elevated storage tank, the evidence in this proceeding indicates that the tank was serving 396 customers at the end of the test year. Using the 200 gpd standard that the Commission has found to be appropriate in this proceeding, this facility is capable of serving 1250 customers. 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 $251,048. In reaching its conclusion, the Commission notes its percentage utilization method would apply before the deduction of contributions including prepaid taps paid directly to the construction contractor. 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 $163,181. Accordingly, the amount that should be included in rate base for the Cabarrus

Woods elevated storage tank, prior to any adjustments for prepaid taps or tap fees or plant modification fees paid is $204,278 ($367,459-$163,181).

Cabarrus Woods Sewer Treatment Plant

This issue involves the amount of investment that should be allowed in rate base for the Cabarrus Woods wastewater treatment plant. Public Staff witness Larsen recommended that $298,315 of the Company's $696,998 investment in this facility be excluded from rate base, whereas the Company proposes to include the total cost of the plant of $626,597, less $283,600 contributed by the developer and less $114,794 contributed as tap fees.

The Public Staff determined that the total treatment plant cost is $696,998. This is comprised of $660,418 invested to expand the initial plant as well as $36,580 in capitalized rehabilitation costs.

The Commission has carefully considered the evidence relating to this item and concludes that the cost of this plant for purposes of subsequent calculations is $626,597, as was the case in Sub 81 and proposed by the Company herein. Furthermore, the Commission has deducted contributions in the form of prepaid tap fees paid by the developer to the construction contractor after making the disallowance.

The Commission concludes that $452,115 of the Company's investment in the Cabarrus Woods sewer treatment plant should be allowed prior to any adjustments for tap fees paid.

In concluding that $452,115 be allowed in rate base for this plant, the evidence in this proceeding indicates that the plant was serving 643 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 1125 customers. 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 plant under its percentage utilization method would be $268,434. 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 174,482. Accordingly, the amount that should be included in rate base for the Cabarrus Woods sewer treatment plant, prior to any adjustments for tap fees or plant modification fees paid is $452,115 ($626,597-$174,482).

Cambridge Lift Station

The Public Staff includes $32,568 for the Company's Cambridge lift station in rate base. CWS includes $138,000 of the cost of the lift station in rate base. Public Staff witness Larsen recommended disallowing a portion of the investment in the sewer pumping station. He testified that the station has capacity to serve 900 lots planned for Cambridge, plus the 145 customers in Steeplechase for a total of 1,045 customers. Mr. Larsen testified that the station was serving 247 customers at the end of the test year, or 23.6% of its capacity. He testified that the total cost of the station was $388,000 of which

$250,000 was CIAC, leaving $138,000 as the Company's investment. He recommended disallowing $105,432 as excess capacity.

CWS witness Dopuch testified in rebuttal. Mr. Dopuch testified that the Commission in Docket No. W-354, Sub 81, ruled that the total $138,000 Company investment related to the lift station should be included in rate base. This decision was based on the fact that by installing the force main, the Company would avoid the cost of improving the Steeplechase plant while at the same time effectively eliminating customer complaints relating to odors. Mr. Dopuch testified that the Commission's ruling was based on Company testimony indicating that the installation of the lift station allowed the Steeplechase treatment plant to be taken out of service. Also, if the lift station had not been installed, the Company would have been forced to make an investment in a separate force main from Steeplechase to the Cabarrus treatment plant site for the existing customers. Mr. Dopuch testified that the lift station investment of $138,000 should continue to be included in rate base.

After having carefully examined the testimony on the Cambridge lift station issue, the Commission determines, as it did in Docket No. W-354, Sub 81, that the entire portion of investor supplied capital of $138,000 should be included in rate base. We note that a lift station is partially constructed underground and is part of the sewage collection system. It is unusual to construct portions of a sewage collection system with capacity less than that anticipated at full buildout. The Commission deems it especially unwise to apply a percentage utilization formula to portions of the sewage collection system. The Company really had little choice in sizing the lift station the way it did. The Public Staff has made no showing that the Company's decision to build the lift station at the size it did was imprudent or unwise. The Commission determines that $138,000 should be included in plant in service for the Cambridge lift station.

Danby Sewer Treatment Plant

This issue involves the amount of investment that should be allowed in rate base for the Danby wastewater treatment plant. Public Staff witness Larsen recommended that $143,976 of the Company's $244,441 net investment in this facility be excluded from rate base, whereas the Company proposed to include its net investment of $209,000 ($459,000 less $250,000 in developer contributions).

The Public Staff determined that the total treatment plant cost is $494,441. This is comprised of $459,000 to expand the initial plant from 130,000 gpd to 630,000 gpd as well as $35,441 in capitalized rehabilitation costs.

The Commission concludes, as it did in Sub 81, that the cost basis for this plant for the purposes of subsequent calculations is $209,000.

The Commission concludes that $129,039 of the Company's investment in the Danby sewer treatment plant should be allowed prior to any adjustments for tap fees paid.

In concluding that $129,039 should be allowed in rate base for this plant, the evidence in this proceeding indicates that the plant was serving 648 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 1575 customers. 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 plant under its percentage utilization method would be $123,017. 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 $79,961. Accordingly, the amount that should be included in rate base for the Danby sewer treatment plant, prior to any adjustments for tap fees or plant modification fees paid is $129,039 ($209,000-$79,961).

Queens Harbor

The issue involves the amount of rate base to include for the water and sewer systems at Queen's Harbor subdivision. CWS paid $70,000 for a complete water and sewer system designed to serve approximately 206 customers in June 1987 when it had five customers. (80 NCUC Reports at p. 391 -- the Commission Order in Docket No. W-354, Sub 81.) At the end of the test year, CWS had 40 customers in Queens Harbor.

The Public Staff has made an adjustment to exclude $56,420 of the $70,000 investment as not used or useful to the existing customers. The Public Staff divided the end of period customers (40) by the capacity of the system (206) and concluded that only $13,580 should be allowed in rate base.

The Company argued that its $70,000 purchase price for this system is significantly less than the net original cost of $419,372, and its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for Queens Harbor System under its percentage utilization method would be $56,420. 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 $36,674. Accordingly, the amount that should be included in rate base for Queens Harbor is $33,326 ($70,000 - $36,674).

Riverpointe

The issue involves the amount of rate base to include for the water and sewer systems at Riverpointe subdivision. The Company paid $35,000 for these systems. The water utility system is comprised of several wells, treatment equipment, and water mains capable of serving 200 customers. In addition, the sewer utility system consists of a 100,000 gpd treatment plant, along with sewer collection mains capable of serving 200 customers. (See 80 NCUC Reports at p. 391 -- the Order in Docket No. W-354, Sub 81.) There were 51 customers at the end of the test year.

The Public Staff made an adjustment to exclude $26,076 of the investment as not used and useful to the existing customers. The Public Staff divided the end of period customers (51) by the capacity of the system (200) and concluded that only $8,924 should be allowed in rate base.

The Company argued that it only paid $35,000 for this system which is significantly less than the net original cost of $795,417, and therefore its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for the Riverpointe system under its percentage utilization method would be $26,076. 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 $16,950. Accordingly, the amount that should be included in rate base for Riverpointe is $18,050 ($35,000 - $16,950).

Sherwood Forest

The issue involves the amount of rate base to include for the water system at Sherwood Forest subdivision. The Company paid $26,500 for a water utility system that is capable of serving 950 customers. (See 80 NCUC Reports at p. 391 -- the Order in Docket No. W-354, Sub 81.) There were 190 customers at the end of the test year. (Supplemental Larsen Exhibit I.)

The Public Staff made an adjustment to exclude $21,200 of the investment as not used or useful to the existing customers. The Public Staff divided the end of period customers (190) by the capacity of the system (950) and concluded that only $5,300 should be allowed in rate base.

The Company argued that it only paid $26,500 for this system which is significantly less than the net original cost of $85,000, and therefore its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for the Sherwood Forest system under its percentage utilization method would be $21,200. 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 $13,780. Accordingly, the amount that should be included in rate base for Sherwood Forest is $12,720 ($26,500 - $13,780).

TET

This issue involves the amount of rate base to include for the TET sewer system. The Company paid $9,327 for a sewer utility system that is capable of serving 28 customers. (See 80 NCUC Reports at p. 391 -- the Order in Docket No. W-354, Sub 81.) There were 9 customers at the end of the test year.

The Public Staff made an adjustment to exclude $6,333 of the investment as not used and useful to the existing customers. The Public Staff divided the end of period customers (9) by the capacity of the system (28) and concluded that only $2,994 should be allowed in rate base.

The Company argued that it only paid $9,327 for this system which is significantly less than the net original cost of $122,531, and therefore its entire investment in this system should be allowed in rate base.

The Commission concludes that the appropriate reduction in rate base for the TET system under its percentage utilization method would be $6,333. 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 $4,116. Accordingly, the amount that should be included in rate base for TET is $5,211 ($9,327 - $4,116).

New Wells

CWS added three wells after the conclusion of the test year but prior to the completion of the hearing in this case. The three wells were added in the Sugar Mountain, Sherwood Forest and Wolf Laurel developments. The Public Staff disallowed the investment in these wells on the theory that the capacity was not needed to serve end of test period customers. The Public Staff contends that DEH requires pumping capacity of 400 gallons per customer for 12 hours each day, which is 0.556 gallons per minute per customer. The Public Staff compared the actual pumping capacity of all wells within the systems with the DEH required pumping capacity for the subdivisions in question. Public Staff witness Larsen testified that the capacity for the new wells may be needed to serve future customer growth, but it is not needed to serve customers on line at the end of the test year.

CWS, through witnesses Daniel and Stewart, argues that the three wells in question are wells within mountain systems. Mountain water systems are unlike normal water systems both in terms of operations and in terms of the facilities needed to provide adequate service. Because mountain water systems must be designed to take into account the variations in elevation and differences in water pressure that result throughout the water system, mountain systems are segregated into pressure zones. Although the entire water system may be interconnected, each pressure zone exists almost as a separate water system and must possess its own supply, storage, and distribution capabilities. Therefore, even though the aggregate water supply capacity of a mountain system may be adequate by minimum DEH standards, deficiencies may exist within a pressure zone which would require the addition of a well or storage tank. When it comes to making a judgment regarding the necessary level of supply or storage capacity needed for mountain systems, it is inappropriate to blindly apply the minimum State standards in an attempt to judge the prudence of an investment; a more thorough investigation is required. The Company maintains that all three of the mountain wells are necessary to provide adequate service to customers and should be included in rate base.

CWS maintains that the Public Staff's logic in determining the prudence of an investment in water supply capacity based on a simplistic application of minimum State standards to any ground water well system is inherently flawed. First, wells are not like a new sewage treatment plants or water storage tanks. When purchasing sewage treatment plant capacity or water storage capacity, the purchaser has the ability to specify exactly the amount of capacity in gallons to be purchased. Conversely, in purchasing water supply capacity, the utility does not call upon the well drilling contractor and say "We want a 50 gallon per minute well and no larger." Well capacity is not known until the well is drilled and tested. Therefore, even though only 50 gpm of water supply capacity may be needed, a utility may end up with a 200 gpm well just because there is a favorable subsurface water supply. Conversely, the same well could just as easily produce only 25 gpm. Therefore, the overall well capacity of a ground

water system compared to minimum State standard is not a reasonable measure of the prudence of water supply capacity.

CWS maintains that the incremental difference in cost associated with using the complete capacity of a well versus the minimum permissible capacity is very small. The only additional investment between providing 250 gpm would be the incremental cost of purchasing a larger well pump, approximately $3,000. This compares to the typical well cost of $100,000.

CWS maintains that, unlike surface water sources of supply, wells are unpredictable and often lose capacity over time. It is advisable for any ground water system to have extra capacity available to counterbalance the unpredictable effects from yield lost in customer growth or well failures.

CWS maintains that the Public Staff has failed to take into account the length of time necessary to complete a well. It takes up to nine months to complete a well. A utility should not wait until the very next connection forces the addition of water supply capacity before beginning construction of a well.

CWS maintains that applying minimum State standards as a means for calculating useful capacity of wells ignores peak demand situations and the quality of water provided by each individual well. The State's standards are minimum standards and are not necessarily indicative of the amount of water supply capacity needed to provide adequate service. Even though a well may provide water supply capacity, the quality of water obtained from that well may be so poor that using the well will create customer complaints.

Sugar Mountain Well

The cost of the Sugar Mountain well is $28,115. Public Staff witness Larsen testified that, according to the 1990 annual report, the combined pumping capacity of the existing wells at Sugar Mountain is 848 gpm. The pumping capacity required to supply the 1,409 end of period customers at Sugar Mountain is 783 gallons based on state design criteria for .556 gpm per customer. Mr. Larsen testified that the new well may be needed to serve future customer growth, but it is not needed to serve customers on line at the end of the test year.

On cross-examination Mr. Larsen was presented with CWS Larsen cross-examination Exhibit No. 1, which constitutes data responses of CWS to the Public Staff requested and provided during discovery after Mr. Larsen filed his initial testimony removing the cost of the wells. This Exhibit indicates that CWS has been experiencing water problems in zones 1 and 2 within Sugar Mountain because it is impossible to transfer water from zone 3 to zones 1 and 2. CWS was not able to provide adequate service to its customers in zones 1 and 2 during peak usage periods. As a result, CWS drilled well No. 20, which is the well that the Public Staff has disallowed.

Zone 1 and zone 2 provide service to approximately 75 percent of CWS's customers. Zones 1 and 2, without well No. 20, provide 0.511 gpm per customer which is below DEH standards. Zones 1 and 2, with well No. 20, provide only 0.61 gpm per customer, which is only slightly over DEH requirements.

The Commission determines that the cost of the Sugar Mountain well No. 20 should be included in rate base. The Commission finds unpersuasive the Public Staff argument that the well should be disallowed simply because, with the addition of the well, the combined pumping capacity on paper of all the wells within Sugar Mountain exceeds DEH requirements for end of test year customers. N.C.G.S. 62-133 clearly permits consideration of post test period investment if the investment is complete and on line by the close of the hearing. There is no requirement that this investment be disregarded simply because it was not needed to serve customers on line at the end of the test year. Indeed, if the new wells were needed to serve end of test period customers, the Company would have been imprudent in waiting to place the wells on line until after the end of the test year. It is apparent that the Public Staff has applied a formula without any analysis of the underlying facts. Based upon the record as a whole it seems irrefutable that the decision to build the Sugar Mountain well was prudent and necessary for adequate customer service. We agree with the unrefuted evidence presented by the Company that wells are added for purposes other than fulfilling a state minimum combined system capacity requirement. If the capacity exists in one pressure zone, but system constraints prevent its use in another pressure zone, obviously an additional well is necessary for the Company to meet the supply in the second zone. The Commission determines that $28,115 should be included in plant in service for the Sugar Mountain well.

Sherwood Forest

Public Staff witness Larsen testified that the Company completed construction of a new well at Sherwood Forest on December 15, 1991, at a cost of $42,382 and is proposing to include this well's cost in rate base. Mr. Larsen testified that prior to constructing this fourth well, the system's existing three wells had capacity sufficient to serve 250 customers according to the DEH plan approval dated September 20, 1990. Mr. Larsen testified that the new well is not needed to serve the 190 customers on line at Sherwood Forest at the end of the test year.

CWS Larsen Cross-Examination Exhibit No. 1 indicates that Sherwood Forest is a mountain system with a number of pressure zones, and the well was necessary to provide adequate service to existing customers.

Based upon the unrefuted evidence presented by the Company as to the necessity and need for the Sherwood Forest well, the Commission determines that the $42,382 cost of the well should be included in rate base.

Wolf Laurel Well

Public Staff witness Larsen testified that the Company constructed Well No. 9 at Wolf Laurel and is proposing to include $25,075 in rate base. He testified that prior to constructing this well, the seven existing wells had a combined yield of 242 gpm and had capacity to serve 457 connections according to the DEH plan approval letter dated March 26, 1991. He testified that at the end of the test year, the Wolf Laurel system was serving 446 customers. He concluded that the new well is not needed to serve end-of-test-year customers.

CWS Larsen Cross-Examination Exhibit No. 1 indicates that there are ten different pressure zones within Wolf Laurel. Well No. 9, drilled in Zone 2, is

the only well in this zone. Zone 2 had 103 single-family and six commercial connections at the end of the test year. Until drilling well 9 this zone was supplied by a 35 gallon per minute booster pump from Zone 3, which by DEM standards would only provide service to 63 customers. The exhibit shows clearly that additional capacity was needed to provide adequate service to CWS customers as is indicated by the customer complaints of low pressure and water outages in 1990.

Once again the Commission concludes that the Company has presented a convincing case supporting the prudence of constructing Well No. 9 within Wolf Laurel. We reject the Public Staff approach of applying a formula without investigation into the underlying facts. We find that the addition of a new well when the booster pump was inadequate to provide sufficient capacity within Zone No. 2 is prudent and appropriate. The Commission determines that $25,075 should be included in plant in service for the Wolf Laurel well.

Transportation Rate Base

This issue has to do with the allocation to remove a portion of the CWS investment in transportation equipment due to its use in contract and non-CWS operations. The Commission concludes that the allocations that apply to transportation rate base should be the same as the allocations of the operators discussed in the expenses part of the Order. The Public Staff testified that vehicle investment is directly related to the time spent on particular systems by the employees assigned to those vehicles. In its rebuttal testimony, the Company agreed with the theory of the Public Staff's adjustment, although CWS did not agree with all the specific allocations and adjustments to salaries. The Commission concludes that this methodology is appropriate. Having elsewhere found that the Public Staff's adjustments and allocations to salaries are reasonable, the Commission concludes that the $94,866 adjustment to remove transportation equipment from rate base is proper.

CWIP

The next difference between the Public Staff and the Company concerning plant in service relates to two items of construction work in progress (CWIP). The first item is a $6,450 expenditure on the Wolf Laurel well and tank the Company has apparently completed. Company witness Cuddie discussed this expenditure in rebuttal testimony, but the expenditure was not reflected in the amount of plant in service in the Company's schedules of final position. The other CWIP item is a $19,494 expenditure for an extension to the Carronbridge force main. Carronbridge is part of the Beatties Ford system which has been sold by the Company. The Company has removed this item from plant in service in its schedules of final position. Public Staff witness Larsen addressed the removal of the $19,494 from plant in service in his testimony. The Public Staff has failed to reflect the removal of the $19,494 from its schedules of final position and, therefore, its plant in service amounts are overstated by $19,494. Witnesses for both the Public Staff and the Company agree that this amount should be removed from sewer plant in service.

The Commission has reviewed the evidence concerning the two items of CWIP and concludes that the $6,450 expenditure for the Wolf Laurel well and tank

should be included in plant and service, while the $19,494 for the Carronbridge extension of the force main should be excluded from plant in service.

MT. CARMEL WWTP

This difference between the parties with respect to rate base involves the issue of the Mt. Carmel wastewater treatment plant that is no longer in service. Public Staff witness Haywood testified that she has made an adjustment to remove the investment in Mt. Carmel wastewater treatment plant from rate base. She testified that Mt. Carmel wastewater treatment plant is not currently used and useful plant, and she reduced rate base by $72,330.

In his rebuttal testimony, CWS witness Wenz testified that it is his understanding that the Commission and the Public Staff approach to abandoned property is to recover the costs of the abandoned plant over a ten year period and to include the unamortized portion in rate base. He testified that this is a reasonable methodology and should be adopted by the Commission in this proceeding. Mr. Wenz adjusted operating expenses by $7,233 to reflect a ten year amortization period. He also included in rate base the $65,097 unamortized cost of this facility which is properly recovered from ratepayers in this proceeding.

Mr. Wenz stated that the plant should not be classified as plant held for future use. The uniform system of accounts provides the following guideline for use of Account 105 - Plant Held for Future Use:

> This account shall include the original cost of property owned and held for future use in utility service under a definite plan for such use.

Mr. Wenz testified that this guideline would not permit the Mt. Carmel WWTP to be classified as plant held for future use. The Mt. Carmel plant will never again be used for the provision of utility service as the Company is taking bulk service from the Asheville-Buncombe County Authority.

Mr. Wenz testified that CWS has been negotiating with a developer who is interested in purchasing the land upon which the WWTP is presently situated. He testified that the "talked about" sale price is $13,000 for the land. The purchaser would also be responsible for the removal of the old WWTP. Mr. Wenz testified that as of today there has been no formal agreement signed for such a sale. Therefore, the disposition of this facility is uncertain except to say that it will never be put back into service because of the interconnection of the Mt. Carmel collection system with the Metropolitan Sanitary District. He testified that if CWS cannot sell the land and the WWTP, the plant will have to be disassembled and scrapped by CWS. There will be a cost associated with that.

Ms. Haywood stated that the appropriate ratemaking treatment of the abandoment related to Mt. Carmel WWTP should be deferred until CWS's next rate case due to the uncertainties surrounding this issue.

The Commission has carefully analyzed the positions of the parties with respect to the appropriate treatment of the abandoned Mt. Carmel wastewater treatment plant. As of the end of the test year and the close of the case, the plant is no longer in service. There is some speculation as to what will

ultimately become of the plant, but as of the close of the hearing there has been no known and measurable decision in that regard. Mr. Wenz testified that the plant was in very poor condition prior to its being abandoned and that it is a plant partially above ground and partially below ground. This type of plant has little if any salvage value. Indeed, the cost of dismantling the plant may be in excess of any salvage value that it may have. Although the Commission concludes that this plant is no longer in service, there is no question that the plant has been used and useful in the past. Based upon the evidence presented, the Commission is of the opinion and so concludes that this plant should be treated as an extraordinary property retirement and the unrecovered costs should be amortized over a ten-year period with the unamortized portion included in rate base. In this way the Company will be allowed to recover its investment in plant that at one time was used and useful to provide service.

Although conditions may change in the future that possibly could allow the Company to recover some cost of the plant, the appropriate way to handle that situation if it occurs, will be to simply adjust the amortization and unrecovered costs in the next rate case. It is common Commission practice to authorize that retired plant be amortized, and, as conditions change over the amortization period, the Commission can change the amortization rate. We agree with the Company's argument that it is inappropriate to deny any rate base treatment for the extraordinary retirement of this plant. This unrecovered investment represents cost prudently incurred in public utility facilities. We commend the Company's efforts, motivated by our decisions in past cases, to obtain wholesale wastewater treatment services from the Asheville-Buncombe County Authority. We would be sending the wrong message to the Company if, after having obtained the contract with the municipal authority, we punished the Company for its efforts by refusing rate base treatment on the unamortized portion of the old plant. The Commission concludes that $65,097 should be included in plant in service for the unamortized portion of the Mt. Carmel WWTP.

Based on the foregoing, the Commission concludes that the appropriate amount for plant in service is $25,755,108 for water operations and $19,251,551 for sewer operations.

FARMWOOD 20 AND 21, HABERSHAM, AND WINDSOR CHASE

This finding of fact deals with sewer utility service in the Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions. The parties disagree over the issue of the rate base treatment for the sewer plant serving Farmwood 20 and 21, Habersham and Windsor Chase. The Public Staff recommends that this investment be removed from rate base. Public Staff witness Larsen testified that on June 14, 1990, Andy Lee, Director of the Public Staff's Water and Sewer Division, wrote a letter to Carl Daniel of CWS expressing his belief that the Company does not have a franchise to provide sewer service to certain sections of the Farmwood Subdivision. The Company responded on October 30, 1990, claiming that it does have a franchise.

On January 31, 1991, Mr. Lee again wrote the Company reiterating that while the Company has a water franchise, it does not have a sewer franchise. Mr. Lee stated that the areas are not contiguous to an existing sewer franchised area and that the Company must file an application for authority to serve this area. Mr. Larsen testified that the Company has never filed such an application.

Mr. Larsen also testified that the Public Staff has subsequently inspected the area. He testified that CWS is providing sewer service in Farmwood 20 and 21, Habersham and Windsor Chase. Mr. Larsen expressed the opinion that these subdivisions are not contiguous with any other franchised sewer area operated by CWS. Therefore, he concluded that CWS is offering sewer service to those customers without authority to do so. For that reason, Mr. Larsen removed the estimated cost of the sewer system from rate base, and Public Staff witness Haywood has removed estimated revenues and expenses for those areas. Mr. Larsen testified also that if the Commission agrees that the Company is operating this sewer system without a franchise, despite warnings from the Public Staff, refunds to customers would be appropriate.

Company witness Wenz offered rebuttal testimony on the issue of the Farmwood franchise. Mr. Wenz testified that CWS was granted a certificate of public convenience and necessity for the Farmwood system in October 1980, in Docket No. W-354, Sub 15. The certificate, transferred to CWS in that docket, authorized CWS to provide water service to twenty subdivisions and sewer service to two of those twenty subdivisions. At that time, the Farmwood Subdivision was only provided water service by CWS. Sewer service was obtained through individual septic tanks. Mr. Wenz testified that septic tanks were apparently unsuitable for the development of Sections 20 and 21 of the Farmwood Subdivision. In 1986, the developer of Sections 20 and 21 installed a central sewage collection and treatment system at a cost of $323,000. CWS purchased the sewer facilities for $5,000, resulting in a net contribution in aid of construction of $318,000.

The accounting entries to reflect the original cost, contribution in aid of construction, and purchase price of this sewer system were made in December 1986. The number of customers attached to the Farmwood wastewater treatment plant (WWTP) has grown from nine at the end of 1987 to 316 at the end of the test year (291 in Farmwood, 15 in Habersham, and 10 in Windsor Chase).

Mr. Wenz testified that the Public Staff learned that CWS was providing sewer service in the areas in question in the general rate case in Docket No. W-354, Sub 69, filed in July 1988. Mr. Wenz testified that in that case Mr. Lee of the Public Staff filed testimony that included an exhibit that lists the WWTP in Farmwood serving the nine customers. Mr. Wenz testified that in the Company's next case, Docket No. W-354, Sub 81, Mr. Lee again filed testimony that included an exhibit listing the Farmwood system, then serving thirty customers. Mr. Wenz also testified that the operating and servicing area sections of the Company's 1988 annual report to the Commission included information and specifications for the Farmwood WWTP as have all subsequent annual reports.

With respect to the dispute between the Public Staff and CWS regarding Farmwood, Mr. Wenz testified that the Company has been corresponding with the Public Staff on this issue since it was brought up in 1990. In October 1990, Mr. C. Thomas Cross, a former Public Staff engineer, who at that time was employed by CWS, responded to Mr. Lee's inquiry. In his letter, Mr. Cross stated his view that CWS was authorized to provide sewer service in the Farmwood Subdivision, pursuant to the Order issued in Docket No. W-354, Sub 15. Mr. Wenz testified that even though Mr. Lee maintained in January 1991, that the Company needed to file an application, Mr. Cross was still not convinced that a certificate was required under the circumstances involving the sewer system in Farmwood. Mr. Cross did not follow-up any further.

Mr. Wenz further testified that it would not be appropriate for the Commission to accept the Public Staff's adjustment to rate base, revenues, and operating expenses for the Farmwood sewer system for two reasons. The existence of Farmwood was clearly noted in two previous rate cases. According to witness Wenz, there was certainly no intent to mislead or improperly provide service. Recognizing that over time there may have been issues that inadvertently were not addressed properly, the Company agreed to a settlement in connection with Docket No. W-778, Sub 6, and Docket No. W-354, Sub 91. Mr. Wenz stated that CWS intended the settlement to be a point from which to start anew with respect to the scrutiny of previous acquisitions and contiguous expansions. Mr. Wenz further testified that if the Commission determines that a sewer certificate for Farmwood is required, the Company requests that the certificate be granted concurrent with the decision in this proceeding.

The Commission concludes that the Order Approving Settlement Agreement entered by the Commission in Docket No. W-778, Sub 6, and Docket No. W-354, Sub 91, on May 7, 1991, is determinative of the ratemaking issues raised by the Public Staff with respect to the Farmwood 20 and 21, Habersham, and Windsor Chase Subdivisions. The Settlement Agreement and Release approved by the Commission specifically provided, in pertinent part, that CWS was released from any and all claims and demands, whether known or unknown, that the Commission has, or may have, arising out of ". . . acquisitions, whether by contiguous extensions or otherwise, that have been expressly noted in any previously decided CWS rate application. . . ." Mr. Wenz testified that "CWS intended the settlement to be a point from which to start anew with respect to the scrutiny of previous acquisitions and contiguous expansions." He further testified that the existence of Farmwood was clearly noted in the Sub 69 and 81 general rate cases and that there was certainly no intent by CWS to mislead or improperly provide service.

Because of our approval of the above-discussed Settlement Agreement and Release, the Commission must reject the Public Staff's proposed adjustments to rate base, revenues, and operating expenses and requests for refunds for the Farmwood sewer system. In so ruling, we conclude that CWS has improperly interpreted G.S. 62-110 as authorizing the Company to provide sewer service in areas contiguous to those for which it has a water franchise. We also hold that for purposes of this case, no ratemaking adjustment is appropriate with respect to the Farmwood Sections 20 and 21, Habersham, and Windsor Chase Subdivisions. Furthermore, in order to avoid any further doubt about the Company's authority to provide sewer utility service, the Commission will grant CWS temporary operating authority, nunc pro tunc, to provide sewer service in Farmwood Sections 20 and 21, Habersham and Windsor Chase. This Order shall constitute that temporary operating authority. In addition, the Company is hereby required to file applications for permanent certificates of public convenience and necessity to serve those subdivisions not later than 30 days from the date of this Order.

ACCUMULATED DEPRECIATION

The following chart summarizes the differences between the Public Staff and the Company concerning accumulated depreciation:

Item	Public Staff	Company	Difference
Steeplechase WWTP	$ 287	$ 287	$ 0
Mt. Carmel WWTP	33,387	33,387	0
Allocation of Vehicles	32,610	53,399	(20,789)
Retired Vehicles	66,904	66,904	0
Depreciation on Vehicles	(21,400)	0	(21,400)
Total	$111,788	$ 153,977	$(42,189)

The Public Staff and the Company disagree on several aspects of accumulated depreciation. First, the Public Staff removed from accumulated depreciation the depreciation expense on several vehicles for which an allocated portion of the cost of the vehicles was removed from plant in service based on Public Staff witness Larsen's testimony. This adjustment resulted in a $32,610 decrease of accumulated depreciation, of which $22,455 is allocated to water operations and $10,155 is allocated to sewer operations. The Company also removed an amount from accumulated depreciation for the accumulated depreciation associated with the vehicles that were allocated to the contract sewer plants ($36,771 for water operations and $16,628 for sewer operations). The Public Staff used a percentage of the vehicle cost to reduce accumulated depreciation while the Company took a percentage of the actual accumulated depreciation associated with the vehicles to adjust its accumulated depreciation. Therefore, the Public Staff and the Company adjusted accumulated depreciation for different amounts with respect to the allocations. Next, the Public Staff has included in accumulated depreciation one year of depreciation expense ($14,736 for water operations and $6,664 for sewer operations) on the vehicles the Company has acquired since the April 14, 1992, filing date. The Company did not adjust accumulated depreciation for this item.

As discussed earlier under plant in service, the Commission has determined that the allocation methodology proposed by Public Staff witness Larsen regarding vehicles is appropriate. Therefore, the Commission concludes that it is appropriate to allocate accumulated depreciation associated with vehicles as recommended by the Public Staff. The Commission also concludes it is appropriate to include one year of depreciation expense in accumulated depreciation related to the new replacement vehicles as recommended by the Public Staff. Thus, the Commission agrees with the adjustments to accumulated depreciation as proposed by the Public Staff.

Based on the foregoing, the Commission finds that the level of accumulated depreciation for use in this proceeding is $3,344,714, of which $1,988,456 is allocated to water operations and $1,356,258 is allocated to sewer operations.

ACCUMULATED DEFERRED INCOME TAXES

CWS has included in the accumulated deferred income taxes account $426,207, while the Public Staff has included $594,670, for a difference of $168,463. The first difference between the parties relates to the issue of including the taxes the Company paid upon its acquisition of Monteray Shores.

Monteray Shores/Shipwatch

In consideration for $370,000 in original cost facilities, CWS paid $1,000 in cash to the developer of the Monteray Shores and Shipwatch subdivisions and assumed the tax liability for the tax owed on the CIAC. The Company includes the

tax paid in the accumulated deferred income taxes added to rate base. The Public Staff objects to this approach and makes adjustments to remove the taxes paid with respect to the Monteray Shores/Shipwatch contribution.

The Monteray Shores system is located in Currituck County and is contiguous to the Corolla Light Subdivision which CWS also serves. The Monteray Shores water system is comprised of numerous shallow wells, chemical treatment equipment and the distribution system. The sewer system is comprised of gravity and force mains, lift stations, man holes and a wastewater treatment plant. The developer contributed only the water distribution and sewer collection systems to CWS. The developer retained ownership rights in all the other facilities. The value of land upon which the supply and treatment facilities is located is very high, and the developer sought to retain ownership rights to the land and facilities in the event that alternative services become available. If bulk service becomes available, the supply and treatment facilities can be sold, and the land can be used for an alternative purpose by the developer. The original cost of the supply and treatment facilities, without regard to any land value, is approximately $876,000. The developer was unwilling to contribute these facilities as well as very expensive land and pay the gross-up of approximately $550,000. Likewise, CWS was unwilling to accept a contribution of this size without a gross-up. In addition to the $1,000 purchase price, CWS paid taxes of $142,736.

CWS entered into a contract to serve Monteray Shores and Shipwatch on November 15, 1988. On October 1, 1990, CWS's Vice President of Finance, Patrick J. O'Brien, wrote the Commission stating the Company's intent to seek rate base treatment for the payment of tax on the contributed facilities. Mr. O'Brien stated that it was the Company's understanding that the Order in Docket No. M-100, Sub 113, issued September 14, 1990, did not in and of itself require the gross-up of contributed property to be received under the Monteray Shores contract. The Company based its position on the fact that the contract was dated prior to the September 14, 1990, Order and pertained to an area that was already certificated in that it is contiguous to an already certificated area.

Mr. O'Brien requested that if it was necessary for CWS to petition the Commission for approval of this approach that his letter be treated as such a request.

By letter dated February 6, 1991, James D. Panton, Financial Analyst for the Commission, responded to Mr. O'Brien. Mr. Panton agreed with Mr. O'Brien that the requirements of the September 14, 1990, Order in Docket No. M-100, Sub 113, did not apply. Mr. Panton stated, however, that the Commission concluded that the subject CIAC fell under the requirements of the Order establishing procedures related to taxes on contributions in aid of construction issued August 26, 1987, ordering paragraph 2A, which requires that water and sewer companies use the full gross-up method with respect to collections of CIAC unless the Commission gives prior approval of a different method in a particular case or unless the Company applies for and is granted approval to use the present value method.

Mr. Panton advised that the Commission had concluded that CWS should file a formal request with the Commission for permission to effectuate the tax treatment for CIAC included in the letter of October 12, 1990. Mr. Panton stated that such request should include full justification, including all relevant

financial information. Although Mr. O'Brien assigned the duty of filing the request to the rate department, the filing folder was misplaced and subsequently went unnoticed until the matter was addressed by the Public Staff in this case.

In his prefiled testimony, Public Staff witness Larsen stated that the Company has never made the formal request to which Mr. Panton referred. He argued that because the Commission has never granted the Company permission to deviate from the 1987 Order, the Public Staff had made a tax adjustment relating to the contract. On cross-examination, Mr. Larsen stated that since the Company entered into the contract calling for it to pay the tax on CIAC without developer gross-up without first obtaining the Commission approval, it would be inappropriate to include the tax in rate base.

Company witness Wenz provided testimony indicating that the Monteray Shores/Shipwatch arrangement, structured as identified above, provides substantial benefits to customers and that the tax should be included in rate base. He testified that the investment per customer in the Monteray Shores system, once the development has reached its potential, will be significantly lower than CWS's overall investment per customer of approximately $660 for water and $665 for sewer. As of the date of Mr. Wenz's testimony, there were 72 customers on the system for an investment per customer of $880 and $1,103 for water and sewer, respectfully.

Mr. Wenz testified that once the number of customers on the water system exceeds 96, the water system investment per customer will be below the Company average, thereby benefiting all customers. Similarly, once the number of customers attached to the sewer system exceeds 121, the sewer system investment per customer will be below the Company average, thereby benefiting all customers.

Mr. Wenz testified that prior to obtaining Monteray Shores CWS only served Corolla Light in the Currituck County area. The addition of the Monteray Shores service territory allowed CWS to more fully utilize its personnel and expand to the point where backup people and resources are readily available to serve the needs of Corolla Light and Monteray Shores, hence providing many economies to CWS's operations.

Mr. Wenz explained the ultimate accounting treatment of the transaction if taxes paid are included in rate base. The tax on CIAC is recovered from the IRS over the life of the plant. Therefore, the amount included in rate base now will ultimately be zero, and the entire system would have been contributed. The ultimate investment for customers in the facilities will be zero, thereby benefiting all customers. In effect, CWS has acquired a system giving it access to facilities valued at over $1 million. CWS's current cost is $143,000. Over time the cost will be reduced to practically zero as the tax paid by CWS is recovered from the IRS. The Monteray Shores acquisition compares favorably to other recent acquisitions such as Carolina Trace and Transylvania on a cost per customer basis.

Mr. Wenz stressed that in analyzing the reasonableness of CWS's request to include the ADIT related to Monteray Shores in rate base, the Commission should look at the most likely alternative to what would have occurred had CWS not acquired the system. The only alternative, in light of the facts confronting the

parties, was for the developer to retain the systems and form his own utility company. Under that scenario, the developer could seek rate base treatment for the entire $1,000,246 of original cost facilities, which could have resulted in higher costs being passed on to the customer.

Mr. Wenz stated that history has shown many developer-owned utility systems are not operated and maintained with the same view toward long term viability, nor with the same level of expertise, as are professionally-run utilities like CWS. Mr. Wenz testified that the strategy of CWS paying the taxes and seeking rate base treatment is reasonable in this specific situation and is further justification for the allowance of ADIT in rate base. Mr. Wenz indicated that the Commission had approved a similar situation in Docket No. W-345, Sub 92, involving the Olde Pointe subdivision. Mr. Wenz requested that the Commission, based upon this record, include in rate base the purchase price of the Monteray Shores facilities paid in the form of income taxes.

The Commission has carefully analyzed the testimony on this adjustment and rules that it is inappropriate for CWS to include the tax paid on the Monteray Shores acquisition in rate base. The majority of the issues raised by the Company have been discussed at length in the tax docket, Docket M-100, Sub 113. The Commission was aware of those issues when it issued its Order in Docket No. M-100, Sub 113 dated August 26, 1987, stating specifically that the full gross-up method for collecting taxes on CIAC is mandatory for water and sewer companies unless receiving prior Commission approval to use another method. In Docket No. M-100, Sub 113, the Commission further stated that if a Company did not follow the gross-up requirements established in that Order, a Company would not be allowed to recover any costs of income taxes arising from CIAC from ratepayers. Because the Company did not receive <u>prior Commission approval</u> to use some methodology other than the full gross-up method, the Commission concludes that its ratepayers should not be required to pay any costs associated with the taxes paid on CIAC for the Monteray Shores system. Furthermore, to make matters even worse, the Company failed to respond to Mr. Panton's letter of February 6, 1991. The Commission further notes, however, that even if CWS had made a formal filing in response to Mr. Panton's letter, the request would still have been denied as a result of the Company's failure to request and receive <u>prior approval</u> for the requested ratemaking treatment. The prior approval requirement is the centerpiece of the Commission's Orders regarding CIAC taxes.

<u>Olde Pointe</u>

The second difference between the parties relates to ADIT with respect to the Olde Pointe system. In his rebuttal testimony, Mr. Wenz mentions that based on an agreement between CWS and the Public Staff, the Commission issued an order when the Company acquired Olde Pointe that the taxes paid by the Company upon acquisition of this system would be included in rate base.

In its Exceptions To Recommended Order, the Public Staff excepts to the inclusion of $25,727 in accumulated deferred income taxes with respect to the Olde Pointe system on the grounds that there is no evidence to establish the ADIT amount of $25,727. Further, the Public Staff suggests that such ADIT, if allowed by the Commission, should be offset by tap fees.

With respect to the Public Staff's assertion that the record is void of evidence as to the ADIT amount, the Commission points to the testimony of witness Wenz on cross-examination wherein he stated that the amount was around $25,000 based upon his recollection (Tr. Vol. 15, p. 20). Further, Public Staff Wenz Rebuttal Cross-Examination Exhibit No. 2 contains a copy of the Commission Order in Docket No. W-354, Sub 92, dated November 9, 1990, which refers to the tax liability as being approximately $25,000. Relating to the issue of any tap fee offset, the Company, in its August 31, 1992, Response to the Public Staff's Exceptions, provided the following:

> "There are no tap fees to offset as the Public Staff suggests. Any tap fees collected in Old Pointe are reflected in the CIAC balance. The payment of tax on Old Pointe occurred after the test year, so a proforma adjustment was necessary to include the $25,727 in the ADIT balance. No adjustment is necessary to reflect the Old Pointe tap fees. These facts have been communicated to the Public Staff."

Based upon the foregoing and the entire record in this proceeding, the Commission concludes that sufficient evidence exists to support our finding that the taxes paid with respect to Olde Pointe are $25,727. As a result of our Order approving the acquisition of the Olde Point system based upon the stipulation between the parties, the Commission determines that $25,727 should be included in accumulated deferred income taxes with respect to the Olde Point system. Further, the Commission is not persuaded that any tap fees collected in the Olde Pointe system are not already reflected in the CIAC balance and, accordingly, no such offset is necessary. However, the Commission recognizes the right of the Public Staff or any other party to pursue this matter further in the Company's next general rate case proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of ADIT is $568,943, of which $784,037 is applicable to water operations and ($215,094) is applicable to sewer operations.

NET GAIN ON SALES OF SYSTEMS

Introduction

In Docket No. W-354, Subs 82, 86, 87 and 88, the issue was which party, CWS's stockholders or its remaining ratepayers, should receive the benefits of gains on the future sales of the Beatties Ford, Genoa/Raintree and Riverbend systems. Based on the evidence presented in that proceeding, the Commission, in Ordering paragraph No. 1 of that Order, ordered as follows:

> "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)."

The Commission also included the following language on Page 16 of its Order in Docket No. W-354, Subs 82, 86, 87 and 88:

"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."

Since the Commission issued its Order in Docket No. W-354, Subs 82, 86, 87 and 88, CWS has sold the Beatties Ford, Genoa/Raintree and Mt. Carmel systems. The Riverbend system, which was discussed in that Docket, has not been sold, but the Mt. Carmel system, which was not discussed in that Docket, has been sold.

In this proceeding Company witness O'Brien and Public Staff witness Carter presented testimony and exhibits concerning the amounts of the gains and losses on the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems, and discussed items which should or should not be considered as an "investment" or "reasonable transaction costs associated with the transfers" as those terms are used by the Commission in its Order in that Docket. Company witness O'Brien testified that the calculation of the gain or loss on the sales of the systems should not be calculated based solely on the "accounting debits and credits" required to remove the assets from the books. He testified that it is essential that the Commission look at the economic realities that accompany a decision to sell a system. The economic realities that witness O'Brien presented for the Commission's consideration in determining the amount of gains and losses to assign to the Company's ratepayers are:

(1) In calculating the net plant figure for each system that was sold, Mr. O'Brien did not reduce the original cost of the systems by the Purchase Acquisition Adjustment (PAA) applicable to each system.

(2) In calculating the amount of the pre-tax gain or loss on the sale of each system, Mr. O'Brien decreased the total gain or loss by a 13% "compensation to management."

(3) For the gains on the sales of the Beatties Ford and Genoa/Raintree systems, Mr. O'Brien reduced the gain assigned to the ratepayers by calculating and subtracting Federal and Illinois state income taxes that he says the stockholders will have to pay on the portion of the gains paid to the stockholders as dividends.

(4) Mr. O'Brien reduced the ratepayers' portion of the gain on the sale of the Beatties Ford system for the "loss of revenue" from the date of the Order in Docket No. W-354, Sub 81, to the date that the Beatties Ford system was sold.

(5) Mr. D'Brien reduced the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems for the "loss of operating income" from dates of the sales of these systems to the date of the Order in Docket No. W-354, Sub 111.

Public Staff witness Carter did not reflect the effect of any of the above items in calculating the amounts of gains and losses on the sales of systems that he recommends be assigned to the ratepayers.

In addition to the above items, Company witness O'Brien and Public Staff witness Carter also differ on the following two items:

(1) Witness O'Brien assigned all of the costs related to Docket No. W-354, Subs 82, 86, 87 and 88, to the ratepayers, while witness Carter split the cost of that proceeding equally between the ratepayers and the stockholders.

(2) Witness O'Brien assigned 100% of the loss on the sale of the Mt. Carmel system to the ratepayers, while witness Carter assigned the loss on the sale of the Mt. Carmel system equally between the ratepayers and the stockholders.

Company witness O'Brien and Public Staff witness Carter presented testimony concerning the amounts of gains and losses associated with CWS's sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems. Both witnesses presented testimony concerning the amount of the gains and losses which should go to the benefit of the Company's stockholders and the amount which should go to the benefit of the Company's remaining ratepayers. Witness O'Brien testified that a net loss of $12,465 resulting from the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems should be assigned to CWS's remaining ratepayers, while witness Carter testified that $264,076 of a total gain of $528,152 should be assigned to CWS's remaining ratepayers. The difference between the negative amount of $12,465 recommended by witness O'Brien and the positive amount of $264,076 recommended by witness Carter results from the following differences broken down by each system that was sold:

Line No.	Item	Beatties Ford	Genoa/ Raintree	Mt. Carmel	Total
1.	Net Gain/(Loss) assigned to ratepayers by Company witness O'Brien	$ 30,583	$ 7,183	$(50,231)	$(12,465)
2.	Deduction of purchase acquisition adjustment from original cost of the systems sold	15,008	28,894	29,354	73,256
3.	Elimination of amount allocated to ratepayers for the 13% "Compensation to Management"	25,910	5,037	(7,506)	23,441
4.	Elimination of Federal and Illinois personal income taxes on stockholders' portion of gains on the sales of systems paid in the form of dividends	34,351	6,678		41,029
5.	Assignment of 50% of the costs related to Docket No. W-354, Subs 82-88 to stockholders	1,842	1,843		3,685
6.	Elimination of loss of revenue from date of order in Docket No. W-354, Sub 81 to date of sale caused by removing Beatties Ford from rate case in anticipation of sale	18,255	-	-	18,255
7.	Elimination of loss of operating income from date of sale to date of decision in Docket No. W-354, Sub 111	86,521	16,162	-	102,683
8.	Assignment of 50% of the loss on the sale of the Mount Carmel System to the stockholders	-	-	14,192	14,192
9.	Portion of Net Gain/(Loss) assigned to ratepayers by Public Staff witness Carter	$212,470	$65,797	$(14,191)	$264,076

The Commission will discuss each of the above-listed differences between witness O'Brien and witness Carter in the calculation of the amount of gain or loss resulting from the sale of each system which should go to the benefit of CWS's remaining ratepayers.

Purchase Acquisition Adjustment

In calculating CWS's investment in the Beatties Ford, Genoa/Raintree and Mt. Carmel systems for purpose of calculating the gain or loss on the sales of these systems, Company witness O'Brien did not reduce the original cost of the systems by the Purchase Acquisition Adjustment (PAA), while Public Staff witness Carter did reduce the original cost of these systems by the PAA applicable to each system. Witness O'Brien testified that CWS paid less for each of these systems than the net original cost of the systems, resulting in a PAA for each system. Mr. O'Brien testified that CWS has made additional investments in these systems equal to or greater than the PAAs, and that fact should be recognized in determining the portion of the proceeds that constitute a reimbursement for

investment. Mr. O'Brien testified that the PAAs represent a part of shareholders' investment as the term "investment" is used in the Commission's Order In Docket No. W-354, Subs 82, 86, 87 and 88. Mr. O'Brien further testified that if a utility pays more than the net original cost of a system, the shareholders have no opportunity to earn on the premium. He also testified that ratepayers should not be permitted to benefit from the PAA by recognizing it as a deduction from rate base in calculating rates while the utility owns the system, and inconsistently benefit again by disregarding the PAA once the system is sold and the gain is shared with the ratepayers. Witness O'Brien testified that the Genoa/Raintree systems were in deplorable condition when they were purchased by CWS, and that a significant amount of costs were incurred in upgrading these systems. Mr. O'Brien also testified that CWS operated these systems at reduced rate levels for a number of years, and that the Raintree system was operated without rates for 1 1/2 years. Mr. O'Brien stated that the result of these actions by CWS represents an investment in these systems. In both his prefiled and rebuttal testimony and exhibits, Mr. O'Brien deducted the PAA applicable to the Mt. Carmel system from the original cost of the Mt. Carmel system. When he presented the summary of his testimony, Mr. O'Brien stated that he was revising his testimony and exhibits to exclude the deduction of the PAA applicable to the Mt. Carmel system in order to be consistent with the manner in which he handled the PAAs for the Beatties Ford and Genoa/Raintree systems.

Public Staff witness Carter testified that the gain or loss on the sale of a utility system should be based on the difference between the sales price and the purchase price of the system, assuming the purchase price of the system is reasonable. Witness Carter testified that this is the case whether a utility paid more or less than the original cost of the system. Witness Carter testified that the Commission was aware of the problems CWS had encountered at the Beatties Ford and Genoa/Raintree systems when it made its decision to split the gains on the sales of these systems equally between the stockholders and the remaining ratepayers, because the problems were described in CWS's Brief in Docket No. W-354, Subs 82, 86, 87 and 88. Mr. Carter testified that Mr. O'Brien is in effect asking the Commission to reach a different result on the basis of facts that were already known by the Commission at the time of its Order in Docket No. W-354, Subs 82, 86, 87 and 88. Witness Carter testified that Mr. O'Brien, in his exhibits filed in Docket No. W-354, Subs 86 and 87, reduced the original cost of the Beatties Ford and Genoa/Raintree systems by the PAA applicable to each system in calculating the estimated gains on the sales of those systems. Witness Carter stated that Mr. O'Brien presented no testimony in that proceeding indicating that he thought it was inappropriate to deduct the PAA from the original cost of the systems for the purpose of calculating the gain or loss on the sales of those systems.

The Commission concludes that it is appropriate to deduct the PAA from the original cost of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems for the purpose of determining CWS's net investment in each of these systems. The gain or loss on the sale of each of these systems should be calculated on the difference between the sales price of each system and CWS's net investment in each system. The PAA does not represent an investment by CWS in these systems as contended by witness O'Brien. In order to determine CWS's net investment in each of these systems, the PAA for each system must be deducted from the original cost of each system, because the PAA represents the difference between the original cost of these systems and the lower prices that CWS paid for these

systems. All expenditures by CWS to upgrade the Beatties Ford and Genoa/Raintree systems were capitalized and included in CWS's investment in those systems. The fact that the systems were in deplorable condition when CWS purchased them is most likely the reason that the systems were purchased for prices less than the original cost of these systems. The Commission was aware of the problems at the Beatties Ford and Genoa/Raintree systems when it made its decision in Docket No. W-354, Sub 82, 86, 87 and 88, to split the gains equally between the ratepayers and stockholders.

The Commission does not agree with witness O'Brien that the ratepayers will get a double benefit if the PAA is recognized at the time of the sale of a system. Both the rate base and the gain or loss on the sale of a system should be determined based on the amount that a utility actually paid for a system, plus improvements made since the system was purchased. A utility is not penalized and the ratepayers do not get a double benefit if a negative PAA is recognized in calculating the gain or loss at the time a system is sold. In fact, just the opposite would be true. If a negative PAA is not considered in determining a utility's net investment for purposes of calculating the gain or loss on the sale of a system, the stockholders will receive a windfall. First of all, all improvements made to these systems were capitalized and reflected in CWS's investments in those systems. Second, the original costs of those systems do not reflect the fact that CWS paid less than the original costs of the systems. If the PAA applicable to each of those systems is not deducted from the original cost of each system when calculating the gains or losses on the sales of the systems, CWS's investment in the systems will be overstated and the resulting gains will be understated or the resulting losses will be overstated.

The Commission concludes that the PAAs applicable to the Beatties Ford, Genoa/Raintree and Mt. Carmel systems must be deducted from the original cost of each system in determining CWS's investment in each system for the purpose of calculating the gain or loss on the sale of each system. The amount of PAA that must be deducted for the Beatties Ford system is $49,300, for the Genoa/Raintree systems is $94,915 and for the Mt. Carmel system is $48,213.

"Compensation To Management"

In calculating the gain or loss on the sale of each system, Company witness O'Brien reduced the gain or loss on the sale of each system by a 13% "compensation to management". Public Staff witness Carter did not reduce the amounts of the gains or losses on the sales of the systems by a 13% "compensation to management." Witness O'Brien calculated the "compensation to management" related to each system by multiplying the amount of gain or loss on the sale of each system before income taxes by 13%. Witness O'Brien testified that this cost is a factor in selling a system just as surely as any other cost. He testified that CWS's Board of Directors approved this cost in 1982, long before these sales were contemplated, and that this compensation would not be paid if the transactions did not occur. Mr. O'Brien testified that this compensation is paid to facilitate a sale by removing the natural economic incentive of management to retain property and have a large economic base upon which future compensation is determined. Mr. O'Brien also testified that this compensation program benefits the customers and the shareholders in that it encourages management to look realistically at a sale in terms of what is best for both parties. Additionally, Mr. O'Brien stated that this compensation also gives management a vested interest

in negotiating for the highest possible sales price, which will benefit both the stockholders and ratepayers if gains on the sales of systems are to be split between the stockholders and ratepayers.

Public Staff witness Carter testified that the 13% "compensation to management" is not a necessary transaction cost related to the sale of a system. He stated that it is management's decision on whether to pay a compensation to management, and if they make the decision to do so, it should be paid from the stockholders' portion of the gain instead of reducing the pre-tax gain or loss on the sales of the systems. It is Mr. Carter's opinion that the 13% "compensation to management" is not a transaction cost as that term is used in the Commission's Order in Docket No. W-354, Subs 82, 86, 87 and 88. He testified that the sales of systems could occur whether or not additional compensation is paid to management.

The Commission concludes that the 13% "compensation to management" is not a transaction cost as that term is used in our Order in Docket No. W-354, Subs 82, 86, 87 and 88. The sale of a system can take place with or without the "compensation to management." Management has a choice whether or not to pay a "management compensation" from the proceeds of a sale; and if it does, the compensation should not reduce the ratepayers' portion of the gain on the sale. Mr. O'Brien's testimony that the "compensation to management" is necessary in order to give management the incentive to look realistically at a sale in terms of what is best for both the stockholders and ratepayers, and in order to negotiate the highest possible sales price on the sale of a system, is not convincing. It is the Commission's opinion that it should not be the ratepayers' responsibility to pay a bonus to management to do what management should do based on its normal compensation. Management should always make decisions based on what is best for both the stockholders and ratepayers, and should always negotiate to receive the highest possible sales price on the sale of a system. If, as a result of the sales of these systems, CWS wants to pay its management additional compensation above and beyond the salary level approved as reasonable in the rate case, the additional compensation should be paid from the stockholders' 50% portion of the gain or losses on the sales of these systems, instead of being recognized as an expense in calculating the amount of the gain or loss on the sales of the systems.

Federal and Illinois Income Taxes on Stockholders' Portion of Gains Paid in the Form of Dividends

Company witness O'Brien reduced the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems by Federal and Illinois income taxes that the stockholders may have to pay based on the fact that their portion of the gains on the sales of these systems was paid to them in the form of dividends. Public Staff witness Carter did not reduce the ratepayers' portion of the gains on the sales of these systems for this item. Witness O'Brien testified that when the stockholders' portion of the net proceeds from the sales of the systems are paid to them in the form of dividends, the shareholders' must pay Federal and Illinois income taxes on those dividends. Mr. O'Brien referred to this adjustment as a "tax equalization adjustment." Witness O'Brien further testified that if the ratepayers and stockholders are to split the gains equally on the sales of these systems, the "tax equalization adjustment" must be recognized, because the stockholders must pay income taxes on their portion of

the gains, which are paid to them in the form of dividends, but the ratepayers will not have to pay income taxes on their portion of the gains.

Public Staff witness Carter testified that whether CWS retains its 50% portion of the net gains in the business or pays the funds to its stockholders in the form of dividends should not affect the amount of net gains which will be used for the benefit of the ratepayers. He testified that CWS's stockholders have the choice to either leave the money from the net gains on the sales of the systems in the Company and have the opportunity for their funds to grow in the business, or have the cash in their pockets in the form of dividends. He stated that if they choose to receive their 50% share of the net gains in the form of cash dividends, that should not affect the amount of gains that the ratepayers receive. Mr. Carter further stated that the stockholders know that if they receive their portion of the gains as dividends, the dividends will have to be reflected as dividend income on their Federal and state income tax returns, and they will be required to pay income taxes on the dividends based on their individual Federal and state income tax brackets. Mr. Carter further testified that the personal income tax liability of CWS's stockholders is not even a relevant consideration with respect to the issue of gains or losses on the sales of utility systems, and that it will be a breakdown of regulatory policy if ratepayers are required to pay the personal income taxes of utility investors related to dividends received on their investment in stocks of public utilities. Mr. Carter stated that the clear distinction between the expenses of the utility and the investors must be retained and ratepayers should pay rates designed to cover only the expenses that a utility incurs in providing service to its customers.

The Commission concludes that the ratepayers' portion of the gains on the sales of systems should not be reduced to pay any Federal and Illinois income taxes that CWS's stockholders may incur on their portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems that are paid to them in the form of dividends. The stockholders have the choice to take all or a portion of the Company's earnings from all sources, not just from gains on sales of systems, in the form of cash dividends, or leave 100% of the earnings in the business. The choice belongs to the stockholders. If the stockholders choose to receive a portion of the Company's earnings in the form of dividends, the ratepayers should not be required to pay the stockholders' personal Federal and state income taxes on the dividends. When and if earnings, from whatever source, are taken out of the Company in the form of dividends, it is not the responsibility of the ratepayers to pay the stockholders' personal income taxes on those dividends.

Costs of Docket No. W-354, Subs 82, 86, 87 and 88

Company witness O'Brien assigned 100% of the costs of Docket No. W-354, Subs 82, 86, 87 and 88, to the ratepayers, while Public Staff witness Carter assigned the costs of that Docket equally between the stockholders and ratepayers. Witness O'Brien testified that the costs of regulatory proceedings are recoverable from customers because they represent costs of doing business. Mr. O'Brien testified that a non-regulated business would avoid this expense, because there would be no need to obtain a ruling on who should keep the gain on the sale of part of a business. He stated that a non-regulated business would automatically keep the gain.

Witness O'Brien further testified that when a utility litigates against the consumer advocates, the recoverability of the costs by the utility does not depend on the outcome of the litigation. He also testified that Docket No. W-354, Subs 82, 86, 87 and 88, was in effect a generic proceeding, not unlike proceedings in M-100 dockets; therefore, the costs of Docket No. W-354, Subs 82, 86, 87 and 88, should be borne by the ratepayers.

Public Staff witness Carter testified that the purpose of Docket No. W-354, Subs 82, 86, 87 and 88, was to determine the regulatory treatment of the gains on the sales of facilities. He testified that based on the Commission's decision in that Docket that the gains on the sales of the Beatties Ford and the Genoa/Raintree systems should be assigned equally between the ratepayers and the stockholders, he believes that the costs of that proceeding should also be assigned equally between the ratepayers and the stockholders. He testified that it would be unfair and inconsistent for the ratepayers to receive only 50% of the gains on the sales of these systems, but pay 100% of the costs of the proceeding which was necessary in order to determine the manner in which the gains on the sales of these systems should be assigned between the ratepayers and stockholders. Witness Carter testified that assigning the costs of Docket No. W-354, Subs 82, 86, 87 and 88, between the ratepayers and stockholders in the same manner as the benefits of the gains on the sales of the systems are assigned is the fairest manner of assigning the costs of that proceeding. He also testified that it would be unfair and unreasonable to require the ratepayers to pay all of the costs CWS incurred while litigating against the interests of the ratepayers.

The Commission concludes that the costs of Docket No. W-354, Subs 82, 86, 87 and 88, should be split equally between the ratepayers and the stockholders. Since both the stockholders and ratepayers received an equal benefit as a result of that proceeding, it is only fair that each party absorb an equal amount of the costs of that proceeding.

The Commission does not agree with Mr. O'Brien that a non-regulated business would automatically keep the gain on the sale of a part of its business. We believe that it would depend on the competitive environment and the financial condition of a particular company. A non-regulated business may use a similar gain on the sale of a segment of its total business to lower the prices of its products in order to gain market share. That would be a manner in which a non-regulated business would pass the benefits of such a sale to its customers.

The Commission normally does not assign costs of regulatory proceedings between the stockholders and ratepayers based on the manner in which we decide a case. Docket No. W-354, Subs 82, 86, 87 and 88, was a different type proceeding than the type of proceedings that are usually before the Commission. Most types of proceedings before the Commission are rate case proceedings, franchise proceedings, complaint proceedings or generic type proceedings in which the Commission must make a policy type decision. In those types of proceedings there are usually no proceeds to be split between the stockholders and the ratepayers. In Docket No. W-354, Subs 82, 86, 87 and 88, the issue was to determine the appropriate manner of splitting proceeds between the stockholders and ratepayers that CWS would be receiving in the near future from gains on the sales of some of its systems. Since the Commission, in that proceeding, ruled that the stockholders and ratepayers should equally share the gains on the sales

of the systems, including the Beatties Ford and Genoa/Raintree systems, we also conclude that the stockholders and ratepayers should equally share the costs of that proceeding.

"Loss of Revenue" From the Date of the Order in Docket No. W-354, Sub 81 to the Date of the Sale of the Beatties Ford System

Company witness O'Brien reduced the ratepayers' portion of the gain on the sale of the Beatties Ford system by the "loss of revenue" from the date of the Commission's Order in Docket No. W-354, Sub 81, to the date of the sale of that system. Public Staff witness Carter did not reduce the ratepayers' portion of the gain for this item. The "loss of revenue" represents the difference between the amount of revenues that CWS actually received from the customers of Beatties Ford based on rates approved in Docket No. W-354, Sub 69, and the amount of revenues that CWS would have received from the Beatties Ford customers based on the rates approved for all other systems in Docket No. W-354, Sub 81. Witness O'Brien testified that at the time CWS filed its rate case in Docket W-354, Sub 81, the sale of Beatties Ford was imminent and Beatties Ford was removed from that rate case. Mr. O'Brien testified that the decision to exclude Beatties Ford from that rate case was a direct result of the decision to sell that system; therefore, the "loss of revenue" was a direct result of that decision. Mr. O'Brien testified that the Company suffered a true measurable loss; therefore, the "loss of revenue" from the Commission's exclusion of Beatties Ford from the Docket No. W-354, Sub 81, rate case must be deducted from the ratepayers' 50% portion of the gain on the sale of the Beatties Ford system in order to put stockholders in the position they otherwise would have been.

Public Staff witness Carter testified that the "loss of revenue" resulting from the exclusion of the Beatties Ford system from Docket No. W-354, Sub 81, is not a reasonable transaction cost of selling the Beatties Ford system. Witness Carter testified that the Commission's June 15, 1990, Order in Docket No. W-354, Sub 81, indicates that CWS was denied a rate increase in that proceeding for the Beatties Ford customers "because CWS failed to give notice of this rate case to those customers." He testified that the Commission had previously ordered CWS to give notice of its proposed rate increase in Docket No. W-354, Sub 81, to the customers of the Beatties Ford system, and that CWS voluntarily chose not to give notice of the rate increase request to the customers of Beatties Ford despite the Commission's Order, therefore, it was CWS's own decision that led to the "loss of revenue." Witness Carter further testified that by making that decision, CWS assumed the risk that it would be serving customers of the Beatties Ford system when the Order in Docket No. W-354, Sub 81, was issued, but would not be able to charge those customers the rates approved in Docket No. W-354, Sub 81.

Mr. Carter also testified that the Commission has previously determined that CWS should bear any "loss of revenue" due to the exclusion of Beatties Ford from the Sub 81, rate case. He referred to language in the Commission's Order in Docket No. W-354, Sub 81, to support his position. Witness Carter also testified that counsel for CWS stated at the oral argument on February 1, 1990, that any penalty resulting from the decision to exclude Beatties Ford from the Sub 81 case would fall on the Company. Mr. Carter testified that the "loss of revenue" is neither a transaction cost nor an increase in investment as contended by Mr. O'Brien.

The Commission concludes that the ratepayers' portion of the gain on the sale of the Beatties Ford system should not be reduced by "loss of revenue" from the date of the Commission's Order in Docket No. W-354, Sub 81, to the date of the sale of the Beatties Ford system. The economic impact of the "loss of revenue" is neither a transaction cost nor an increase in investment. In Docket No. W-354, Sub 81, the Commission determined that CWS would bear any revenue loss due to CWS's decision to exclude Beatties Ford from the Sub 81 case. On page 19 of our Order in that proceeding we stated as follows:

> "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."
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> "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 Beatties Ford
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> > 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." [emphasis added] (Eightieth NCUC Report, pp. 360-361, 1990)

The Commission has previously made it clear that CWS would bear the risks associated with excluding Beatties Ford from the Sub 81 rate case. It is entirely inappropriate to reduce the ratepayers' portion of the gain on the sale of the Beatties Ford system by "loss of revenue" because CWS voluntarily removed Beatties Ford from the Sub 81 case and assumed all risks associated with that decision.

"Loss of Operating Income" From the Dates of the Sales of the Beatties Ford and Genoa/Raintree Systems to the Date of the Commission's Order in Docket No. W-354, Sub 111

Company witness O'Brien reduced the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems by the "loss of operating income" from the dates of the sales of these two systems to the estimated date of the Commission's Order in this proceeding. Public Staff witness Carter did not reduce the ratepayers' portion of the gains on the sales of these two systems by the "loss of operating income."

Witness O'Brien testified that when a system is sold certain expenses disappear such as electricity, chemicals, postage, depreciation and other expenses directly related to plant and customer administration, but that many expenses remain, such as the overhead expenses allocated to the customer base. He stated that when a company is sold, the margin between the revenues and expenses that are eliminated is no longer available to cover the fixed expenses that remain. Witness O'Brien testified that the elimination of this margin on the sale of a system is tantamount to either an investment or a reduction in the selling price of the system. Mr. O'Brien testified that this reduction in the ratepayers' portion of the gain by the "loss of operating income" puts the stockholders in the same position as if there had been no sale.

Public Staff witness Carter testified that the "loss of operating income" should not be deducted from the ratepayers' portion of the net gains on the sales of these two systems. He stated that when CWS sold these systems any operating income the Company was earning from these systems ceased to exist, and that it is not appropriate for the ratepayers' portion of the gains resulting from the sales of these systems to be reduced by an amount which Mr. O'Brien testifies will "put the shareholder in the position he would have been if there were no sale." Witness Carter further testified that if the Commission grants CWS's request to reduce the ratepayers' portion of the gain by the "loss of operating income" from the dates of the sales of the Beatties Ford and Genoa/Raintree systems to the date the Order is issued in this proceeding, it will be granting CWS a return on plant that is no longer in service and was not used and useful in providing service to CWS's customers during that time period. Witness O'Brien testified that this action by the Commission would not result in the Commission granting the Company a return on plant that was not in service during that time period.

The Commission concludes that it is inappropriate to reduce the ratepayers' portion of the gains on the sales of the Beatties Ford and Genoa/Raintree systems by the "loss of operating income" from the dates of the sales of these systems to the estimated date of the Commission's Order in this proceeding. The "loss of operating income" represents neither a transaction cost, an investment, nor a reduction in the selling prices of the systems. It is not the responsibility of CWS's remaining ratepayers to put CWS in the same position it would have been in if there had been no sale. CWS sold the systems at a profit and has had the use of the entire amount of the sales proceeds since the proceeds were received. The earnings on the sales proceeds from the dates the proceeds were received until the date of the Order in this proceeding belong to CWS's stockholders. The Company's request that its ratepayers pay for the "loss of operating income" from the dates these systems were sold until the date of the Commission's Order in this proceeding is no more appropriate than would be a decision by this Commission to require CWS to refund monies to its ratepayers for an "increase in operating income" as a result of CWS acquiring new systems.

Loss on the Sale of the Mt. Carmel System

Company witness O'Brien assigned 100% of the loss on the sale of the Mt. Carmel system to the ratepayers, while Public Staff witness Carter assigned the loss on the sale of the Mt. Carmel system equally between the stockholders and ratepayers. Witness O'Brien testified that the decision to sell the Mt. Carmel system was the only option available to the Company. He stated that further

upgrades to the Mt. Carmel system would conceivably result in higher rates for all customers and still not satisfy the Mt. Carmel customers. Mr. O'Brien testified that the sale of the Mt. Carmel system was the best decision for both the stockholders and ratepayers, and that the Company should not be penalized for that decision. Witness O'Brien further testified that the Company was denied rate relief for the Mt. Carmel system in its last two rate cases, and the Company has paid a significant price for its efforts to upgrade service to the residents of Mt. Carmel. Witness O'Brien stated that based on the Company's efforts to improve service and being denied rate relief, the only fair treatment is to offset the entire loss against the gains being distributed to the customers.

Public Staff witness Carter testified that the loss on the sale of the Mt. Carmel system should be split equally between the ratepayers and the stockholders. He stated that it would be unfair and inconsistent for the ratepayers to receive only 50% of the gains on the sales of the Beatties Ford and Genoa/Raintree systems, but absorb 100% of the loss on the sale of the Mt. Carmel system.

The Commission concludes that the loss on the sale of the Mt. Carmel system should be assigned equally to the stockholders and ratepayers. It would be unfair and inconsistent for the ratepayers to receive the benefit of only 50% of the gains on the sales of the Beatties Ford and Genoa/Raintree systems, but assume 100% of the loss on the sale of the Mt. Carmel system. Mr. O'Brien offered testimony concerning the problems CWS has encountered at the Mt. Carmel system, including the need to spend additional capital to upgrade the equipment, going for periods of time without rate relief, and operating the system with inadequate rates for certain periods of time. The Commission is aware of the problems that CWS has encountered at Mt. Carmel; however, for certain periods of time CWS encountered similar problems at the Beatties Ford and Genoa/Raintree systems. For example, on pages 2 and 6 of its Brief in Docket No. W-354, Subs 82, 86, 87 and 88, CWS stated as follows:

> "By order dated January 10, 1986, Carolina Water Service, Inc. of North Carolina (CWS) received a certificate of public convenience and necessity to provide water and sewer utility service to the Beatties Ford Park (Trinity Park) and Hyde Park East (hereinafter "Beatties Ford") subdivisions in Mecklenburg County. The prior owner was experiencing financial distress, and the systems were in a state of extreme disrepair. Immediately upon undertaking operation of the systems CWS began making improvements and bringing the system up to appropriate operating standards. Subsequent to CWS's takeover and operation of the systems, rates to the Beatties Ford customers were increased. Rates were "stepped in" or brought up to CWS's rates to other customers gradually to avoid precipitous rate increases to the Beatties Ford customers."
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> "CWS took over the operation of three systems in Wayne County, collectively called the Raintree systems, in December 1988. At that time, the systems were not providing safe water and were not being operated by a certified operator. CWS made improvements to the

systems and subsequently applied for a certificate of convenience and necessity to provide water service. By Order dated April 25, 1990, in Docket No. W-354, Sub 74, the Commission granted CWS the franchise."

When the Commission made its decision in Docket No. W-354, Subs 82, 86, 87 and 88, to equally split the gains on the sales of the Beatties Ford, Genoa/Raintree and Riverbend systems between the stockholders and ratepayers, it was aware of the problems CWS had encountered at those systems. Those facts entered into the Commission's decision to split the gains on the sales of those systems equally between the stockholders and the ratepayers. Since the problems of upgrading facilities, the denial of rate relief, and operating with inadequate rates for some period of time were incurred at the Beatties Ford and Genoa/Raintree systems, as well as at the Mt. Carmel system, and the fact that ratepayers are receiving only 50% of the benefit of the gains on the sales of the Beatties Ford and Genoa/Raintree systems, it is only fair that the ratepayers assume only 50% of the loss on the sale of the Mt. Carmel system. There is not a material difference between the factors affecting the Mt. Carmel sale and the factors affecting the sales of the Beatties Ford and Genoa/Raintree systems.

In his testimony concerning the treatment of the Mt. Carmel loss, Mr. O'Brien reargued the general principles that were addressed in Docket No. W-354, Subs 82, 86, 87 and 88, with respect to other systems. He testified that the economic risks were all on the shareholders; therefore, they should retain all extraordinary capital gains. He also testified that as part of the economic risk shareholders would absorb all losses on sales, but Mr. O'Brien appears to have abandoned this principle for the Mt. Carmel loss due to the Commission's treatment of the gains on the sales of the other systems. The Commission disagrees with this argument in the present case just as we disagreed with it in Docket No. W-354, Subs 82, 86, 87 and 88.

First of all, the costs of extraordinary losses have often been placed on ratepayers, as in the case of dry wells, storm damage, abandonments, etc. This plainly shows that not all economic risks fall on shareholders.

Second, the Commission determines a fair rate of return on the shareholders' investment, and sets rates that allow CWS a reasonable opportunity to earn that return. The return includes a risk premium (i.e., the authorized return is greater than the risk-free rate of return) to provide adequate incentive for shareholders to take whatever economic risks may occur with their investment in CWS. Thus, the Commission has already provided reasonable compensation for the economic risks facing shareholders. To eliminate the economic risk to shareholders by placing the loss on ratepayers, while compensating shareholders for taking such a risk, would be inappropriate.

Third, the Commission struck a balance in Docket No. W-354, Subs 82, 86, 87 and 88, which is equally applicable here. The sharing of economic risks between ratepayers, and the need to create some incentive for a utility to sell a system to a municipal provider, is just as valid for Mt. Carmel as for Beatties Ford and Genoa/Raintree. This is because the Mt. Carmel sale involves the same utility in the same time frame, and because the economic risks for CWS ratepayers are equal for all systems under uniform rates.

CWS witness O'Brien also sought to justify his recommendation for the gains and losses on sales of systems by reference to historically low rates of return earned by CWS. However, the Commission cannot and should not place all the Mt. Carmel loss on ratepayers as a way of helping offset any past weakness in CWS earnings. Moreover, the Commission does not place much weight on CWS's evidence of historically low returns in light of the steadily increasing investment CWS has in North Carolina and in light of testimony in Docket No. W-100, Sub 13, by the Utilities, Inc., Director of Regulatory Accounting that CWS has historically generated revenues at least equal to its revenue requirement.

Summary Conclusion

Based on the foregoing, the Commission concludes that the appropriate level of net gains and losses on the sales of the Beatties Ford, Genoa/Raintree and Mt. Carmel systems is $528,152, as calculated on Carter Exhibit I, Schedule 1. One-half of this amount, or $264,076 should be assigned to CWS's stockholders and the remaining $264,076 should be assigned to CWS's remaining ratepayers and be used as a deduction in calculating CWS's original cost rate base in this proceeding and all future CWS rate proceedings.

FLOW BACK OF TAXES PAID THROUGH GROSS UP OF CONTRIBUTIONS IN AID OF CONSTRUCTION

Company witness O'Brien and Public Staff witness Carter presented testimony concerning the amount of cost-free capital resulting from the flow back of taxes paid through the gross-up of contributions in aid of construction (CIAC). Witness O'Brien testified that the flow back of taxes paid through the gross up of CIAC results from taxes that have been gross up on tap fees from customers in the Beatties Ford and Genoa/Raintree systems. Witness O'Brien testified that when these systems were sold CWS received a tax deduction for the amount of tap fees previously included as taxable income, which results in lower taxes. The amount related to the Beatties Ford system is $21,747 and the amount related to the Genoa/Raintree systems is $3,805. Witness O'Brien testified that the ratepayers should receive 100% of the benefit of the flow back of this tax benefit.

Public Staff witness Carter agreed with both the amounts and the regulatory treatment of the flow back of tax benefits recommended by witness O'Brien.

Based on the foregoing the Commission concludes that the flow back of taxes paid through the gross-up of CIAC in the amount of $21,747 related to the Beatties Ford system and $3,805 related to the Genoa/Raintree systems, for a total of $25,552, should be assigned to CWS's remaining ratepayers and be used as a deduction in calculating CWS's original cost rate base in this proceeding and all future CWS rate proceedings.

WORKING CAPITAL

The Company and the Public Staff are recommending different amounts of working capital due to the difference in the level of expenses and tax accruals recommended by each party. The Company included an amount of $346,401 for its

water operations and an amount of $177,836 for its sewer operations. The Public Staff included an amount of $318,205 for CWS's water operations and $168,511 for CWS's sewer operations.

Based upon its conclusions reached elsewhere herein regarding the appropriate level of expenses and certain taxes, the Commission concludes that the appropriate level of working capital is $498,807, of which $325,206 is applicable to water operations and $173,061 is applicable to sewer operations.

DEFERRED CHARGES

The final component of rate base on which the Public Staff and the Company disagree is deferred charges. Company witnesses Wenz and Cuddie recommended a level of deferred charges in the amount of $665,507, while Public Staff witness Haywood recommended a level of $522,996. There is a difference of $142,511 between the level recommended by the Company and the Public Staff. The difference of $142,511 is summarized as follows:

Item	Public Staff	Company	Difference
Tank Maintenance - 1985	$ 0	$ 0	$ 0
Tank Maintenance - 1986	0	0	0
Tank Maintenance - 1987	0	0	0
Tank Maintenance - 1988	25,559	25,559	0
Tank Maintenance - 1989	16,630	16,630	0
Tank Maintenance - 1990	80,869	80,869	0
Tank Maintenance - 1991	23,742	23,742	0
Tank Maintenance - 1992	69,049	102,353	(33,304)
Total Tank Maintenance	215,849	249,153	(33,304)
Relocation	8,505	8,505	0
Unamortized Balance - Hugo	79,088	79,088	0
Unamortized Balance - Rate Case Expenses	193,199	250,540	(57,341)
Other Sewer	26,356	26,356	0
VOC Testing	0	51,865	(51,865)
Rounding Difference	(1)	0	(1)
Total	$522,996	$665,507	($142,511)

The first area of disagreement between the Company and the Public Staff, in the amount of $33,304, relates to tank maintenance for 1992. The Company included the unamortized balance of five additional projects as detailed in Mr. Wenz's rebuttal testimony. Mr. Wenz did not reduce the total amount of the tank maintenance expenses by the associated reduction in income taxes related to the expenditures. The Public Staff also included the cost of these five projects, but reduced the total cost of these projects by the associated reduction in income taxes. The Public Staff contends that the unamortized deferred balance for tank maintenance is $215,849.

The Commission agrees with the Public Staff that the cost of the tank maintenance projects should be included in rate base net of the associated reduction in income taxes. Therefore, the Commission concludes that the appropriate level of deferred tank maintenance cost to include in the deferred charges component of rate base is $215,849 which includes an amount of $69,049 related to maintenance in 1992.

The second area of disagreement between the Company and the Public Staff concerns the appropriate level of deferred rate case expenses to include in rate base. The Company contends that the rate case expense for Sub 111 is $224,130. After adopting a three-year amortization period, the Company contends that $149,420 of deferred charges for Sub 111 rate case expenses be included in rate base. The result is a difference of $40,761 between the parties concerning deferred charges - rate case expense for Sub 111.

The Commission has concluded elsewhere in this Order that $217,939 of rate case expenses should be included for this proceeding. Assuming a three year amortization period results in $145,293 of deferred charges for Sub 111. The $145,293 should be allocated between water and sewer as follows: $100,049 for water and $45,244 for sewer.

The third area of disagreement between the Company and the Public Staff concerns intervention costs. During the test year, CWS intervened in two dockets instituted through applications by other utilities. Docket No. W-274, Sub 59, involved an application for a general rate case filed by Heater Utilities, Inc. Docket Nos. W-720, Subs 96 and 108, involved applications for new franchises filed by Mid South Water Systems, Inc. CWS now seeks rate recovery of $20,725, representing a portion of the costs of intervention in those cases. The Company seeks to recover one-fifth of the costs, or $4,145, through rates as a test year expense and proposes to include the unamortized amount of $16,580 in rate base.

In the Heater docket, CWS sought to intervene to insure that the Company's interests in certain issues such as the gain on the sale of Hasty Water Company's systems to the City of Raleigh were adequately represented. CWS sought an opportunity to participate to advocate the same degree of regulatory scrutiny and application of the same standards for Heater as the Commission had applied in recent cases involving CWS. The Commission denied the Company's petition to intervene, but permitted CWS to file an amicus brief. In denying intervention, the Commission ruled, in part, that the concerns being expressed by CWS did not constitute a real interest in the subject matter of the proceeding. Subsequently, CWS communicated with Bryan-Watson, Inc., a customer of Heater. Bryan-Watson agreed to intervene and pursue the issues CWS sought to raise. The Commission also denied that intervention. CWS filed its amicus brief on November 2, 1990.

In Docket Nos. W-720, Subs 96 and 108, CWS intervened to assert that Mid South had obtained contracts to provide water and sewer service in several Mecklenburg and Cabarrus County Subdivisions by declining to require, in compliance with Commission Orders, the developers to pay the reimbursement for taxes due on contributions in aid of construction (CIAC). By Order dated April 4, 1991, the Commission permitted CWS to intervene and conducted a hearing on the issues raised.

Ms. Haywood testified for the Public Staff that the services for the interventions by CWS in the Heater and Mid South dockets were not needed to provide utility service to the Company's customers. In rebuttal, CWS witness Wenz addressed Ms. Haywood's contention that the services were of no benefit to the customers of CWS. Mr. Wenz noted the competition between the larger water and sewer utilities for the opportunity to acquire systems and franchises. He

testified that acquisitions enable growth and that growth facilitates economies of scale and an ability to spread fixed costs over more customers. Mr. Wenz testified that the customers of CWS benefit when CWS can grow in an economically sound manner. According to witness Wenz, the degree of regulatory scrutiny afforded by the Commission and the decisions it makes can play a significant role affecting such competition. CWS intervened in the proceedings to assure that regulation is evenhanded and that its ability to compete fairly would be maintained.

The Commission agrees with the Public Staff that the intervention costs in question provided no benefit to the ratepayers of CWS and that those costs should not be included in operating expenses for ratemaking purposes in this case. The Commission also concludes that the unamortized balance of the intervention costs should not be included in the Company's rate base. To require the customers of CWS to pay in rates all or any portion of the Company's intervention costs would be wrong on the facts, a poor policy decision, and even poorer precedent. The customers served by CWS received no benefit from the interventions, either direct or indirect. Mere assertions by the Company that actions were taken in order to define regulatory policy or for other self-serving reasons are insufficient to justify imposing the associated costs on ratepayers. The ratepayers of CWS should not be required to pay the costs incurred by the Company in either successful or unsuccessful attempts to intervene in proceedings of other water and sewer utilities when it is clear that the ratepayers of CWS received no benefit from those interventions.

The next area of difference between the parties with respect to deferred charges relates to VOC testing costs. Mr. Wenz stated in rebuttal testimony that the unamortized balance of $51,865 for VOC testing costs should be included in rate base to recognize that the funds for these tests have been provided by the Company's investors. Mr. Wenz stated in rebuttal testimony that VOC testing expenditures should be treated consistently with other deferred charges such as tank painting. He stated that VOC testing costs are amortized and recovered in rates over a period of three to five years. Mr. Wenz acknowledged under cross examination that his calculation of VOC testing deferred charges differed from his calculation of tank painting deferred charges. He testified that the inclusion of an average unamortized balance of VOC testing costs in rate base would be more appropriate because it is difficult to measure the proper amount to include in rate base due to the three-year and five-year amortization periods for these tests. He further stated that his justification for using an average balance was that since the tests are staggered it would be a complicated calculation to determine, for amortization purposes, at which point in the cycle the VOC tests were taken.

The Public Staff did not include in rate base an amount for deferred charges related to VOC tests. Ms. Haywood testified that the Public Staff has included a representative amount of VOC testing expenses in operating expenses. She stated that the amortization of tank painting relates to the cost recovery of a specific expenditure whereas the inclusion of a representative amount of VOC testing cost does not.

The Commission continues to believe that VOC tests are regular tests and should not be included in deferred charges. Both parties agree that a representative level of VOC testing costs can be calculated and included in

operating expenses. Since a normalized level of VOC testing expenses rather than a specific recovery of VOC testing costs has been allowed, there is no unamortized amount to be included in rate base. Therefore, consistent with our Order in CWS's last rate case, the Commission has determined that the Public Staff adjustment to reduce rate base by $51,865 for VOC costs is appropriate, and that no amount of deferred VOC testing charges should be included in rate base.

Based on the foregoing, the Commission finds that the appropriate level of deferred charges to be included in this proceeding is $559,630, of which $434,062 is allocated to water operations and $125,568 is allocated to sewer operations.

SUMMARY CONCLUSIONS

Based on the foregoing, the Commission concludes that the Company's reasonable rate base used and useful in providing service is $15,096,627, comprised as follows:

Item	Water Operations	Sewer Operations	Total
Plant in service	$25,755,108	$19,251,531	$45,006,659
Accumulated depreciation	(1,988,456)	(1,356,258)	(3,344,714)
Contributions in-aid-of construction	(9,730,348)	(9,492,716)	(19,223,064)
Advances in-aid-of construction	(122,495)	(98,887)	(221,382)
Plant acquisition adj.	(1,787,538)	(1,198,345)	(2,985,883)
Acc. deferred taxes	(784,037)	215,094	(568,943)
Customer deposits	(78,217)	(35,372)	(113,589)
Excess book value	(1,670,755)	(2,610,511)	(4,281,266)
NCUC bonds	41,316	18,684	60,000
Gain on sale and flow back of taxes	(216,693)	(72,935)	(289,628)
Working capital allow.	325,206	173,601	498,807
Deferred charges	434,062	125,568	559,630
Total original cost rate base	$10,177,153	$4,919,474	$15,096,627

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 61-69

The evidence for these findings of fact is contained in the testimony of Public Staff witnesses Larsen and Haywood and Company witnesses Cuddie and Wenz, and in Larsen Revenue Schedules 1-4 of the Public Staff's Final Position.

The parties differ over the level of revenues. The Company calculates total revenues of $7,255,678; the Public Staff of $7,667,378 for a difference of $411,700.

SERVICE REVENUES

The evidence for Finding of Fact No. 61 is found in the testimony of Company witnesses Wenz and Cuddie and Public Staff witnesses Larsen and Haywood. The Company calculates service revenues of $7,189,400, while the Public Staff calculates service revenues of $7,592,841, for a difference of $403,441. This difference is due to a dispute between the parties with respect to the number of end-of-period customers.

In its application in this case, CWS showed test year pro forma revenues of $7,189,400. As reflected in Revised CJW Schedule D, these were annualized test year revenues obtained by use of end-of-period billing units. All of the exhibits, schedules, and testimony offered in evidence by CWS in this case consistently contain the same number for test year revenues, calculated in the same way.

The Public Staff testified that it conducted an audit of the Company's books and its application. Public Staff witness Larsen testified that he calculated pro forma revenues that would be generated by the Company's existing and proposed rates. The Public Staff engaged in substantial discovery in this case. The Public Staff prefiled and supported testimony, exhibits, and schedules that required it to state a position on the Company's pro forma level of test year revenues. The evidence of the Public Staff on that point indicates acceptance of the Company's calculation of pro forma revenues. See Rankin Exhibit I, Schedule 3, line 1, column (a).

Prior to the close of the evidentiary hearings in this docket, there was no schedule, exhibit, or testimony suggesting any controversy over the Company's level of test year service revenues. No party, including the Public Staff, proposed any adjustment through testimony or cross-examination which directly contradicted or called into controversy the Company's level of test year revenues. The record, as it existed at the close of the hearing, contained no suggestion that the method of calculating test year revenues followed by either CWS or the Public Staff was in error.

It was only after the evidentiary hearings in this docket were closed on June 12, 1992, that the issue of test year revenues became a matter of controversy. The Commission requested the parties to file financial exhibits reflecting their final positions with respect to net operating income, rate base, and capitalization by June 19, 1992. On June 18, 1992, the Public Staff made two filings in this docket entitled Motion for Extension of Time to File Numbers and Public Staff's Notice of Agreement with Company Regarding Certain Matters. In its motion for an extension of time to file numbers, the Public Staff stated that, in attempting to calculate its final numbers, it discovered that the end-of-period customer numbers in the Company's exhibits differ significantly from the numbers testified to by CWS witness Cuddie. The Public Staff further stated that it could not calculate its final numbers until it had received a reconciliation from the Company. Therefore, the Public Staff requested that all parties be granted an extension of time until June 26, 1992, to file final numbers in this case. The Commission granted the requested extension of time to all parties by Order dated June, 22, 1992.

On June 26, 1992, CWS and the Public Staff filed their final positions with respect to net operating income, rate base, and capitalization as required by the Commission. In a cover letter to its filing, the Public Staff stated that its final position and numbers used the end-of-period customer figures presented by CWS through the testimony of witness Cuddie.

On July 6, 1992, the Public Staff filed a motion requesting the Commission to consider three alternative procedures to resolve the discrepancy in the different numbers provided by CWS for its end-of-period customer count. The three options suggested by the Public Staff were to (1) reopen the hearing for additional testimony, (2) extend the period of time for the parties to file proposed orders, or (3) continue to require the parties to file proposed orders as scheduled on July 10, 1992, but allow the Public Staff to review the reconciliation it was to be provided by CWS and then make a supplemental filing on the customer issue. On July 8, 1992, CWS filed a response to the Public Staff's motion for alternative procedures and urged the Commission to adopt the third alternative suggested by the Public Staff. CWS stated that it presented the Public Staff with a reconciliation on July 7, 1992, between the numbers used in the Company's application to compute revenues and those provided from the stand by witness Cuddie. On July 9, 1992, the Commission entered an Order requiring the parties to file their proposed orders by July 10, 1992, and allowed the Public Staff until July 15, 1992, to make a supplemental filing with respect to the appropriate number of end-of-period customers for use in calculating test year revenues.

On July 15, 1992, the Public Staff made its supplemental filing in response to our Order of July 9, 1992. The Public Staff stated that it had reviewed the reconciliation provided by CWS, but that it could not accept the Company's numbers for end-of-period customers and had been unable to reach agreement with CWS on the proper end-of-period customer numbers to use for calculating pro forma revenues in this case. On July 17, 1992, CWS filed a response to the Public Staff's supplemental filing of July 15, 1992, in which it asserted that the only alternative is for the Commission to use the revenues contained in the schedules of the Public Staff and the Company that are a part of the record in this case.

Only after the record in this case was closed has an allegation been made that some adjustment for test year pro forma revenues is perhaps appropriate. The genesis of the post-hearing position taken by the Public Staff with respect to test period revenues is a series of questions and answers during the cross-examination of CWS witness Cuddie on her direct prefiled testimony. During her direct testimony, Ms. Cuddie was initially asked a series of questions having to do with end-of-period customers on cross-examination by the Attorney General. The purpose of that line of questions is not entirely clear from the record, but it appears that the Attorney General was attempting to compare the Company's customers at the end of the test year in this case with those at the end of the test year in its last general rate case.

Following the Attorney General, the Public Staff asked questions of witness Cuddie that appeared to be in the nature of clarification:

CROSS-EXAMINATION BY MR. DROOZ:

Q. Ms. Cuddie, the customer numbers that you just provided to the Attorney General, are those the number of water and sewer customers used to calculate pro forma revenues?
A. Yes. Those are the numbers.

Q. And likewise you would recommend that those be the numbers the Public Staff use to calculate pro forma revenues?
A. I believe those are the numbers that they were provided.

Q. And I missed the two set of numbers. Is it 17,548 water?
A. Yes.

Q. And 7,937 sewer?
A. Yes.

Q. And then 2,266 water availability?
A. Yes.

Mr. Drooz: Okay. Thank you. That's all I have.

The controversy on this issue was generated by witness Cuddie's statement that "those [are] the number of water and sewer customers used to calculate pro forma revenues." (Emphasis added). Ms. Cuddie's response to the question posed by the Public Staff leaves completely open the extent to which the customer numbers may have been adjusted, refined, discounted, added to, or subtracted from in the process of obtaining pro forma revenues.

As far as the Commission can determine, there was no subsequent mention made in the record of any disagreement over the level of test year revenues. In fact, the Public Staff, subsequent to Ms. Cuddie's direct testimony, sponsored its own expert testimony, with supporting exhibits and schedules, containing revenue levels which were in agreement with those offered by CWS.

Absent more compelling evidence, Ms. Cuddie's testimony regarding customer numbers made in response to questions without an apparent intent to lead toward an adjustment to test year revenues is insufficient to contradict the exhibits, schedules, and prefiled testimony offered by both the Public Staff and CWS as to the appropriate level of pro forma test year revenues.

In the motion for alternative procedures filed by the Public Staff on July 6, 1992, the Public Staff alleged that it originally accepted the numbers on end-of-period customers reflected in the Company's schedules, but because of "contradictory responses to several data requests," pursued the matter at the hearing. The Commission is puzzled as to why the Public Staff waited until the hearings took place to raise an issue of such importance and then raised it in such an oblique fashion. Further, if both the Public Staff and Attorney General wished to pursue the issue at the hearing, why did they not directly raise it through their own expert testimony or through cross-examination of Mr. Wenz, since he was the witness for CWS who sponsored the relevant exhibits and testified on rebuttal after Ms. Cuddie.

Furthermore, the Commission notes that a similar disparity exists in the testimony offered by Public Staff witness Andy Lee in Docket No. W-354, Sub 81. On page 4 of his testimony, Mr. Lee states that the Company was serving 17,122 water customers, 7,011 sewer customers and 2,331 availability customers at the end of the test year. Mr. Lee also detailed the billing units on Lee Exhibit 9, pages 1, 2 and 3 of his supplemental testimony. An analysis of that exhibit shows that when the monthly billing units are added together and divided by 12, there are 15,696 water customers, 6,106 sewer customers and 2,349 availability customers. The lower customer numbers (billing units) were used for determining revenues.

It is apparent to the Commission that factors exist, such as disconnected "connections" or the connection of multiple units on a master meter, that can result in different customer counts for both the Company and the Public Staff at different times for different purposes. In fact, Mr. Larsen, on page 34 of his prefiled testimony and in his Exhibit 13, raises a third method of counting customers, called customer equivalents. However, the one constant is that billing units were used to calculate revenues by both CWS and the Public Staff in their prefiled expert testimony. That testimony was never disavowed or changed in any way during the course of the hearing.

We also note that Mr. Wenz reconciled the revenue generated during the test year and agreed to by the parties by using billing units (Revised CJW Schedule D, 1 of 4), buttressing further the Company's position that calculations using billing units, as was done by both CWS and the Public Staff in this case, are in fact proper.

The Commission concludes that the most credible evidence of test year pro forma revenues is that contained in the application and the testimony and exhibits offered by CWS witness Wenz and Public Staff witnesses Larsen and Haywood. Ms. Cuddie's testimony on end-of-period customers, whether or not used to calculate pro forma revenues, is not direct evidence of pro forma revenues. The crucial question of whether or not intermediate adjustments were made to obtain billing units from end-of-period customers was not explored by the Public Staff, either through cross-examination of CWS witnesses Cuddie or Wenz or through revised testimony by Public Staff witnesses Larsen and Haywood. Whatever concerns Ms. Cuddie's answers raised with the Public Staff, there was no follow-up prior to the close of the record. The evidentiary record is now closed. Based on the evidence found to be the most credible, the Commission determines that the Company's test year pro forma service revenues are $7,189,400.

MISCELLANEOUS REVENUES

The first issue involves the revenues and expenses from the billing and collection services for the City of Charlotte (City). The Company states that expenses should be allocated out of the rate case to account for this service.

According to the Public Staff, an agreement exists between Water Service Corporation and the City relating to billing and collecting services for the City's sewer customers in three subdivisions (Lawyer's Station, Mallard's Crossing, and Courtney) in which CWS provides the water service and the City

provides the sewer service. Although the Applicant claims that this agreement is through Water Service Corporation, it uses all the data and resources (customer usage information, office employees, etc.) of CWS to provide this service.

The Company stated that Water Service Corporation uses an "insignificant amount of resources of CWS (Carolina Water)" for this service. However, the Applicant states that the only cost to Water Service Corporation is one hour per month of one person's time summarizing this information.

During cross-examination, witness Larsen explained the Public Staff's reasoning for this adjustment:

> Q. And isn't only the real legitimate adjustment that can be made one to identity the costs that are incurred in providing these billing services and to take them out?
>
> A. Yes, but I think we should also consider the value of this information.
>
> Q. You mean the allocation of the expense out ought to be based on how valuable it is?
>
> A. Well, this information is obviously a value to the City of Charlotte at the tune of $2.00 per customer per month and for Carolina Water to give this information away we believe they are subsidizing Water Service Corporation, or whoever is receiving these revenues.

Witness Larsen further explained in his testimony that as of the end of the test year, the Company maintained 556 accounts and was compensated $4.00 bi-monthly per customer for this service. Therefore, the annual revenue is $13,344 (556 x $4.00/2 mos. x 6 billing periods).

The Commission notes that CWS has acquired through its regulated operations information of value to CMUD, and has incurred the billing expense which also is of value to CMUD, but has allowed an unregulated affiliate to receive the benefit of revenues from CMUD without any compensation to CWS. The Commission concludes that this revenue should belong to CWS because it is through CWS's regulated operations that the information of value to CMUD is obtained. It is reasonable to allocate this revenue 70% ($9,341) to water and 30% ($4,003) to sewer. In so ruling, the Commission concludes that there should be no adjustment to remove expenses for providing this service to CMUD.

The next issue involves the following miscellaneous charges:

Reconnection Charges - Water
New Account Fee - Water
New Account Fee - Sewer
New Account Fee - Water and Sewer

The Applicant's current reconnection fee for water service that is discontinued for good cause or at the customer's request is $22.00, and the

proposed is $27.00. Also, the new customer account fee for water is currently $22.00 and proposed is $27.00; the new account fee for sewer is $16.50, whereas the proposed is $22.00. The Public Staff recommended that these fees remain unchanged.

Witness Larsen explained that while he did not disagree with the actions required to perform these services, he did disagree with the estimated time involved. Since the operators visit the systems on a daily basis, witness Larsen argued that the operators' time should not include travelling to and from the system. By removing the travel time, witness Larsen concluded that a cost of $22.34 is justified. Since this result is very close to the existing $22.00 charge, witness Larsen recommended that no change in any of these water fees be allowed. He also stated the sewer new account fee should remain unchanged because it takes even less time than setting up a water new account.

The Company maintains that its calculation of the time involved is appropriate and that the fees as requested should be approved. The Commission determines that even though an operator may visit a system for operational purposes on a frequent basis, the need to travel to the system for connection purpose requires additional time. The Commission agrees with the Company on this matter and, therefore, the Commission determines that the requested increases for these charges should be approved.

The Company has also requested to include the following language pertaining to Sewer Reconnection Charge in its tariff:

> Where an elder valve has been previously installed, a reconnection charge of $27.00 shall be due. Customers who ask to reconnect with 9 months of disconnection will be charged the monthly sewer charge for the service period they were disconnected.

Neither the Company nor the Public Staff addressed this matter in its testimony. The Commission is aware that similar language pertaining to the "9 months of disconnection" has been approved for Water Reconnection Charges; however, the Water Reconnection Charges were approved in previous proceedings based on evidence presented at that time.

CWS included the above language on its application. However, they did not address the merits of this request in their prefiled testimony or at the hearing. The Public Staff did not address this matter at any time. CWS is responsible for defending and justifying its request, which it failed to do in this matter.

Based on the above, the Commission is of the opinion that CWS requested to modify its Sewer Reconnect Charges, as stated above, should be denied.

The Company also requested an increase from $7.00 to $10.00 for the Returned Check Charge. The Public Staff agreed with the proposed charge of $10.00.

The Commission concludes that the proposed returned check charge of $10.00 is fair and is in line with the amounts charged by other utilities in the state of North Carolina.

The Company has also asked that a water meter testing fee of $20.00 be approved for customers who request meters be tested more frequently than every two years (unless the meter is found to be inaccurate, in which case the fee will be waived) be allowed. The Public Staff noted that although Commission Rule R7-22(b) only allows a charge of $2.50 for a residential meter (and greater charges for larger meters), they believed that this amount was outdated. The Public Staff agreed with the proposed charge.

The Commission agrees with the proposed charge and also notes that the following language from NCUC Rule R7-22 is still controlling:

> If a customer requests a test of a water meter more frequently than once in a twenty-four (24) month period, the Company will collect a [Twenty Dollar ($20)] service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24 month period without charge.

The last miscellaneous revenues issue involves the management fees. The Company included $10,250 of "management fees" in miscellaneous revenues that it received during the test year pursuant to contracts with developers in the Riverbend, Southwoods, Wolf Laurel, and Cabarrus Woods subdivisions. CWS collects these fees at a specified rate for each subdivision every time a new customer connects. The Public Staff recommended that in addition to these fees, $8,475 which was booked to Utilities, Inc., for the same services should also be included as management fees since Utilities, Inc., has already been paid by CWS for management services related to CWS operations. The Company did not rebut the Public Staff's adjustment.

The Commission is of the opinion that management fees of $10,250 plus $8,475 for a total of $18,725 should be included in miscellaneous revenues. It is reasonable to allocate this amount 70% or $13,108 to water operations and 30% or $5,617 to sewer operations.

UNCOLLECTIBLE REVENUES

Witnesses for both the Company and the Public Staff agree that the appropriate rate of uncollectible revenues is 1.22%. The difference in the level of uncollectible revenues between the Company and the Public Staff results from the different levels of service revenues and miscellaneous revenues recommended by each party.

The Commission concludes that the appropriate rate of uncollectible revenue is 1.22%. Based upon its conclusions elsewhere herein regarding revenues, the Commission concludes the appropriate level of uncollectibles is $59,389 for water operations and $30,387 for sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate end of period level of gross service revenue is $4,745,041 for water operations and $2,444,359 for sewer operations; miscellaneous revenues are $122,876 for water operations and $46,359 for sewer operations. The Commission also concludes that it is appropriate to reduce these revenues by $59,389 for water operations and $30,387 for sewer operations as uncollectible revenue.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NOS. 70-95

The evidence supporting these findings of facts is found in the testimony of Public Staff witnesses Larsen and Haywood and Company witness Daniel, Cuddie and Wenz.

The following differences remain between the Public Staff and the Company concerning operation and maintenance expenses:

Item	Public Staff	Company	Difference
Salaries & Wages	$1,093,934	$1,178,587	$(84,653)
Purchased Power	754,324	754,324	0
Purchased Water	61,634	61,634	0
Maintenance & Repair	826,845	826,845	0
Maintenance Testing	155,670	204,023	(48,353)
Chemicals	174,803	174,803	0
Transportation Expense	185,021	195,432	(10,411)
Operating Exp. - Plant	(335,756)	(361,889)	26,133
Outside Services - Other	144,180	145,791	(1,611)
Water service charges	145,430	145,430	0
Total	$3,206,085	$3,324,980	$(118,895)

As the chart shows, the Public Staff and the Company agreed on the amounts for purchased power, purchased water, maintenance and repair testing, chemicals, and water service charges. Therefore, the Commission concludes the appropriate level for these items are those set forth by both parties.

SALARIES AND WAGES-O&M

This issue involves the allocation of salary expense and vehicles expense to the non-regulated contract water and sewer systems. Several disagreements arose over this issue between the Company and the Public Staff. In total, the Company has allocated 3.13 employees to the operations of the 4 contract water and 14 contract sewer systems, whereas the Public Staff has allocated out 4.41 employees.

According to witness Larsen's evaluation of the contracts:

> The contracts require the owner of the system (client) to pay for repairs that are outside the scope of normal maintenance and also to pay for chemicals, electric power for the plant, and testing fees. The contract operator (Water Service Corporation) provides the system with a certified operator and completes all monthly reports that must be submitted to DEH for water systems, or DEM. In addition, the

operator performs routine maintenance on the facility, monitors lift stations (if applicable), collects and analyzes samples in the field and transports other samples to laboratories for analysis, arranges and supervises repair services that are outside the scope of routine maintenance, is responsible for procuring chemicals, and maintains correct chemical feed rates and levels. Also, the operator will repair the plant in the event of any malfunction, damage, or loss of any part of the facility during normal operation hours. Action that is required at times other than during normal inspection is subject to a $40 per hour charge to the client.

The annual revenue from these contract operations is $156,756.

Carteret Systems

The first area of difference relates to the ten sewer systems and one water system in the Carteret County area. The Company allocated 1.5 employees (Jeff Pruitt - full time and John Cunningham - half-time) to these plants. During his field investigation, witness Larsen discovered that Isaac Boyd, another full-time operator, operates one of these ten systems. In addition, witness Larsen reviewed the monthly monitoring reports for the sewer plants and learned that Pruitt is listed as the Operator In Responsible Charge (ORC) on only 62% of the reports, Cunningham on 25% and Boyd on 13%. Since Pruitt is full-time and is listed as ORC for 62% of the reports, witness Larsen stated that it is reasonable that Boyd should be allocated at 21.0% (13%/62%) for these plants.

Witness Larsen applied the same reasoning to laboratory sampling time for these plants. Pruitt as a full-time employee on these plants is responsible for 19% of the lab sampling, and Boyd is listed as responsible for 78% of the lab sampling. Witness Larsen assumed that sampling only takes about one twentieth (1/20) of the operator's time, and concluded that Boyd should be assigned to these plants 20.8% of the time (78%/19% x 1/20). Witness Larsen added that laboratory sampling frequency for these contract systems ranges from 3 to 12 samples per month. Assuming 1/20 of the operator's time for this function is reasonable. Witness Larsen averaged the ORC and lab sampling allocations, which are very close to begin with, and arrived at 20.9% that should be removed for Boyd.

The Company testified that being the ORC of a system has "little, if any, relation to the amount of time an operator actually spends operating a plant."

Clearly, Mr. Boyd is the ORC for some of these contract plants since he signs as the ORC on monitoring reports sent to DEM every month. It is inconceivable that he would sign the monitoring reports without taking time to familiarize himself with what is going on at the plant and at least occasionally making personal inspections. In addition, lab sampling is time consuming, and it is performed by Boyd as well as Pruitt and Cunningham. Given that Boyd is working on these contract plants as ORC and doing lab sampling for them, some of his time should be allocated to these contract operations. Moreover, the field investigation showed that Boyd operates one plant, in addition to signing the monitoring reports and doing lab sampling for other plants. The Company's allocation of zero time for Boyd is unreasonable. The Public Staff's allocation of 20.9% of his time is reasonable on the record evidence.

The Company argued that the 1.5 operator allocation approved in Sub 81 was appropriate in this case because there are two fewer contract plants in the Carteret area than at the time of Sub 81. This is not a compelling argument. The evidence in this case shows that Pruitt, Cunningham, and Boyd all three work on these contract plants. Moreover, CWS has about 3 systems per operator and multiple levels of management for its regulated operations, which shows that its allocation of 7 systems per operator (10 sewer and 1 water divided by 1.5 operators) and zero levels of management for the Carteret contract plants is understated.

The Company also stated that past Commission orders in Subs 69 and 81 regarding this issue should dictate how the Commission rules here. The Commission notes its own Order in Sub 81 that refers back to the Sub 69 case in which the Company questioned Public Staff witness Lee:

> 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....

(Docket No. W-354, Sub 81, Order Granting Partial Rate Increase, 80 NCUC Reports at pp. 413-14.)

> Further in that Order, the Commission found:
>
> 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.

(Id. at p. 414.)

The Commission notes that in this docket, the Public Staff performed an investigation into this issue, including on-site visits to the contract plants and discussions with the contract plant operators and their managers, and has presented expert testimony concerning the facts about the operations of these plants. Therefore, the Commission finds the Public Staff testimony deserves greater weight than in past cases.

The Commission concludes that based upon the first-hand information provided by witness Larsen as well as reasonableness of the adjustments, 20.9% of the salary of Isaac Boyd should be allocated out of the Company's operating expenses along with the full salary of Jeff Pruitt and one-half salary of John Cunningham.

Topsail Green

The next area of conflict is the Topsail Green contract water and sewer system located in Pender County. The Company allocated out 25% of the salary of Edward Hairston, an operator in training who is assigned to this water and sewer system. In addition to this adjustment, the Public Staff recommended that 25% of the salary of Tony Baldwin, who is an operator in this area, be allocated out.

According to witness Larsen, Hairston is only a trainee, has no water certification, and only has a Grade I sewer certification. This is confirmed by Daniel Exhibit 3, although apparently Hairston did obtain a C-well water license by the time rebuttal was filed. DEM requires that the ORC possess a certification level equal to or higher than the level of the plant the ORC is operating. Topsail Green is a Grade II sewer plant; therefore, Hairston cannot be the ORC. Also, the Public Staff's field investigation revealed that Tony Baldwin has replaced Kenneth Hamrick as the operator of this system. Kenneth Hamrick, who is a Carolina Water employee currently operating non-Carolina Water systems in Cumberland County, was listed as the ORC for this system during the test year.

In addition, witness Larsen discovered that while Baldwin and Hamrick are full time employees with benefits such as retirement and health insurance, Hairston is listed as part-time, only earned $3,520 during the test year, and is proformed out at the same annual pay. Therefore, the Company's adjustment to remove a portion of Hairston's salary only amounts to $880 (25% of $3,520) and does not include any benefits. This contract plant has a monthly revenue of $800, or $9,600 annually, while the Company is only accounting for $880 of annual salary expense.

The Commission gives great weight to witness Larsen's testimony that a Company manager directly told him that Tony Baldwin operated the Topsail Green system. The Commission also notes that Hairston is a trainee and is apparently being trained 25% on contract plants and 75% on regulated systems. The Public Staff's allocation of 25% of the operator's salary -- Tony Baldwin -- in addition to the trainee's salary, is reasonable. The Company's allocation of only $880 annual salary expense to run a contract water and sewer system which has annual revenues of $9,600 is unreasonable.

Supervisor Time - Carteret Systems and Topsail Green

Joe Lawrence is the CWS Area Manager who supervises the CWS employees who work on the Carteret County contract systems and on Topsail Green. The Public Staff allocated out 36.7% of Lawrence's salary because a total of 2.2 of the six employees for whom he is responsible work on contract systems. Since these employees are under direct supervision of Lawrence, the Public Staff argued that his salary should be allocated accordingly, which is the methodolgy the Commission used in the last CWS rate case.

The Company did not make any adjustment to Lawrence's salary, stating that there is essentially no supervisory time involved in contract plants. The Commission finds this surprising since the Company has numerous levels of management on its regulated side including Operator - Operating Manager - Area Manager - Regional Manager - Vice President of Operations (North Carolina) - Manager of Corporate Operations - Vice President of Operations (Northbrook, IL) - President and Chief Executive Officer. This is in great contrast to its claim that there isn't even one level of management on its unregulated systems. The Commission notes that in the Company's last rate case that 3/16 or 18.8% of Lawrence's salary was allocated to the contract plants. The Commission's decision at that time was based upon the fact that Lawrence was the manager of Cunningham and Pruitt. The Public Staff's recommendation of the removal of 36.7% of Lawrence's salary is based upon the same logic of employee/supervisor

relationship. Moreover, witness Larsen stated that in addition to managerial duties, Mr. Lawrence assisted in obtaining some of these contract plants. Finally, the Public Staff's Daniel Rebuttal Cross-examination Exhibit 3 shows that Lawrence as Area Manger/Project Manager is assigned responsibility for contract plants on a CWS organization chart. On this organization chart, Mr. Lawrence is responsible for 4 regulated systems, compared to 11 contract systems, which indicates that a 36.7% allocation to contract systems is more likely to be too low than too high. Based on the foregoing, it would be inappropriate to allocate none of Mr. Lawrence's time to contract operations as the Company recommends. The Commission agrees with the Public Staff's adjustment to allocate out 36.7% of the salary of Joe Lawrence.

Ocean Sands

The next area of discussion in the contract plants is the Ocean Sands system located in Currituck County. This system is quite large and has 440 water and 440 sewer customers. In addition to the normal contract operator responsibilities, the Company also reads the individual meters on behalf of Currituck County, which owns the system. The Company also has two franchised water and sewer systems in this area: Corolla Light with 227 water and 195 sewer customers and Monteray Shores with 54 water and 49 sewer customers. The Company assigns one operator to each of these systems and one operator to Ocean Sands.

The Oceans Sands water system has several wells, treatment equipment consisting of chlorination and soda ash chemical feed equipment and manganese greensand filters, and hydropneumatic storage. The sewer system has 6 lift stations, a 300,000 gpd wastewater treatment plant, five rotary disposal fields and one drain field. The Corolla Light water system has several wells, treatment equipment consisting of chlorination equipment and manganese greensand filters, and a 150,000 gallon elevated storage tank. The sewer system has six lift stations, two sewer plants for a total of 180,000 gpd, two rotary fields and one drain field. The Monteray Shores water system has several wells, treatment equipment consisting of chlorination and polyphosphate sequestration chemical feed equipment, and hydropneumatic storage tanks. The sewer system has six lift stations and a 180,000 gpd treatment plant that has four rotary fields.

The Company has assigned 100% of the salary of Billy Hodges to the Oceans Sands system, but Hodges is not listed as a Carolina Water employee so no adjustment has been made. According to witness Larsen, Corolla Light is operated by Joel Norris, the operating manager for this area, and the Monteray Shores system is operated by Matt Palmiter, an operator in training, who works the Oceans Sands system as well.

Due to the larger size of the Ocean Sands system (660 customer equivalents vs. Corolla Light with 325 and Monteray Shores with 79) as well as the complexity and added responsibilities of it (i.e., meter reading), the Public Staff recommended that, in addition to Hodges' salary being excluded, one fourth or 25.0% of Palmiter's salary be allocated to this contract plant for time worked on it.

The Public Staff also allocated out a portion of the salary of Norris, since he is an operating manager and supervises employees as well as operates systems. The Public Staff assumed that Norris spends at least one-fourth of his time in

a supervisory position over Hodges and Palmiter; and therefore, recommended that 15.6% of Norris' salary be allocated to the Ocean Sands system. The Public Staff arrived at this adjustment by multiplying 25% supervisory time by the ratio of contract employees supervised (1.25/2.0). This adjustment is consistent with the Commission's methodology in the Company's last general rate case and the Commission's decision for the supervisory time of Joe Lawrence.

The Commission accepts the results of the Public Staff's investigation which revealed that Palmiter is an operator in training and works on both the Monteray Shores system and the Ocean Sands system. Considering that Ocean Sands is much larger than Monteray Shores and Corolla Light, as well as the other facts in this case, the Commission concludes that the Public Staff's allocation of 25% of the salary of Matt Palmiter to Ocean Sands is reasonable. Consistent with the methodology used by the Commission in the last CWS rate case for supervisor time, and consistent with Mr. Larsen's recommendation, the Commission also concludes that 15.6% of Mr. Norris' salary should be allocated to supervision of contract plant operators at Ocean Sands.

Wolf Laurel/Sherwood Forest Contract Operations

The last area of dispute was the Wolf Laurel sewer system and the Sherwood Forest sewer system. In its application, the Applicant listed Diane Coughlin, a part-time employee, as the operator of the Wolf Laurel contract system. Although the Company has allocated out Coughlin at one-eighth time or 12.5% for this system, she worked less than 400 hours in the test year (average 7.5 hours per week) and is proformed out at the same level. Therefore, the allocation to this sewer plant only amounts to $331 annual salary, whereas the revenues are $10,836.

The Public Staff's investigation reveals that Coughlin has no water or sewer certification, and Bennie Shelton, another Carolina Water operator in the area, visits the system daily and also is listed on the monitoring reports as the person collecting the samples. The Public Staff recommended that 12.5% or one hour per day of Shelton's salary be allocated to this system. This is consistent with the Company's allocation of one-eighth of an operator (full-time) to this plant. Coughlin at one-eighth time amounts to less than one hour per week.

In addition, the Public Staff explained that Aubrey Deaver, Area Manager, is listed as the ORC for Wolf Laurel since this system is a Grade II plant and Shelton is only a Grade I operator whereas Deaver is a Grade IV. The Public Staff's investigation further revealed that Deaver visits this system weekly; consequently, the Public Staff recommended that 2.5% of Deaver's salary or one hour per week be assigned to this contract system.

The Company lists Nick Daniels as the operator for the Sherwood Forest contract sewer system at 8.3% or one-twelfth time. The Public Staff agreed with this adjustment. However, Daniels does not possess any water or sewer certification and Deaver is listed as the ORC. Since the Sherwood Forest system is comprised of a sand bed filter and is a relatively simple operation, the Public Staff recommended that Deaver be assigned to this plant at only 2.5% or one hour per week.

In addition to these adjustments, the Public Staff recommended that another 4.9% of the salary of Deaver be allocated out since Deaver is the supervisor over a total of three and one-eighth employees (Full Time - Bennie Shelton, Nick Daniels, and Avery McKinney, and 1/8 time - Diane Coughlin). By adding up 12.5% for Coughlin (Wolf Laurel), 28.3% for Daniels (the Company has allocated 20% for the operation of a Tennessee system and 8.3% to the Sherwood Forest system), and 12.5% for Shelton, dividing this sum by the total (312.5%), and multiplying by the Company's allocation of Deaver to Carolina Water (28.6%), the Public Staff arrived at 4.9%. In summary, the Public Staff calculated that Deaver should be allocated out 9.9% (2.5% + 2.5% + 4.9%) more than the Company stated.

The Company agreed in rebuttal with all of the above listed adjustments for these two plants except the supervisory time of Aubrey Deaver. Mr. Daniel argued again that contract operations do not require supervisory time.

The Commission agrees with the Public Staff's adjustment to allocate 4.9% of Deaver's time for supervision of contract plant operators. This adjustment is consistent with the methodology used for supervisor time in the last rate case, and it is a small amount of time which is quite fair to CWS, for supervision of operations at two contract sewer plants.

Overall Review

CWS has allocated 3.13 operators to 14 sewer and 4 water contract systems and not all of these operators were full time at the time of allocation. Witness Larsen determined that this was 6.7 contract systems per full time operator equivalent. This appears inadequate to the Commission. The Public Staff's allocation of 4.4 operators (not full time equivalents) to contract systems still provides a significantly higher systems per operator ratio than the Company has on its regulated side. Also the Public Staff has allocated very little supervisor time -- less than one full time equivalent (which is included in the 4.4 number) -- to all the contract operations. Even accepting that contract plants involve less operator time and much less supervisor time than regulated operations, the Public Staff's allocations are fair and reasonable.

TRANSPORTATION EXPENSES

This issue has to do with the allocation to remove a portion of the CWS transportation expense because it is incurred in contract and non-CWS operations. The Commission concludes that the allocations that apply to transportation expense should be the same as the allocations of the operators. The Public Staff testified that vehicle expense is directly related to the time spent on particular systems by the employees assigned to those vehicles. In its rebuttal testimony, the Company agreed with the theory of the Public Staff's adjustment, although CWS did not agree with all the specific allocations and adjustments to salaries. The Commission concludes that this methodology is appropriate. Having elsewhere found that the Public Staff's adjustments and allocations to salaries are reasonable, the Commission concludes that the $10,411 adjustment to remove transportation expense is proper.

PIED PIPER EMERGENCY OPERATIONS

This issue pertains to the allocation of operating expenses for the Pied Piper emergency operator water system. CWS is the emergency operator trustee of Pied Piper. Public Staff witness Larsen stated that 15.4% of the salary of the CWS operator who runs this system should be removed from pro forma expenses in this case. On the other hand, Company witness Daniel stated that the customers of Carolina Water should subsidize this operation.

During cross-examination, Public Staff witness Larsen reiterated the Public Staff's position by stating that upon review of the Pied Piper annual report, many other operating expenses have already been allocated out. Witness Larsen went on to say that an emergency operator system should be a "stand alone system" and if a rate increase is necessary for Pied Piper, then the Company needs to apply for it.

According to Company witness Daniel, the CWS view of emergency operations is based upon the precept that the customers of one utility should help the customers of another utility by subsidizing it.

The Commission notes that Pied Piper is under a separate docket (W-893, Sub 1) and has rates ($15.00 per month) that differ from the CWS uniform rates. The Commission concludes that emergency operator systems should be "stand alone" systems and have separate accounting. There is no good reason why CWS customers should subsidize the customers of Pied Piper. Therefore, the Commission concludes that the removal of 15.4% of the salary of Howard Allen for purposes of setting CWS rates is appropriate.

RAINTREE/GENOA

This issue involves the operator expenses for the Raintree/Genoa water systems. These water systems account for 807 customers and include Raintree, Lakewood, Southern Plaza, Rollingwood, Robin Lakes, Foxfire, and Hickory Hills. These systems were sold in March of 1992 to a Sanitary District in Wayne County. While the Public Staff's adjustment removed one and one-half employees for this change, the Company contended that only one employee should be removed and he had already been removed.

According to witness Larsen, Wyman McDaniel was the operator of these systems and was not responsible for any other system. In addition, witness Larsen recommended the removal of one half of the salary of Joel Clark, McDaniel's supervisor. To support his argument, witness Larsen explained that the Applicant's other systems in this area are operated by Chris Lee of Carolina Water and include Willowbrook - water and sewer, White Oak - water and sewer, Kings Grant - sewer, and Ashley Hills - sewer. These four remaining systems only account for 495 customer equivalents, much less than the 807 of Raintree/Genoa. Witness Larsen concluded that since Clark now only supervises one employee (Lee) instead of two (Lee and McDaniel), that one-half of his salary should be excluded.

The Company stated that only one operator's salary should be excluded due to the loss of the Raintree/Genoa systems; namely that of Ken Hamrick. According to the Company, McDaniel and Clark now operate the Vander systems which only

include four systems. The previous operator of the Vander systems was Tony Baldwin, who was transferred to the coast to replace Hamrick. Now, according to the Company, Hamrick is the only operator of the Clearwater systems, owned by CWS Systems, Inc. The net effect of all these changes, according to CWS, is that only one operator has been removed from working on CWS regulated operations as a result of the sale of the eight Genoa/Raintree water systems.

On redirect, witness Larsen discussed the net effect of CWS's allocation:

Q. How many salaries have they now allocated out for the sale of these eight systems and 807 customers?
A. One.

Q. Do you believe that is sufficient amount?
A. No, I do not.

Witness Larsen also explained that only one operator was assigned to the Clearwater Systems.

Q. How many water systems are there under the name Clearwater?
A. There are 12 systems in four different counties.

Q. Are those systems operated by someone from Carolina Water Service to your knowledge.
A. Yes, they are.

Q. And who is that according to the company?
A. Ken Hamrick, H-a-m-r-i-c-k..

Q. To your knowledge, is his salary the only salary they have allocated out to the Clearwater Systems?
A. To my knowledge, it is, yes.

The Clearwater systems belong to an affiliate company, CWS Systems, Inc.

The Commission notes that the Company has an overall ratio of approximately one operator for every three systems. DEH requires no more than one ORC for every five water systems. Although the Commission realizes that some systems are more complex and may require more attention than other, the Company's allocation of two full-time employees (McDaniel and Clark) for the Vander Systems which account for a total of four water systems, while at the same time only allocating one operator for twelve Clearwater systems is very inconsistent.

The Commission concludes that witness Larsen's adjustment is reasonable. Even though McDaniel and Clark may be working 100% on CWS regulated systems, the sale of eight water systems would mean at least 1.6 operators would no longer be needed under DEH requirements. Larsen removed salaries for 1.5 operators. In addition, CWS's claim that only one full time equivalent operator is assigned to

the twelve rundown Clearwater water systems plainly shows that not enough operators have been allocated to these non-CWS systems for which CWS supplies the labor. For the foregoing reasons, the Commission adopts the Public Staff adjustment to remove 1.5 operator salaries in connection with the sale of the Genoa/Raintree systems.

MAINTENANCE TESTING

This issue involves the proper level of maintenance testing expense. Although the Company and the Public Staff agreed on the level of sewer testing expense, they differed on water testing expense. The Commission will discuss each type of water test separately.

Bacteriological

While the Public Staff agreed with the frequency of the testing and the number of tests claimed by the Company, they disagreed with the cost of this test. In its proformed cost, the Applicant used a cost per test of $18.00. This was based on a sewer effluent fecal coliform bacteria test instead of a water coliform bacteria test and, therefore, is incorrect. During his review of the invoices, witness Larsen discovered that the Company pays $10.00 to $25.00 per test, depending on which lab is used. In his calculations, witness Larsen used $15.42, which is the weighted average of all the costs, and he determined that $17,394 is the proper level for this account. The Applicant had requested $21,600. The Company did not rebut the Public Staff's adjustment. The Commission concludes that the Public Staff's adjustment is reasonable.

TTHM (Total Trihalomethanes)

Although the Public Staff agreed with the number of samples, the frequency of the testing, and the cost of each test, they disagreed with the annual level of this expense. Witness Larsen pointed out that DEH requires that each water system providing disinfection (chlorination) perform TTHM tests in four consecutive quarters. After this first year of testing, the utility is only required to test once a year provided that the first four tests are in compliance. The Company calculated the annual amount assuming the quarterly testing on an ongoing basis, which is not required. The Public Staff amortized three years of testing (first year - quarterly, second and third years - annually) and determined that an annual cost of $10,400 should be allowed. (The Company had calculated a level of $22,100.) The Public Staff used a three-year period for amortization since this is the typical and usual time period assumed between rate cases.

The Company did not offer any rebuttal evidence to Mr. Larsen's adjustment for TTHM testing cost. Therefore, the Commission concludes that the Public Staff's level of expense is proper.

Lead and Copper

Witness Larsen explained that DEH requires that lead and copper testing begin in July of 1992 for water systems with populations greater than 3,300. (DEH translates connections to population by assuming 3.5 people for each connection.) Systems with populations less than 3,300 do not have to begin

testing until July 1993. CWS's only systems with populations over 3,300 are Pine Knoll Shores and Sugar Mountain, in which two series of 40 tests are required on each system for a total of 80 per system. After the first year, the sampling is annually instead of semi-annually and the number of tests, provided the results are within compliance, are 20 each rather than 40 as in the first year. This reduces the testing from 80 samples per system in the first year to only 20 samples per system in the future years.

The Applicant has included all of its systems in calculating this expense, and initially assumed the maximum (first year) sampling level. The Public Staff included Pine Knoll Shores and Sugar Mountain because the effective date of this requirement (July 1992) for those systems is so near the close of hearing date that it can be considered a known and actual change in testing expense. However, this test does not apply to Carolina Water's other systems until July 1993, and the Public Staff did not consider this sufficiently near the close of hearing to be a known and actual change in testing expense. It is quite possible that the requirement will change between now and July 1993, as it did with VOC tests or that the number of Carolina Water systems which will incur this expense will change by then.

In calculating this expense, witness Larsen figured 80 tests per system the first year (for Pine Knoll Shores and Sugar Mountain only), 20 the second and consecutive years, and a three-year amortization period similar to the TTHM adjustment. The Public Staff's calculated level is $3,000 while the Company's is $42,000.

CWS witness Daniel disagreed with Mr. Larsen's adjustment on the grounds that the lead and copper tests which do not take effect for systems with less than 3,300 customers until July 1993 are known and measurable changes in the test year expense level.

The Company's reasoning on the lead and copper test expense for systems with less than 3,300 customers is faulty for two reasons:

1) It is an expense that will not even begin until over a year after the close of the hearings in this case, so CWS would overcollect by recovering a "representative" level of lead and copper test expense for smaller systems beginning this August.

2) The rule does not become effective until July 1993 for such systems, and this creates uncertainty about the proper expense level because the requirement could become less stringent in terms of number of tests, as happened with VOC tests, or through sales or acquisitions the number of CWS systems subject to the test could change.

The Commission agrees that the Company should be allowed the annual expense of this testing requirement for the systems it must test beginning in 1992; however, it should not be allowed rates for expenses that do not currently exist and that will not exist for the next year, and that are uncertain in that they may change. This future expense, if it ever comes to pass as speculated, must be recovered in rates in future proceedings, not with rates in this proceeding. Therefore, the Commission determines that the $3,000 expense level for this test is appropriate.

VOC

The Company requested $28,782 for this expense. The Public Staff, through witness Larsen, calculated that the proper expense for this test should be $19,429. The Public Staff included the effects of the DEH's "new" VOC less stringent requirements whereas the Company ignored this fact.

According to the updated information provided by witness Larsen at the hearing, the new VOC testing requirements are as follows:

"Regulated" VOC's

Less than 150 population	1 test per 5 years
150 to 500 population	2 tests per 5 years
Greater than 500 population	2 tests per 3 years

"Unregulated" VOC's 1 test per 5 years

The "old" VOC testing requirement the Company used assumed four quarterly tests per well and sampling once every three years for systems with population greater than 500 and once every five years for systems with a population less than 500.

The Commission concludes that the new VOC testing requirement is the proper one to use and that the level calculated by the Public Staff, $19,429, is the proper level of expense.

Inorganic and Radiological

The Public Staff and the Company agree on the level of expense for these two tests. The Commission concludes that the $5,333 amount for inorganic and $1,300 for radiological is the proper annual level for these tests.

Overall

In summary, the Commission concludes that the proper level for all water tests is $56,856.

OPERATING EXPENSES CHARGED TO PLANT

Witnesses for both the Company and the Public Staff used the same methodology in calculating operating expenses charged to plant. The difference between the parties arises due to the difference in salaries and wages as recommended by the parties as discussed in the Evidence and Conclusions for Findings of Fact Nos. 71 and 80.

The Commission agrees with the methodology used by both parties in calculating operating expenses charged to plant. The Commission further agrees with Mr. Larsen's allocation methodology which reduces salaries and wages.

Consistent with the Commission's determination of operators' salaries, the Commission concludes that the appropriate level of operating expenses charged to plant to be included in this proceeding is $335,756, of which $248,881 is for water operations and $86,875 is for sewer operations.

OUTSIDE SERVICES - OTHER

The parties differ on the level of outside services - other. The difference is a result of the Public Staff's adjustment for the removal of $1,611 for legal fees related to the Company's attempt to purchase the ROE water system. Public Staff witness Haywood testified that the Commission has not approved an application for transfer and that, for that reason, the legal fees incurred by CWS should not be included in this general rate case.

The Commission has thoroughly reviewed the adjustment proposed by the Public Staff to outside services - other. The Commission concludes that the costs related to the Company's attempt to purchase the ROE water system are not proper utility expenditures to be included in the Company's cost of service in view of the fact that an application for transfer has never been approved by the Commission. Furthermore, we note that CWS presented no rebuttal testimony on this issue, but instead chose to deal with the matter through cross-examination of Public Staff witness Haywood. We find witness Haywood's testimony in support of her proposed accounting adjustment to be dispositive of the issue. Hopefully, the Company will ultimately recoup the legal fees in question through the consent judgment, which the Company references in its proposed Order, against the owner of the ROE water system. Based on the foregoing, the Commission concludes that the proper level of outside services - other is $144,180, of which $99,282 is allocated to water operations and $44,898 is allocated to sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of operation and maintenance expenses is $3,206,085, of which $2,051,285 is applicable to water operations and $1,154,800 is applicable to sewer operations

GENERAL EXPENSES

The following chart indicates the differences between the Public Staff and the Company for general expenses:

Item	Public Staff	Company	Difference
Salaries & Wages	$187,907	$200,802	$(12,895)
Office Supplies & Other	155,089	155,089	0
Rate Case Expense	111,879	136,405	(24,526)
Pension & Other	329,370	350,558	(21,188)
Rent	132,098	132,098	0
Insurance	175,531	175,531	0
Office Utilities	146,911	146,911	0
Meter Reading	3,037	3,037	0
Miscellaneous	120,653	120,653	0
Water Service Charges	145,428	145,428	0
Interest on Deposits	8,263	8,263	0
Alloc. from Sewer Systems	(8,300)	0	(8,300)
Alloc. of Northbrook Exp.	(171,654)	(1,322)	(170,332)
Total	$1,336,212	$1,573,453	$(237,241)

As shown above, the Company and the Public Staff agreed on the amounts for office supplies, rent, insurance, office utilities, meter reading, miscellaneous, water service/charges and interest on customer deposits. Therefore, the Commission finds these amounts appropriate in the determination of general expenses.

SALARIES AND WAGES - GENERAL

This issue involves the allocation of indirect expenses shared among the various Utilities, Inc., affiliates. While using the same methodology as the Company, Public Staff witness Larsen updated the allocations to include all systems operated out of North Carolina offices or with the Company's personnel. The Company agreed with the Public Staff's allocations except for one area: the office allocation of the of the Connestee Falls system (a separate subsidiary of Utilities, Inc.). Therefore, this discussion will only include this contested issue.

The Public Staff's allocation of the Connestee Falls system is similar to the other allocations, that is, it is computed on a customer equivalency basis.

According to witness Wenz:

> Connestee Falls is presently served by an office and customer service representative at an on-site location. This office will not be eliminated for several months. Incorporating the billing function at an alternative CWS office will not occur until 1993.

The Commission notes that this situation is in conflict with the Company's continuous claim of "economies of scale" since it would be cost effective to incorporate the administrative functions of this system into the Company's existing office and staff. The Commission is also concerned that this change in office expense allocation is in the Company's hands, but the Company apparently

does not intend to make any changes until the rate case is over. CWS expects to eliminate the Connestee Falls office in the next year and perform its functions from other existing CWS offices. This gives the Company a higher operating expense for this rate case than it expects to incur.

The Commission concludes that the allocations of the Public Staff are fair and reasonable and should be applied in their entirety. The Company has stated that it will eliminate the Connestee Falls office, which means this non-CWS system will be served by CWS employees in the CWS Charlotte office. This known change justifies an allocation. Therefore, the Commission accepts the Public Staff's updated allocation of office salaries.

RATE CASE EXPENSES

The differences between the parties are as follows:

Item	Public Staff	Company	Difference
Legal Fees	$ 50,914	$ 97,123	($46,209)
WSC Personnel	83,617	86,377	(2,760)
Customer Notices	19,066	19,066	0
Travel	5,688	8,410	(2,722)
Outside Witnesses	0	9,450	(9,450)
Audit and Filing	3,704	3,704	0
Subtotal	162,989	224,130	(61,141)
Amortize over three years	54,330	74,710	(20,380)
Amortization of Sub 69	8,691	8,691	0
Amortization of Sub 69 Appeal	13,671	13,671	0
Amortization of M-100 Sub 113	1,959	1,959	0
Amortization of Sub 81	24,232	24,232	0
Amortization of Miscellaneous	8,997	13,142	(4,145)
Total Sub 111	$111,880	$136,405	$(24,525)

The first area of disagreement between the Company and the Public Staff relates to the amount of legal fees incurred for this proceeding.

Ms. Haywood testified that $50,914 is the proper amount because this is the amount approved by the Commission in Docket No. W-354, Sub 81. To support this position Ms. Haywood testified that public hearings in this case were limited to six, while twice as many were held in Sub 81. She testified that the number of witnesses in this case was four instead of seven in Sub 81. Ms. Haywood testified that rate of return has been stipulated in this case while it was contested in Sub 81. Ms. Haywood testified that the hourly rates for the Company's attorney have decreased since the last case.

On rebuttal, Ms. Cuddie testified for CWS that the full request $97,123 should be allowed. The difference in legal expense is $46,209. Due to the filing of rebuttal there are five company witnesses and two outside engineering witnesses. Ms. Cuddie provided a specific breakdown of the legal expenses for the case. Ms. Cuddie stressed that CWS rate cases are precedential for the industry and are enthusiastically contested by the Public Staff.

The Commission determines that the legal expense portion of rate case expense should be $97,123. It is inappropriate to establish the level of an

expense to recover through rates based upon the level approved by the Commission in another case that was litigated two years ago. The Commission notes that the Public Staff has not identified any expense that is unreasonable or unnecessary. While some features of this case required less time than in Sub 81, others required substantially more. There were many procedural disputes and negotiations during discovery. In addition, a hearing was held in Sylva, a remote and distant location. The issues in the case are many and complex. The consumer advocates relied upon five attorneys during the technical portion of the case. A number of other attorneys appeared at the field hearings. A fundamental issue raised by the Public Staff in this case involves the issue of including in rate base plant with capacity for future growth. Resolution of this issue requires legal analysis of G.S. 62-133 and the cases interpreting that statute.

CWS has presented a detailed breakdown of the actual and projected legal expense in this case and the Commission concludes that the level of legal fees proposed by the Company in the amount of $97,123 is appropriate.

The next area of disagreement between the parties relates to the amount of WSC personnel salaries and travel expense to be included in rate case expenses. The Public Staff is recommending that $2,760 of WSC personnel salaries and $2,722 of travel costs be removed from rate case expense for Sub 111. These amounts relate to the forty hours of time for two WSC personnel who attended the customer hearings in North Carolina and the related travel expense. The Public Staff contends that the WSC personnel did not provide any additional benefits to the North Carolina ratepayers than the Vice-President and Regional Director of Operations, Carl Daniel, was capable of providing to CWS customers. In other words, Ms. Cuddie did not answer any customer questions or concerns that Mr. Daniel could not have sufficiently handled.

Ms. Cuddie testified that CWS deems it necessary to have WSC Northbrook representatives present at the hearings. Only one WSC representative from the Northbrook office attended each of the four smaller hearings, and two attended the two largest hearings. CWS sent these WSC representatives to evaluate comments of the customers in light of the continuing effort to maximize customer service. The WSC Northbrook representatives fielded customer questions and demonstrated to customers the importance of their concerns by being present to hear them.

The Commission has carefully considered the evidence relating to the appropriate amount of WSC personnel costs and travel costs related to this proceeding. The Commission concludes that the evidence presented by both parties has merit and is faced with the determination of adopting an appropriate level of these costs. Accordingly, the Commission concludes that the differences between the parties of $2,760 for WSC personnel and $2,722 in travel costs should be divided equally in determining a reasonable and appropriate level for use in this proceeding. Therefore, the Commission concludes that the appropriate level of WSC personnel costs is $84,997 and travel costs is $7,049.

An additional area in dispute is the outside witness fees paid by Carolina Water Service in this proceeding. The Company has included $9,450 in rate case expense for two outside witnesses, Dale Stewart and Frank Seidman, whom the Public Staff believes provided little or no benefit for CWS ratepayers. As Ms. Haywood mentions in her supplemental testimony, Mr. Stewart testified in the Sub

81 rate case. Ms. Haywood also testified that Mr. Stewart's testimony is almost identical to his testimony in Sub 81 for which he was paid $1,000. However, for his testimony in this proceeding, Mr. Stewart was paid $4,450 for essentially the same testimony. During cross-examination, Ms. Cuddie also agreed that Mr. Stewart's testimony was essentially identical to the testimony offered in Sub 81. The Public Staff believes that Mr. Stewart's fee for providing the same testimony should be disallowed in this proceeding. The other witness, Frank Seidman, was paid $5,000 for his testimony in this proceeding. As Ms. Haywood states in supplemental testimony, the issues in Frank Seidman's testimony are duplicative of CWS's testimony on the excess plant issues. In addition, as mentioned in Ms. Haywood's supplemental testimony, the Public Staff contends that it is not reasonable for CWS to hire a Florida consultant to testify to North Carolina regulatory standards.

CWS maintains that the outside expert rebuttal testimony is essential to rebut the issues the Public Staff has raised. Mr. Stewart addressed the issue of the design criterion for elevated tanks which the Public Staff has raised for the third time. Mr. Seidman rebuts the Public Staff position on the excess plant adjustments, which the Public Staff has raised for the third time. CWS sought to avoid the expense for these two witnesses and the cost of their attendance at the hearing by limiting or eliminating the issues they were to rebut on the ground that the issues already had been finally adjudicated. When the Commission rejected CWS's position, CWS asserts that it had no choice but to use its best efforts to rebut the Public Staff testimony.

The Commission has carefully considered the evidence of the parties in this proceeding and concludes that the cost for witness Stewart's testimony should be limited to $1,000 for the purposes of this proceeding for the reasons set forth by the Public Staff. Further, the Commission concludes that the cost of the testimony of witness Seidman should be allowed for the reasons set forth by CWS.

The final area of disagreement relates to the amortization of miscellaneous rate case expenses. As detailed in Evidence and Conclusions for Finding of Fact No. 58, the Commission has determined that no amortization of these legal fees should be included in rate case expense for the purpose of this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of rate case expense for the purpose of this proceeding is $130,195, of which $89,652 is allocated to water operations and $40,543 is allocated to sewer operations.

PENSION AND OTHER BENEFITS

The differences between the parties relate to the differences in salary levels. Based on the Commission's level of salaries, the Commission finds that the level of pension and other benefits is $329,370, allocated $226,387 to water operations and $102,983 to sewer operations, is appropriate for use in this proceeding.

SEWER SYSTEMS EXPENSE

Another difference between the Public Staff and the Company concerns expenses related to several sewer systems. The Public Staff believes that the Company should exclude the revenues and expenses of four sewer systems (Farmwood 20 and 21, Windsor Chase, and Habersham).

As discussed in Evidence and Conclusions for Findings of Fact Nos. 22 and 23, the Commission concludes that the revenues and expenses related to the four sewer systems should not be excluded for the purposes of this proceeding. Based on the foregoing, the Commission concludes that $8,300 should not be removed from sewer operation expenses for the four sewer systems.

NORTHBROOK EXPENSES

The final component of expenses on which the Company and the Public Staff disagree is Northbrook or Water Services Corporation (WSC or Northbrook) charges. The Public Staff included a level of $490,068 while the Company included a level of $660,400 a difference of $170,332. The Public Staff recommends that the level of WSC expenses be maintained at the level found appropriate in Sub 81. Ms. Cuddie, in rebuttal testimony, stated that "these costs are prudent, reasonable and properly included in the cost of service in this proceeding." Ms. Cuddie further cited several reasons for the 35% increase over the Sub 81 level, including inflation, a new general ledger software system, increased insurance costs, the inclusion of four new administrative positions, and customer growth. Ms. Cuddie also stated that the Public Staff "has not given any evidence that these expenses are improper." According to Ms. Cuddie, "all of the Northbrook expenses are prudent, reasonable and necessary to support the utility companies including CWS."

The Public Staff provided many compelling reasons for its adjustment. First, the Public Staff stated that the expenses allocated to North Carolina from WSC have increased over 35% since the Sub 81 rate case. Public Staff Cuddie Rebuttal-Cross Examination Exhibit I shows that from CWS's last rate case to this proceeding expenses to North Carolina from Northbrook have increased by a much greater percentage than the overall increase CWS has requested. The Public Staff stated that it is unreasonable to expect North Carolina ratepayers to fund an increase of this magnitude. Ms. Haywood stated in prefiled testimony that CWS is the only water or sewer company that operates from out-of-state headquarters. She testified that administrative salaries allocated to North Carolina have increased by 56.85% since the last rate case, and that does not include benefits. Ms. Haywood testified that this salary level for administrative services is unreasonable. She also stated that transportation expenses are unreasonably high because the headquarters are located in Illinois.

Another area the Public Staff addressed during the hearing related to various items such as gifts and a Christmas party, the costs of which have been allocated to CWS. The Public Staff stated its belief that North Carolina ratepayers should only have to pay for the level of WSC expenses found reasonable in Sub 81 and that this amount will cover truly necessary and reasonable expenses of CWS.

The Public Staff made the adjustment to freeze WSC expenses at the level found reasonable by the Commission in Sub 81 due to all of the unnecessary and unreasonable expenses mentioned above. The Public Staff believes that the level of WSC expenses the Company is proposing to include in this case is overinflated and should be held at the level found reasonable in the last rate case, Sub 81.

During the hearing, the Public Staff addressed the fact that customer equivalents in North Carolina have changed significantly since the end of the test year. The majority of Northbrook expenses are allocated to North Carolina based on the ratio of customer equivalents in North Carolina as compared to the total number of customer equivalents in all states. The Public Staff pointed out that two systems, Connestee Falls and Carolina Trace, have been acquired since the end of the test year. These two systems have around 3,000 customers and have been "placed" under Utilities, Inc. Therefore, if Northbrook expenses were allocated including these new systems in the allocation, CWS would receive less expense and Utilities, Inc. would pick up some expense for these two systems. Public Staff Cuddie Rebuttal Cross-Examination Exhibit 4 details the Public Staff's calculation of customer equivalents after the inclusion of Providence West, Carolina Trace, and Connestee Falls and the exclusion of Raintree and Pied Piper. Ms. Cuddie, however, maintained the importance of the test year concept and refused to update her customer equivalent calculation despite these known changes.

The Commission recognizes that WSC charges appear to be overstated for various reasons. These reasons include the magnitude of the increase since Sub 81, the increase in customer equivalents in North Carolina, the Public Staff's discovery of unnecessary expenses such as the Christmas party, expensive paintings and pool maintenance, and the fact that the Company did not allocate any WSC indirect expenses to the contract sewer systems the Company operates. These factors lead the Commission to conclude that WSC expenses are overstated and that it is reasonable to adjust such level of expenses so as to arrive at a more reasonable and representative level for inclusion in the cost of service in this case. The Commission is not convinced by CWS's attempt to show that Heater Utilities' administrative expenses are so high that it should approve the requested level of Northbrook expenses. The Public Staff and the Attorney General both introduced cross-examination exhibits that severely undermined Ms. Cuddie's testimony on this point.

The Commission concludes, that based upon a thorough analysis of the record, the level of Northbrook expenses have increased at an unreasonable level and should be adjusted so as to arrive at a reasonable and representative level for inclusion in the cost of service in this proceeding. As pointed out by witness Cuddie, many of the expenses of WSC are allocated to the various Utilities, Inc., subsidiaries based upon a customer equivalent weighting applied evenly to all companies. According to witness Cuddie, the increase in customer equivalents between the Sub 81 proceeding and this proceeding is 9% due to growth. The Commission is not persuaded that an increase in the level of Northbrook expenses of 35% since the last case is reasonable. In fact, such an increase is patently unreasonable. Accordingly, the Commission concludes that an increase in the level of Northbrook expenses in the range of 9% is more reasonable and equates to the increase in customer equivalents during this time period.

Therefore, the Commission concludes that the level of Northbrook expenses found to be appropriate in Sub 81 of $490,068 should be increased by 9% to a level of $534,174 to be included as a reasonable and representative level for inclusion in the cost of service in this proceeding.

A final area of disagreement between the parties concerning Northbrook expenses is the adjustment the Company made to reduce expenses related to the contract it has with CMUD. The Company has removed $1,322 from Northbrook/WSC expenses in its schedules of final position.

Having concluded elsewhere herein to include the revenues from the CMUD billing and collection service, the Commission finds that the $1,322 adjustment made by the Company to be inappropriate.

OTHER OPERATING REVENUE DEDUCTIONS

The issues involving other operating revenue deductions are depreciation expense, payroll taxes, the regulatory fee, and gross receipts, state and federal income taxes. Each is discussed below.

DEPRECIATION EXPENSE

The next area of disagreement between the parties concerns depreciation expense. The Public Staff and the Company agree on the depreciation rates used to calculate depreciation for all classes of water and sewer plant items. However, the amounts of depreciation expense proposed by the parties differ due to different amounts of plant in service. In addition, the Company has included in depreciation expense one year of amortization expense on the Mt. Carmel WWTP. Therefore, the Company has included $7,233 in depreciation expense.

Based on the Commission's conclusions in the Evidence and Conclusions for Finding of Fact No. 7, the Commission finds that the appropriate level of depreciation expense is $354,218 for water operations and $165,608 for sewer operations for the purpose of this proceeding.

PAYROLL TAXES

The differences between the Public Staff and the Company concerning payroll taxes relate to the different allocation percentages used by the two parties in allocating out salaries of CWS personnel in North Carolina due to time spent on contract systems and other non-CWS operations

The Commission agrees with Mr. Larsen's allocation methodology for CWS personnel as detailed in the Evidence and Conclusions for Findings of Fact Nos. 71 and 80. Therefore, the Commission agrees with the Public Staff's adjustment to reduce payroll taxes and concludes that the appropriate level of payroll taxes to be included for the purposes of this proceeding is $136,306, of which $93,684 is allocated to water and $42,622 is allocated to sewer.

REGULATORY FEE

The next area of difference between the Public Staff and the Company concerns regulatory fee. The difference between the Company and the Public Staff

arises from the parties' disagreement over revenues. The Commission having determined the appropriate level of revenues, concludes that the appropriate level of regulatory fee to be included in this proceeding is $4,328 for water operations and $2,214 for sewer operations.

GROSS RECEIPTS TAXES

The next area of disagreement between the parties relates to gross receipts taxes. The difference between the Company and the Public Staff results from the parties' disagreement over revenues. The Commission having determined the appropriate level of revenues, concludes that the appropriate level of gross receipts tax to be included in this proceeding is $192,341 for water operations and $147,620 for sewer operations.

STATE INCOME TAXES

The next area of difference between the parties concerns the level of state income taxes. The difference between the Company and the Public Staff arises from the parties' disagreement over revenues and expenses. The Commission having determined the appropriate level of revenues and expenses, concludes that the appropriate level of state income tax to be included in this proceeding is $48,576 for water operations and $14,893 for sewer operations.

FEDERAL INCOME TAXES

The next item of disagreement between the parties relates to the level of federal income taxes. The difference between the Company and the Public Staff arises from the parties' disagreement over revenues and expenses. The Commission having determined the appropriate level of revenues and expenses, concludes that the appropriate level of federal income tax to be included in this proceeding is $196,590 for water operations and $60,275 for sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate level of other operating revenue deductions is $1,362,168, of which $916,859 is applicable to water operations and $445,309 is applicable to sewer operations.

ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION

The evidence on this item is found in the prefiled testimony of Public Staff witness Haywood and Company witness Wenz. The Company is proposing to accrue AFUDC on projects after construction has been completed. Under the Company's proposal, the Company would accrue AFUDC for an indefinite period of time from the date construction is completed until the Company files a rate case and the costs are included in rate base. According to Mr. Wenz, this mechanism would alleviate an inequitable situation where customers are receiving the benefits of capital projects without bearing the costs. Additionally, the Company believes that this treatment would result in less frequent rate cases which would result in cost savings to customers.

The Public Staff contends that AFUDC should cease to accrue when a project is completed in accordance with the Uniform System of Accounts. Ms. Haywood stated that the Uniform System of Accounts defines AFUDC as:

> "The allowance for funds used during construction which includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used... The cost of the property placed in operation or ready for service will be treated as "Utility Plant In Service" and allowance for funds used during construction there on as a charge to construction shall cease..."

(emphasis added.)

Public Staff witness Haywood stated that the Public Staff does not believe the resulting decrease in rate case expense would outweigh the potential for rate shock when accrued AFUDC is brought into rate base. She also stated that to her knowledge the Commission has never allowed any utility to continue accruing AFUDC on a capital project for an indefinite period after completion of the project

The Commission rejects the Company's assertion that customers are receiving benefits of capital costs without bearing the costs. Rates established by the Commission are deemed just and reasonable and are set to recover all costs including capital costs.

The Commission agrees with the Public Staff that the accrual of AFUDC beyond completion is unreasonable and in direct conflict with the Uniform System of Accounts definition of AFUDC. In addition, the Commission has never allowed any other water or sewer utility to accrue AFUDC beyond completion of a project. Therefore, the Commission finds that the Company should not be allowed to accrue AFUDC on projects after completion.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 96

Capital structure and cost of capital were stipulated by CWS and the Public Staff, and no other party contested the stipulation. Therefore, the Commission concludes that the stipulation is reasonable and proper and should be adopted for purposes of this proceeding, subject to the rate of return penalty of 1.0% on common equity adopted by the Commission. This rate of return penalty is based upon our finding that the quality of service provided by CWS to its customers is inadequate and unacceptable in many of the Company's service areas as a result of poor water quality and/or serious service problems. If the Company's quality of service were adequate, CWS would have been entitled to a 12.0% rate of return on common equity. The penalty imposed by the Commission in this case will not result in a confiscatory rate of return. The Commission has determined that allowing an 11.0% rate of return on common equity and a 10.14% rate of return on the Company's rate base will allow CWS to recover all of its operating expenses, including depreciation and taxes, and still have an opportunity to recover $1,531,366 for the benefit of its sole shareholder to cover the cost of Utilities, Inc.'s debt and equity. This is not confiscatory, particularly in

view of today's extremely low interest rates. A 1.0% penalty for inadequate service will reduce the Company's allowed rate increase by approximately $117,000 on an annual basis, which is not arbitrary or unreasonable when compared to the Company's total authorized North Carolina jurisdictional annual service revenues of approximately $7.6 million.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 97

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 111
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
COMBINED OPERATIONS
For the Twelve Months Ended June 30, 1991

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues:			
Service Revenues	$7,189,400	$396,356	$7,585,756
Miscellaneous Revenues	169,235	20,252	189,487
Uncollectibles	(89,776)	(5,083)	(94,859)
Total Operating Revenues	7,268,859	411,525	7,680,384
Operating Revenue Deductions:			
Operation, Maintenance and General Expenses	4,613,019	-	4,613,019
Depreciation & Amortization	519,826	-	519,826
Taxes other than Income Taxes	523,013	21,128	544,141
State Income Taxes	63,469	30,256	93,725
Federal Income Taxes	256,865	122,447	379,312
Amortization of ITC	(1,005)	-	(1,005)
Total Operating Revenue Deductions	5,975,187	173,831	6,149,018
Net Operating Income for Return	$1,293,672	$ 237,694	$1,531,366

SCHEDULE II
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUB 111
STATEMENT OF RATE BASE AND RATE OF RETURN
COMBINED OPERATIONS
For the Twelve Months Ended June 30, 1991

Item	Amount
Plant in Service	$45,006,659
Less - Accumulated Depreciation	(3,344,714)
Contributions in-Aid-of Construction	(19,223,064)
Advances in-Aid-of Construction	(221,382)
Plant Acquisition Adjustments	(2,985,883)
Accumulated Deferred Income Taxes	(568,943)
Customer Deposits	(113,589)
Excess Book Value	(4,281,266)
Gain on Sale and Flow Back of Taxes	(289,628)
Add - NCUC bonds	60,000
Working Capital Allowance	498,807
Deferred Charges	559,630
Total Rate Base	$15,096,627
Rates of Return:	
Present	8.57%
Approved	10.14%

SCHEDULE III
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUB 111
STATEMENT OF CAPITALIZATION AND RELATED COSTS
COMBINED OPERATIONS
For the Twelve Months Ended June 30, 1991

Item	Ratio %	Original Cost Rate base	Embedded Cost	Net Operating Income
		Present Rates		
Long-term Debt	55.60	$8,393,725	9.46	$794,046
Common Equity	44.40	6,702,902	7.45	499,626
Total	100.00	$15,096,627	-	$1,293,672
		Approved Rates		
Long-term Debt	55.60	$8,393,725	9.46	$794,046
Common Equity	44.40	6,702,902	11.00	737,320
Total	100.00	$15,096,627	-	$1,531,366

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 98 and 99

This issue concerns the need for system-specific data from the Company, and the related issue of whether uniform rates are reasonable. Two formal intervenors as well as many customers desired system-specific rates and the

Public Staff requested system-specific data in a motion. The Commission denied that motion and did not require the Company to supply system-specific data for this proceeding.

The Public Staff recommends that the Company be required to provide system-specific data in its next general rate case. Intervenors Whispering Pines and Pine Knolls Shores likewise request system-specific data and desire that rates for those systems be set based on the cost of service for those systems. The Public Staff notes that the Company has not been required to provide system-specific data although the Public Staff and some of the customers have requested it. Public Staff witness Larsen testified that until such information is evaluated and investigated, the Public Staff cannot make any recommendations concerning system-specific or regional rates or judge whether rates for any specific system are unlawfully discriminatory. Mr. Larsen further testified that, in the absence of system-specific data, the Public Staff cannot determine the extent of cross-subsidization nor can it quantify whether there is unreasonable discrimination in the rate structure.

CWS adheres to the position that it is unnecessary to require the Company to incur the time and expense to provide system-specific data unless and until the Commission has decided to alter its policy that the Company charge uniform rates. The Company maintains that the advisability of maintaining or altering the ratemaking concept of setting rates uniformly can be addressed and determined without system-specific data.

The Commission concludes the CWS should not be required to provide system-specific data based on the record in this case. The issue of uniform rates has recently been addressed by the Commission in a generic proceeding, Docket No. W-100, Sub 13. The Public Staff had earlier requested that the Company be required to submit system-specific data for each of its systems in this case. The Commission denied that motion, noting that the issue was under consideration in the generic docket. By Order dated September 11, 1992, in Docket No. W-100, Sub 13, CWS has been required to file system-specific data in conjunction with its next application for a general rate increase. The record on the next rate case filed by CWS will contain the evidence necessary for the parties to argue the merits of system-specific rates versus uniform rates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 100 AND 101

This issue has to do with the metering of the approximately 1,010 presently unmetered customers. The Public Staff favors the metering of all customers while the Company questioned the wisdom of such action.

The Commission notes that in the Applicant's last rate case, the Commission required the Company to publish a meter feasibility study. The Company states that it would cost around $175 per connection to add meters to the existing unmetered customers. The Company also indicates that there are potential future customers in the subdivisions without meters. The Public Staff did not believe the metering of these potential future customers would be as costly since it can be done at the same time as the connection is made to the system.

Commission Rule R7-22 encourages metering, and it is inequitable for some customers to be charged a metered rate while others are charged a flat rate.

Therefore, the Commission adopts the recommendation of witness Larsen that individual meters should be installed to all customers. The Commission concludes that CWS shall meter all unmetered customers by December 31, 1996. Furthermore, CWS shall file a time table for metering all unmetered customers by November 30, 1992.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 102

This issue involves the filing of contracts between CWS and developers. The Public Staff stated that a number of such contracts have not yet been filed with the Commission. In Docket No. W-354, Sub 69, the Commission explained why such contracts should be filed with the Commission. In Docket W-354, Sub 81, the Commission stated that CWS should provide the Public Staff with copies of any missing contracts. Witness Larsen testified in this case that these contracts were needed to determine whether tap fees and plant impact fees are being charged properly.

As listed in Public Staff Wenz Rebuttal Cross-Examination Exhibit 3, the Commission files do not contain contracts for the following subdivisions:

Hearthstone
Mossy Creek/Sugar Mountain
Ski Country
Mount Carmel - Section 5A
Farmwood - Section 20
Farmwood - Section 21
Hidden Hills
Riverbend/Lakemere
Riverbend/Pier Pointe
Riverbend/Lockbridge
Riverbend/Plantation Landing
Riverbend/Canebrake
Sugar Top
Pelican Pointe
Williams Station
Beacon Reach
Cedarwood Village
Brandonwood

The Commission concludes that contracts for these subdivisions, if they exist, and all other outstanding contracts should be filed within 30 days of the date of this Order. Also, all new contracts in the future should be filed within 30 days from signing. All contracts should be filed with the Chief Clerk of the Commission and a copy of each contract should be served on the Public Staff. If any agreements are reached with developers regarding the provision of utility service, but are not written or signed prior to being acted on, CWS shall file with the Commission a detailed written description of the terms of the agreement within 30 days of entering into the agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 103

This issue has to do with the uniform tap fee and the plant impact fees. According to the Public Staff, the Company, in its Sub 39 rate case, requested and received approval to charge its uniform tap fees and plant impact fees to all

new connections otherwise approved by the Commission. The Public Staff raised a concern in the next rate case, Sub 69, that the Company was not uniformly applying its tap and modification fees. Public Staff witness Larsen testified that the Commission required the Company to file copies of all contracts and that the uniform tap and modification fees are supposed to be charged unless the contract provides otherwise and that provision is approved by the Commission. Public Staff witness Larsen recommended that the tap fees and plant modification fees approved in this rate case be required in all situations from this point forward, except where the Commission has already approved a different level in the past for specific contracts. CWS witness Wenz testified on rebuttal that CWS does collect tap fees and plant impact fees in all situations where the Commission has already approved a different level for a specific contract. For that reason, the Company takes the position that it is unnecessary for the Commission to require CWS to charge the tariffed tap and plant impact fees except where the Commission approves a different level.

The Commission agrees with the Public Staff on this issue and concludes that the Company should charge the uniform tap fee and plant modification fee in all of its service areas unless it receives prior Commission approval to deviate from the uniform fees. This requirement should apply to both existing and new service areas. The filing by CWS of contracts that provide for non-uniform fees does not constitute Commission approval of such fees.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 104 AND 105

The evidence for these findings of fact is found in the testimony of Public Staff witness Larsen and Company witness Cuddie. The Commission points out that the wording of G.S. 62-153(a) is not discretionary. The statute mandates that a utility "shall file with the Commission copies of contracts with any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company." Clearly Water Service Corporation is such a company. The informal, unwritten agreements regarding contract operations and billing for the City of Charlotte have not been reduced to writing and then filed with the Commission, despite the clear requirement of the statute. Accordingly, CWS should be required to reduce these informal agreements to writing, if no written agreements currently exist, and then file them for Commission approval pursuant to G.S. 62-153.

This decision is consistent with previous decisions in other cases involving informal agreements. For instance, several companies, including CWS, have presented the Commission with franchise applications in the past few years that did not include written contracts. In each case, the Commission required the utility to either produce a contract or a memorandum detailing the agreement for the Commission to consider; e.g., Docket No. W-354, Sub 78. Therefore, the Commission concludes CWS should likewise produce written agreements for consideration pursuant to G.S. 62-153.

The statute allows the Commission to disapprove prejudicial contracts. The Commission will determine whether hearings should be scheduled on these contracts after they are filed and intervenors have had an opportunity to file motions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 106

The Commission notes that it might be possible to avoid much of the controversy over contract allocations in future cases if CWS were to adopt an appropriate methodology to keep track of how much time its operators, part-time employees, managers, and others spent on regulated CWS operations, regulated operations of affiliate companies (like Clearwater and the Fairfield systems), and non-regulated operations like the contract plants. Witness Larsen recommended the use of time sheets. The Commission concludes that the Company shall undertake a study to determine an appropriate methodology to properly allocate employees' time who do not work exclusively on CWS jurisdictional operations. The reasonableness of such methodology and the results thereof shall be considered in the Company's next general rate case proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 107

This finding flows from the previous findings. The Commission concludes that these rates are fair and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That CWS shall 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 service revenues of $182,473 and an increase in sewer service revenues of $213,883. CWS is also authorized to increase miscellaneous revenues in the amount of $16,676 for water operations and $3,576 for sewer operations as more particularly set forth herein.

2. That the Schedule of Rates, attached as Appendix A, is approved for water and sewer service rendered by CWS. These rates shall become effective for service rendered on and after the date of this Order. The Commission deems this Schedule of Rates to be filed as required by G.S. 62-138.

3. That CWS shall file a report, as discussed in the Evidence and Conclusions for Findings of Fact Nos. 5 and 6, by Monday, November 30, 1992, that describes in detail all service and water quality problems and specifies what corrective actions CWS is taking or plans to take. Additionally, CWS shall undertake corrective actions expeditiously.

4. That a copy of the attached Appendices A and B shall be delivered by CWS to all its customers, in conjunction with the next billing statement after the date of this Order.

5. That CWS shall file the attached Certificate of Service, properly signed, and notarized, within 10 days of completing the requirement of Ordering Paragraph No. 4.

6. That CWS shall file with the Commission, within 30 days of the date of this Order, all contracts identified by the Public Staff in Wenz Rebuttal Cross-Examination Exhibit No. 3 as not having been previously filed. In addition, CWS shall, within 30 days of the date of this Order, file any other contracts it has entered into with developers through the date of this Order that have not previously been filed. CWS shall henceforth file all contracts with developers

with the Commission within 30 days of signing or, in the case of informal agreements or contracts that are effective without signing, within 30 days from the date agreement is reached. The requirements of this paragraph shall apply to all contracts, including those covering contiguous expansions.

7. That CWS shall, within 30 days from the date of this Order, reduce to writing and file its contracts with Water Services Corporation covering (a) the billing and collecting services for the City of Charlotte and (b) its contract water and sewer operations. In addition, CWS shall file any other contracts with affiliated corporations as required by G.S. 62-153 as follows: for existing contracts, within 30 days of the effective date of this Order; and for new contracts, within 30 days of their execution or, if no execution occurs, their effective date. This requirement shall apply to all contracts, including informal agreements which shall be reduced to writing and filed.

8. That CWS shall charge its uniform tap and plant modification fees in all subdivisions except those in which the Commission has given explicit approval by written Order to charge otherwise. To ensure that all parties and the Commission know exactly where those exceptions are, CWS shall file a list of all systems where the uniform fees are not charged within 30 days of the effective date of this Order.

9. That CWS shall meter all customers who are now flat rate customers by December 31, 1996. Upon completion of the metering project, CWS shall charge all customers its metered rates. CWS shall file a report by Monday, November 30, 1992, showing a timetable for metering all unmetered customers.

10. That CWS may not continue to accrue AFUDC after construction of a project has been completed. This accounting proposal is disapproved.

11. That CWS shall undertake a study to determine an appropriate methodology to properly allocate employees' time who do not work exclusively on CWS jurisdictional operations. The reasonableness of such methodology and the results thereof shall be considered in the Company's next general rate case proceeding.

12. That CWS is hereby granted temporary operating authority, nunc pro tunc, to provide sewer utility service in the Farmwood 20 and 21, Habersham, and Windsor Chase Subdivisions. CWS shall file applications for certificates of public convenience and necessity to serve these subdivisions not later than 30 days from the date of this Order.

13. That the motion for further hearing and, in the alternative, the request for leave to take and file depositions filed by CWS be, and the same are hereby, denied.

14. That, except to the extent granted in this Final Order, the exceptions to the Recommended Order filed by the parties be, and the same are hereby, denied.

15. That CWS shall file a refund plan not later than 10 days from the date of this Order proposing a plan to make refunds, including interest at a rate of 10 percent per annum, of the difference between the interim rates implemented by the Company and the final rates approved by this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of October 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Commissioner Sarah Lindsay Tate dissents in part. Commissioner Tate voted to affirm the Recommended Order.

APPENDIX A

SCHEDULE OF RATES
for
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
for providing water and sewer utility service in
ALL ITS SERVICE AREAS IN NORTH CAROLINA

WATER RATES AND CHARGES

METERED SERVICE:

Base Facility Charges		
A.	Residential Single Family Residence	$ 9.35
B.	Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	$ 9.35
C.	Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	$ 8.35
D.	Commercial and Other (Based on Meter Size): 5/8" x 3/4" meter	$ 9.35
	1" meter	$ 24.00
	1-1/2" meter	$ 47.00
	2" meter	$ 76.00
	3" meter	$ 142.00
	4" meter	$ 236.00
	6" meter	$ 472.00

USAGE CHARGE:

A.	Treated Water/1,000 gallons	$ 2.90
B.	Untreated Water/1,000 gallons (Brandywine Bay Irrigation Water)	$ 2.00

FLAT RATE SERVICE:

A.	Single Family Residential	$ 20.50
B.	Commercial (per single family equivalent)	$ 20.50

WATER AND SEWER - RATES

AVAILABILITY RATES:

Applicable only to property owners in Carolina Forest and Woodrun Subdivisions in Montgomery County	$ 2.00

CONNECTION CHARGES [1]:

A. 5/8" meter	
Hound Ears Subdivision	$ 300.00
Sherwood Forest Subdivision	$ 950.00
Wolf Laurel	$ 925.00
All Other Service Areas	$ 100.00
B. Meters Larger Than 5/8"	Actual Cost

PLANT IMPACT FEE [1]:

A. Residential (5/8") Meter	
Hound Ears, Sherwood Forest, and Wolf Laurel Subdivisions	None
All Other Service Areas	$ 400.00
B. Commercial and Others (Per Single Family Equivalent - payable by developer or builder)	$ 400.00

METER TESTING FEE [2]: $ 20.00

NEW WATER CUSTOMER CHARGE: $ 27.00

RECONNECTION CHARGES [3]:

If water service is cut off by utility for good cause:	$ 27.00
If water service is disconnected at customer's request:	$ 27.00

SEWER RATES AND CHARGES

METERED SERVICE: (Commercial and other)

A. Base Facility Charge (Based on Meter Size)	
5/8" x 3/4" meter	$ 10.00
1" meter	$ 25.00
1-1/2" meter	$ 50.00
2" meter	$ 80.00
3" meter	$ 150.00
4" meter	$ 250.00
6" meter	$ 500.00
B. Usage Charge/1,000 gals (based on metered water usage)	$ 4.40
C. Minimum Monthly Charge	$ 29.30

FLAT RATE SERVICE:

Per Dwelling Unit [4]	$ 29.30

WATER AND SEWER - RATES

COLLECTION SERVICE ONLY: 1/ (When sewage is collected by utility and transferred to another entity for treatment)

A.	Single Family Residence	$ 11.00
B.	Commercial (per single family equivalent)	$ 11.00

CONNECTION CHARGE 1/:

A.	Residential	
	Hound Ears Subdivision	$ 300.00
	Corolla Light Subdivision	$ 700.00
	All Other Service Areas	$ 100.00
B.	Commercial and Others	Actual Cost

PLANT IMPACT FEES 1/:

A.	Residential	
	Hound Ears and Corolla Light	None
	Brandywine Bay Subdivision	$1,456.00
B.	Commercial and Others (Per single family equivalent- payable by developer or builder)	$1,000.00

NEW SEWER CUSTOMERS CHARGES 5/: $ 22.00

RECONNECTION CHARGES 6/:

If sewer service is cut off by Utility for good cause: Actual Cost

MISCELLANEOUS UTILITY MATTERS

BILLS DUE: On billing date

BILLS PAST DUE: 21 days after billing date

BILLING FREQUENCY: Bills shall be rendered bi-monthly in all service areas except for availability charges in Carolina Forest and Woodrun Subdivisions which will be billed semi-annually.

CHARGES FOR PROCESSING NSF CHECKS: $ 10.00

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.

1/ These fees are subject to the Gross Up Multiplier provisions for Contributions in Aid of Construction of the North Carolina Utilities Commission, Docket No. M-100, Sub 113. Also these are the fees that are subject to collection from all service areas unless specified differently by contract approved by and on file with the North Carolina Utilities Commission.

2/ If a customer requests a test of a water meter more frequently than once in a 24 month period, the Company will collect a $20 service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24 month period without charge.

3/ Customers who request to be reconnected within nine months of disconnection at the same address shall be charged the base facility charge for the service period they were disconnected.

4/ Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor building the unit.

5/ These charges shall be waived if sewer customer is also a water customer within the same service area.

6/ The utility shall itemize the estimated cost of disconnecting and reconnecting service and shall furnish this estimate to customer with cut-off notice. This charge will be waived if customer also receives water service from Carolina Water Service within the same service area.

7/ The utility shall charge for sewage treatment service provided by the other entity; the rate charged by the other entity will be billed to CWS' affected customers on a pro rata basis, without markup.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-354, Sub 111, on this ~~the 12th day of October 1992.~~

APPENDIX B

DOCKET NO. W-354, SUB 111

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in All of its Service Areas in North Carolina	)	NOTICE TO THE CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued a Final Order assessing a penalty and authorizing Carolina Water Service (CWS) to charge new rates for water and sewer utility service in all its service areas in North Carolina. A copy of the new Schedule of Rates is attached. These rates are lower than the interim rates which CWS was allowed to place into effect by law pending entry of a Final Order by the Commission. Customers will receive a refund, including interest at a rate of 10 percent per annum, of the difference between the interim and final rates.

In approving a partial rate increase, the Commission found that the quality of service provided by CWS to its customers is inadequate and unacceptable in many of its service areas as a result of poor water quality and/or serious service problems. Due to such findings, the Commission assessed a penalty in the amount of 1% on the rate of return on common equity which will reduce the Company's allowed rate increase by approximately $117,000 on an annual basis.

Due to different previously existing rate schedules, some customer bills in certain service areas will increase more than others. The new rates reflect an overall increase of 3.8% for water operations and 8.7% for sewer operations. The Company had requested an increase of 13.9% for water operations and 18.5% for sewer operations.

The Commission reached its decision after considering testimony and evidence presented by the customers, the Company, and the Public Staff at public hearings in Boone, Charlotte, Beaufort, Fayetteville, Sylva, and Raleigh.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of October 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customes the attached Notice to Customers issued ~~by Order of the North Carolina~~ Utilities Commission in Docket No. W-354, Sub 111, and said Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1992.

BY: _____

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice was mailed or hand delivered to all affected customers, ~~as required by the~~ Commission Order dated _____ in Docket No. W-354, Sub 111.

Witness my hand and notarial seal, this the _____ day of _____ 1992.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____

DOCKET NO. W-218, SUB 63
DOCKET NO. W-218, SUB 68
DOCKET NO. W-218, SUB 69
DOCKET NO. W-218, SUB 71
DOCKET NO. W-796, SUB 2
DOCKET NO. W-796, SUB 3
DOCKET NO. W-796, SUB 4
DOCKET NO. W-796, SUB 5
DOCKET NO. W-796, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NOS. W-218, SUBS 63, 68, 69, AND 71

In the Matter of
Hydraulics, Ltd. - Show Cause Hearing on Bonds)
)
DOCKET NOS. W-796, SUBS 2, 3, 4, 5, AND 6)
)
In the Matter of)
Harrco Utility Corporation - Show Cause Hearing)
on Bonds)

ORDER DENYING BONDING PROPOSALS AND REQUIRING ACCEPTABLE BONDS AND SECURITIES OR INITIATION OF TRANSFER PROCEEDINGS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 6, 1991, at 9:30 a.m.

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

APPEARANCES:

For Hydraulics, Ltd.:

William E. Grantmyre, Attorney at Law, 202 MacKenan Court, Cary, North Carolina 27511

For Harrco Utility Corporation:

Samuel Roberti, Attorney at Law, Roberti, Wittenberg, Holtkamp & Lauffer, Post Office Box 3359, Durham, North Carolina 27702

For the Commission Staff:

Wilson B. Partin, Jr., Deputy General Counsel, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510

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

BY THE COMMISSION: On October 14, 1991, the Public Staff of the North Carolina Utilities Commission filed petitions requesting the Commission to enter Orders requiring Hydraulics, Ltd. (Hydraulics), and Harrco Utility Corporation (Harrco) to appear and show cause, if any there be, why certain certificates of public convenience and necessity issued to these companies should not be canceled and an emergency operator appointed, and why other sanctions including fines should not be imposed, for the failures to post the required bonds with security in the amounts of $60,000 by Hydraulics and $50,000 by Harrco.

By Orders dated November 13, 1991, the Commission granted the Public Staff's motions for show cause proceedings and scheduled the cases for consolidated hearing on Friday, December 6, 1991, in order to fully inquire into the circumstances surrounding the failure of Hydraulics and Harrco to file the appropriate bonds and post the security required by law.

On December 5, 1991, Hydraulics filed a motion in response to the Public Staff's petition requesting that the Commission authorize it to either post an irrevocable letter of credit from Piedmont State Bank for the term of one year or a bond executed by a commercial bonding company with a one-year expiration date in satisfaction of the bonding requirement specified by G.S. 62-110.3 and Commission Rule R7-37.

Harrco made no written filing prior to the hearing.

Upon call of the show cause proceedings for consolidated hearing at the appointed time and place, the parties were present and represented by counsel. Hydraulics presented the testimony of Manuel L. Perkins, its President. Harrco presented the testimony of Lexie W. Harrison, its President. The Commission Staff offered the testimony of Cynthia K. Smith, Secretary to the Water and Sewer Division of the Public Staff; Sandra Sawyer, Trust Officer with United Carolina Bank (UCB); and David Snyder, Vice President and Regional Trust Manager for United Carolina Bank.

On January 15, 1992, the Commission Staff and Public Staff filed the following joint recommendations in these dockets.

> "Hydraulics, Ltd. (W-218, Subs 63, 68, 69, and 71) and Harrco Utility Company (W-796, Subs 2, 3, 4, 5, and 6) have proposed to file bonds secured by one-year letters of credit or, in the alternative, commercial bonds with one year terms renewable at the discretion of the bonding company. It is our opinion that such bonds do not provide sufficient security to meet the requirements set out by the Commission or the underlying purposes of G.S. § 62-110.3.

"The fundamental criteria for security are, first, whether funds will be available when needed, and, second, how quickly the security can be converted to cash. Given the high probability that an emergency necessitating forfeiture of a bond would be preceded by a decline in the financial health of the utility, it seems distinctly probable that under these circumstances a bank would decline to renew a letter of credit and that a bonding company would refuse to renew its bond. Even if the letter of credit or bond were in effect, the bank or bonding company might be (sic) well raise defenses or conditions requiring litigation or at least delaying the availability of funds. The Commission's Rules as currently written and interpreted avoid this potential morass by requiring a bond for the duration of the franchise and by specifying forms of security which provide the certainty and prompt availability needed in an emergency.

"It is our recommendation that Hydraulics and Harrco be given 30 days in which to either provide acceptable bonds and securities or to initiate transfer proceedings. If they do not comply we recommend that the Commission seek fines or other penalties under G.S. § 62-310. We note that this is the procedure set out in Rules R7-37(g)(2) and R10-24(g)(2) for dealing with uncertified utilities. We also note that each of the certificates in question was conditioned on the posting of a proper bond within 60 days of the Order granting the certificate, a condition which was violated in each instance." (Emphasis in original)

On January 15, 1992, Hydraulics filed a legal brief in support of its position in these dockets asserting that:

1. The certificates of public convenience and necessity granted to Hydraulics, Ltd. in Docket Nos. W-218, Sub 63 - Smoke Ridge, Sub 68 - Sturbridge Village and Laurel Acres, Sub 69 - Dorsett Downs and Bexley Place, and Sub 71 - Allendale, should not be canceled with an emergency operator appointed and the Commission should not impose fines or other sanctions.

2. A one-year irrevocable letter of credit from a bank should be approved by the Commission as an acceptable form of security under Commission Rule R7-37(e).

3. A commercial bond from a commercial bonding company with a one-year term should be approved by the Commission asan acceptable form of security under Commission Rule R7-37(e).

On January 15, 1992, Harrco filed a legal brief in support of its position in these dockets requesting that the Commission hold that Harrco is not in contempt for failure to post $50,000 in cash with United Carolina Bank and allow Harrco to comply with G.S. 62-110.3 by posting an annual and renewable performance bond of the type normally permitted for construction companies.

WHEREUPON, the Commission reaches the following

FINDINGS AND CONCLUSIONS

On June 26, 1987, the General Assembly of North Carolina enacted G.S. 62-110.3 which provides that no franchise may be granted to any water or sewer utility company until the applicant for a franchise furnishes a bond, secured with sufficient surety as approved by the Commission, in an amount not less than $10,000 nor more than $200,000. The bond shall be conditioned upon providing adequate and sufficient service within all the applicant's service areas, including those for which franchises have previously been granted. Any interest earned on a bond shall be payable to the water or sewer company that posted the bond. The appointment of an emergency operator pursuant to G.S. 62-118(b) or by the Commission with the consent of the owner or operator operates to forfeit the bond. The proceeds of the bond will then become available to the Commission to alleviate the emergency in the water or sewer franchise.

G.S. 62-110.3 became effective on June 26, 1987, and applies to all franchises granted by the Commission on and after that date.

By Orders entered in Docket No. W-100, Sub 5, on September 2, 1987, and March 18, 1988, the Commission adopted rules to implement G.S. 62-110.3. Those rules were codified as Rule R7-37 for water companies and Rule R10-24 for sewer companies.

On May 17, 1990, the Commission entered an Order in Docket No. W-218, Sub 63, granting Hydraulics a certificate of public convenience and necessity (certificate or franchise) to provide water utility service to customers residing in the Smoke Ridge Estates Subdivision in Guilford County, North Carolina. Decretal paragraph number 8 of that Order required Hydraulics to post a bond with appropriate security in the amount of $10,000 pursuant to G.S. 62-110.3 within 60 days.

On August 7, 1990, the Commission entered an Order in Docket No. W-218, Sub 68, granting Hydraulics a franchise to provide water utility service in the Laurel Acres Subdivision in Guilford County and the Sturbridge Village Subdivision in Orange County, North Carolina. Decretal paragraph number 5 of that Order required Hydraulics to post a bond with appropriate security in the amount of $20,000 within 60 days.

On June 26, 1990, the Commission entered an Order in Docket No. W-218, Sub 69, granting Hydraulics a franchise to provide water utility service in the Dorsett Downs Subdivision in Guilford County, North Carolina. Decretal paragraph number 5 of that Order required Hydraulics to post a bond with appropriate security in the amount of $10,000 within 60 days. By further Order entered in the Sub 69 docket on January 22, 1991, Hydraulics was granted a water utility franchise for the Bexley Place Subdivision in Forsyth County, North Carolina, and was required to file a bond with appropriate security in the amount of $10,000 within 60 days.

On December 28, 1990, the Commission entered an Order in Docket No. W-218, Sub 71, granting Hydraulics a franchise to provide water utility service in the

Allendale Heights Subdivision in Randolph County, North Carolina. Decretal paragraph number 6 of that Order required Hydraulics to post a bond with appropriate security in the amount of $10,000 within 60 days.

On April 3, 1990, the Commission entered an Order in Docket No. W-796, Sub 2, granting Harrco a franchise to provide sewer utility service in the River Oaks Subdivision in Wake County, North Carolina. Decretal paragraph number 5 of that Order required Harrco to post a bond with appropriate security in the amount of $10,000 within 60 days.

On April 3, 1990, the Commission entered an Order in Docket No. W-796, Sub 3, granting Harrco a franchise to provide sewer utility service in the Park Ridge Subdivision in Wake County, North Carolina. Decretal paragraph number 5 of that Order required Harrco to post a bond with appropriate security in the amount of $10,000 within 60 days.

On April 3, 1990, the Commission entered an Order in Docket No. W-796, Sub 4, granting Harrco a franchise to provide sewer utility service in the Woods of Tiffany Subdivision in Wake County, North Carolina. Decretal paragraph number 5 of that Order required Harrco to post a bond with appropriate security in the amount of $10,000 within 60 days.

On April 3, 1990, the Commission entered an Order in Docket No. W-796, Sub 5, granting Harrco a franchise to provide sewer utility service in the Hardscrabble Subdivision in Durham County, North Carolina. Decretal paragraph number 5 of that Order required Harrco to post a bond with appropriate security in the amount of $10,000 within 60 days.

On September 27, 1990, the Commission entered an Order in Docket No. W-796, Sub 6, granting Harrco a franchise to provide water utility service in the Hardscrabble Subdivision in Durham County, North Carolina. Decretal paragraph number 6 of that Order required Harrco to post a bond with appropriate security in the amount of $10,000 within 60 days.

Hydraulics and Harrco failed to file the bonds in question. Therefore, upon motion of the Public Staff and pursuant to Orders entered in these dockets on November 15, 1991, the Commission initiated show cause proceedings against Hydraulics and Harrco and scheduled a consolidated hearing to consider the matters in question.

Hydraulics' witness Perkins testified that Hydraulics obtained a commitment for a $50,000 letter of credit from Piedmont State Bank in Greensboro approximately two years ago to satisfy the bonding requirement; that Hydraulics failed to submit such letter of credit for approval by the Commission and failed to request a hearing on its proposed letter of credit; that Hydraulics had $20,000 in certificates of deposit on file with Piedmont State Bank to satisfy part of its bonding requirement, but was unaware that those certificates of deposit should have been filed with United Carolina Bank; that Hydraulics has diligently but unsuccessfully attempted to secure continuous bonds from approximately 20 commercial bonding companies; that Hydraulics has now located a commercial bonding company willing to issue a one-year bond assuming that Hydraulics deposits collateral equal to 50% of the bond amount; that Hydraulics has obtained another commitment from Piedmont State Bank for a one-year

irrevocable letter of credit in the amount of $50,000 which would be issued in favor of the North Carolina Utilities Commission or a commercial bonding company; and that Hydraulics desires to post a one-year letter of credit or preferably a one-year commercial bond in lieu of certificates of deposit in order to conserve its working capital which is needed in order to improve the quality of service provided to customers.

Harrco witness Harrison testified that the five sewer systems subject to this proceeding are low-pressure, nondischarge septic systems; that Harrco has developed a good reputation as an operator of low-pressure sewer systems; that the five sewer systems in question are currently serving about 100 customers and are operating at about 33% of their total capacity to serve approximately 300 homes; that Harrco experienced a net operating loss from its sewer utility operations during the year ended September 30, 1990, of approximately $18,700; that Harrco is financially unable to post a cash bond in the amount of $50,000 to cover the sewer systems in question; that Harrco has been unsuccessful in locating a commercial bonding company willing to write a perpetual bond; that Harrco believes it could secure a renewable bond to cover the sewer systems in question if the Commission authorizes use of such a bond in this case; that Harrco does not think it could secure a bank letter of credit due to its size or that its assets would be sufficient to secure a deed of trust; that Harrco does not want to sell its sewer systems; that witness Harrison has not drawn a pay check from Harrco since April 1990, and that he is on call 24 hours a day, seven days a week, to respond to service problems; and that Harrco is adding approximately three customers per month.

Commission Staff witness Sawyer testified that she administers the Commission's bonding program on behalf of UCB; that as of December 6, 1991, UCB was administering bonds totalling $871,400; that Hydraulics now has certificates of deposit on file with UCB in the amount of $40,000; that all of the bonds currently being administered by UCB are in the form of certificate of deposit; and that UCB would accept a bond in whatever form authorized by the Utilities Commission.

Commission Staff witness Snyder testified that he supervises the UCB office which administers the Commission's bonding program and a similar program which UCB administers for the North Carolina Department of Insurance; that he considers obligations of the United States of America to be the safest and most secure of investments; that he considers obligations of the State of North Carolina to be high in quality and very marketable in view of North Carolina's AAA bond rating, although they are graded a little bit below obligations of the United States; that certificates of deposit drawn on banks and savings and loan associations incorporated in North Carolina are a little bit less safe than U.S. government obligations, but their liquidity and marketability is almost instantaneous; that, in his opinion, a bank may delay honoring a draft presented to it pursuant to a letter of credit and there may be a substantial delay if litigation is involved; that certificates of deposit have been honored whenever UCB has presented them for redemption, but that he did not believe letters of credit would be honored on a timely basis; that the Department of Insurance no longer accepts property mortgage bonds and is trying to replace those which were previously accepted with securities that are more negotiable; that a bank would have no obligation to honor a draft or demand made pursuant to a one-year letter of credit after expiration of the one-year term; that he is aware of an instance in which the

Department of Insurance has unsuccessfully attempted to collect on a bank letter of credit for several years; that he is personally aware of at least six instances in which banks have raised questions and have delayed payment pursuant to letters of credit, with the length of the delay depending on litigation; that UCB is willing to hold renewable or perpetual commercial surety bonds authorized by the Utilities Commission and make one attempt to collect on such bonds if requested to do so by the Commission; that certificates of deposit are automatically renewed at the end of their terms and that they are, in effect, permanent or perpetual; and that letters of credit typically contain a 30-day notice provision regarding cancellation.

The Commission has carefully reviewed the entire record in this proceeding and concludes that good cause does not exist to authorize Hydraulics and Harrco to post bonds secured by either one-year irrevocable letters of credit issued by banks or annual renewable bonds issued by commercial bonding companies. One-year letters of credit and commercial bonds, even though renewable, do not afford sufficient security to protect the public interest. In reaching this conclusion, we agree with the joint recommendations of the Commission Staff and the Public Staff in their filing of January 15, 1992, that:

> "The fundamental criteria for security are, first, <u>whether</u> funds will be available when needed, and, second, <u>how quickly</u> the security can be converted to cash. Given the high probability that an emergency necessitating forfeiture of a bond would be preceded by a decline in the financial health of the utility, it seems distinctly probable that under these circumstances a bank would decline to renew a letter of credit and that a bonding company would refuse to renew its bond. Even if the letter of credit or bond were in effect, the bank or bonding company might be [sic] well raise defenses or conditions requiring litigation or at least delaying the availability of funds. The Commission's Rules as currently written and interpreted avoid this potential morass by requiring a bond for the duration of the franchise and by specifying forms of security which provide the certainty and prompt availability needed in an emergency." (Emphasis in Original).

Simply stated, the securities being proposed by Hydraulics and Harrco do not serve the public interest because they are of such limited duration and inherently subject to potential litigation. Their use would foster uncertainty and instability in the bonding program for water and sewer companies. While the result of this decision may seem somewhat harsh as it affects Hydraulics and Harrco, the Commission cannot justify the use of securities such as those proposed by Hydraulics and Harrco which are of such limited duration that they could impair the long-term integrity of the entire bonding program. Once approved, <u>all</u> water and sewer companies in this State could petition the Commission to approve one-year letters of bank credit and/or one-year commercial bonds for them in lieu of the securities heretofore found acceptable by the Commission; i.e., government bonds and certificates of deposit. As of the date of the show cause hearing, at least 32 water and sewer companies had certificates of deposit on file with UCB totalling $871,400. This indicates that, by and

large, the Commission's bonding rules have not worked an undue hardship on the water and sewer industry and that the number of operators experiencing problems in filing acceptable bonds is minimal. Adoption of the bonding proposals being advocated by Hydraulics and Harrco would, in our opinion, weaken and erode the bonding program.

Today, the bonding program is supported by certificates of deposit which are easy to administer and, if necessary, easy to liquidate. Such securities are also permanent or perpetual in nature because they are registered in the name of UCB as custodian for the Utilities Commission and are automatically renewed at the end of each term. By contrast, one-year commercial bonds and bank letters of credit are too fleeting in duration and subject to too much uncertainty to justify their approval for general use in North Carolina. Since the appointment of an emergency operator would serve to forfeit a bond, it is imperative that the Commission have ready access to securities of the greatest liquidity in order to be able to expeditiously correct the problems which led to the forfeiture.

Therefore, Hydraulics and Harrco will be allowed 120 days from the date of this Order to either provide acceptable bonds and securities for the utility systems in question or to initiate transfer proceedings for those systems.

IT IS, THEREFORE, ORDERED as follows:

1. That, not later than 120 days from the date of this Order, Hydraulics, Ltd., shall either post acceptable bonds with appropriate securities for the water utility systems serving the Smoke Ridge Estates Subdivision (Docket No. W-218, Sub 63), the Laurel Acres Subdivision (Docket No. W-218, Sub 68), the Sturbridge Village Subdivision (W-218, Sub 68), the Dorsett Downs Subdivision (Docket No. W-218, Sub 69), the Bexley Place Subdivision (Docket No. W-218, Sub 69), and the Allendale Heights Subdivision (Docket No. W-218, Sub 71) or initiate transfer proceedings, as appropriate.

2. That, not later than 120 days from the date of this Order, Harrco Utility Corporation shall either post acceptable bonds with appropriate securities for the sewer utility systems serving the River Oaks Subdivision (Docket No. W-796, Sub 2), the Park Ridge Subdivision (Docket No. W-796, Sub 3), the Woods of Tiffany Subdivision (Docket No. W-796, Sub 4), and the Hardscrabble Subdivision (Docket No. W-796, Sub 5) and the water utility system serving the Hardscrabble Subdivision (Docket No. W-796, Sub 6) or initiate transfer proceedings as appropriate.

3. That the proposals by Hydraulics, Ltd., and Harrco Utility Corporation to file bonds secured by either a one-year irrevocable letter of credit from a bank or a commercial bond issued by a commercial bonding company for a one-year term are not acceptable to the Commission pursuant to G.S. 62-110.3 and Rules R7-37 and R10-24 and such proposals are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioners Sarah Lindsay Tate, Laurence A. Cobb, and Charles H. Hughes dissent.

COMMISSIONER CHARLES H. HUGHES DISSENTING. I dissent in part from the decision of the Majority in these dockets. I would authorized Hydraulics, Ltd., and Harrco Utility Corporation to post one-year commercial bonds in satisfaction of the bonding requirement specified by G.S. 62-110.3, so long as such commercial bonds specify that they would be automatically renewed for additional one-year periods of time unless the bonding company give the utility and the Utilities Commission 60 days' notice of cancellation. Commercial bonds are clearly allowed by the law and the Majority has adopted a policy on bonds which is too harsh and stringent on good utility operators like Hydraulics, Harrco and others, who do not choose to tie up liquid working capital necessary to post only cash bonds. I doubt seriously if it is prudent for some utilities to remove from their liquidity base $10,000 cash when other forms of security are available. This, in and of itself, emulates the spectacle of a man choking himself. Without working capital, no enterprise can survive. The Commission should be looking for ways to help utilities to succeed, not promote failure. The acceptance of cash only bonds is in my opinion unjust discrimination, creates undue preferences and advantages, and is an unfair and destructive competitive practice.

I disagree with the Majority's conclusion that one-year commercial bonds are not of sufficient duration and liquidity to justify their approval. Such conclusion is, in fact, inconsistent with Commission Rules R7-37 and R10-24 which provide that the bonding requirement may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission and that the utility shall ensure that the bond is renewed as necessary to maintain it in continuous force. These provisions clearly support approval of renewable commercial bonds and the Majority's decision to deny their use is, in my opinion, arbitrary and capricious. Commercial bonds are commonly used and accepted as security in our society today and their use should be recognized and approved by the Utilities Commission. Furthermore, the Commission has given great weight to the joint recommendation of the Commission Staff and Public Staff in their filing of January 15, 1992. The Commission's reliance on the Staff's definition of security - "whether funds will be available when needed, and, second, how quickly the security can be converted to cash," is relevant, but the definition of security can also be defined as freedom from doubt, anxiety or fear. This type security can be accomplished by professional financial stability oversight. Financial stability oversight occurs on a yearly basis when guaranteed irrevocable letters of credit bonds and surety bonds by a professional bonding company is accepted as security. When the Commission is notified by the bank that a letter of credit bond or a surety bond would not be renewed, it would signal that possibly the financial security of the company is in question and at that point the Commission could obtain its cash in the early stages of financial insolvency. With a cash bond, renewed automatically, there is no financial oversight and if a company gets into trouble, it might take years before such financial instability is recognized. The cash bond at that time might help very little in the later states of financial insolvency. thus, the utility customers would have had better security with better financial stability oversight.

The second sentence of the recommendation, in and of itself, is totally incorrect and one need only look at what it says for a showing of proof. The second sentence, "Given the high probability that an emergency necessitating

forfeiture of a bond would be preceded by a decline in the financial health of the utility..." is correct. However, the remainder of the sentence, "...it seems distinctly probable that under these circumstances a bank would decline to renew a letter of credit and that a bonding company would refuse to renew its bond", is backwards in the process. First of all, the Commission, taking action causing forfeiture of the bond, would at that point care less if the bond were renewed or not. Once it's collected, its collected. That has nothing to do with the bond. The same holds true for a letter of credit. If a guaranteed letter of credit were used as security, the Commission would write a draft executing the letter of credit and withdrawing the funds from the bank. At that point, there would be no need for the letter of credit; therefore, it has no value. It would have been executed. Using the same train of thought for a cash CD bond, it would be like saying, given the high probability that an emergency necessitating forfeiture of a cash CD bond would be preceded by a decline in the financial health of the utility. It seems distinctly probably that under these circumstances, the utility would decline to give the bank another cash CD to be forfeited.

The second portion of the Staff's filing, that litigation might occur delaying funds, is no more than an assumption. Even though there was testimony in this case about letters of credit, David Snyder, who made those statements, also stated he was not an expert witness. The conclusion as to the value of a guaranteed letter of credit or guaranteed bond by a bonding company seems to be derived from the testimony of the Public Staff witness, David Snyder. However, from the testimony on pages 125 and 126, it is clear that witness Snyder was not an expert witness in forms of bonds and that he was not an expert witness in the issuance of bonds or letters of credit. The only experience that witness Snyder had with letters of credit default was one occurrence and even with that one occurrence, he did not know why the letter of credit payment was refused. He clearly stated that he was not testifying that letter of credit are not acceptable to the Commission.

There is great weight also given in the Staff's recommendation previously quoted, of the great concern for renewal. However, the Public Staff's witness, Snyder, stated that the Commission has already set a precedence on Page 128 of his testimony, that there is one CD that is not automatically renewable. This CD has been accepted by the Commission and has a single maturity date. On page 129, witness Snyder admits the Commission has established the acceptance of renewable items.

I fear that the Commission's failure to authorize one-year commercial bonds will severely impede the water and sewer industry in North Carolina to the detriment of consumers, the intended beneficiaries of G.S. 62-110.3. The acceptance of self renewing cash bonds only, can lead to false security. This form of fancy wisdom, if it may so be called, is mere intellectual vanity. It is possible to be intellectually industrious and at the same time not find our way in the dark without stumbling.

Charles H. Hughes, Commissioner

DOCKET NO. W-1000, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Utilities, Inc., to Acquire the Franchise and Assets of the Water and Sewer System Serving Carolina Trace Subdivision in Lee County, North Carolina	)))))	ORDER APPROVING TRANSFER

HEARD IN: Lee County Courthouse, Sanford, North Carolina, on November 7, 1991, at 10:00 a.m.

BEFORE: Commissioner Charles H. Hughes, Presiding, Commissioner Robert O. Wells, and Commissioner Allyson K. Duncan (not present but participating in the decision)

APPEARANCES:

For Utilities, Inc.:

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

For the Public Staff:

David T. Drooz, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On July 17, 1991, Utilities, Inc. (Company), filed an application in Docket No. W-1000 to acquire the franchise and assets of the water and sewer systems serving Carolina Trace Subdivision in Lee County from Carolina Trace Corporation (CTC or Carolina Trace). August 31, 1991, on the grounds that Utilities, Inc., had violated G.S. 62-111 by paying a portion of the purchase price before Commission approval of the transfer. The Company had paid CTC a nonrefundable deposit of $50,000.

Utilities, Inc., refiled the application for transfer on September 4, 1991, in the present docket. The purchase contract attached to the new application is essentially the same as the one in W-1000, except that the purchase price has been reduced by the amount already paid to Carolina Trace Corporation in connection with Docket No. W-1000.

After hearing from the attorneys of the parties as to whether a public hearing would be appropriate, the Commission issued an Order on September 18, 1991, setting a hearing and requiring public notice. The hearing was subsequently rescheduled to the time, date, and place indicated above by Commission Order of September 30, 1991.

Jim Camaren, Vice President of Business Development for Utilities, Inc., testified on behalf of the Applicant.

The Public Staff called William J. Brinn, Jr., President of CTC, as an adverse witness. The Public Staff also presented the testimony of Andy Lee, Director of the Public Staff Water Division, and Robert F. Kratz, a customer and representative of the homeowners in Carolina Trace Subdivision.

Based on the application, testimony, and entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. CTC currently owns the assets of the water and sewer systems which provide utility service for compensation to approximately 840 water customers and 780 sewer customers in Carolina Trace Subdivision, Lee County, North Carolina. CTC has a certificate of public convenience and necessity to provide such services.

2. The May 31, 1991, rate case Order for CTC in Docket No. W-436, Sub 4, found that CTC is providing generally adequate water and sewer service, although some deficiencies in water service needed to be addressed. Customer testimony in the present proceeding was consistent with that finding.

3. Utilities, Inc., owns several water and sewer utility companies operating in North Carolina. Utilities, Inc., has the financial ability and technical expertise to properly operate the CTC water and sewer systems and to make improvements if any are needed.

4. Utilities, Inc., proposed to set up a subsidiary company to own and operate the systems being transferred. However, the transfer requested in this case is to Utilities, Inc., not to any subsidiary of Utilities, Inc.

5. Utilities, Inc., does have a certificate of authority under G.S. 55-15-01 to transact business in this State.

6. Utilities, Inc., does not propose to increase the flat or metered rates charged to Carolina Trace customers at this time.

7. It is inappropriate for Utilities, Inc., to increase the reconnection fee from $15.00 to $22.00.

8. It is inappropriate for Utilities, Inc., to bill on a bimonthly basis.

9. The purchase contract includes a provision whereby Utilities, Inc., indemnifies Carolina Trace Corporation for any liability arising from a possible suit by Heater Utilities arising from this transaction.

10. In determining rate base for Utilities, Inc., the starting point for ratemaking purposes shall be the net original cost.

11. Plant currently classified as nonused and useful for reasons such as those mentioned in the Commission's Order in Docket No. W-436, Sub 4, shall not be excluded from rate base in the future to the extent that competent evidence indicates that it should be included in rate base at that time.

12. As part of the purchase agreement, Utilities, Inc., has agreed to undertake to provide service to the area being developed by the Patten Corporation.

13. There is a provision in the sales contract, captioned Carolina Trace Corporation Water and Sewer Asset Purchase Agreement [Article III(3)], entered into by and between the parties to the instant proceeding, whereby such parties (i.e., Utilities, Inc., and CTC) have proposed to determine among themselves how any future gain will be divided with respect to any future sale of the public utility franchise and assets now proposed for transfer and sale to Utilities, Inc.

14. By agreeing to purchase the assets and franchise, Utilities, Inc., agrees to undertake obligations imposed upon Carolina Trace Corporation in its last rate case dealing with service improvements.

15. By agreeing to purchase the assets and franchise, Utilities, Inc., agrees to comply with any future Commission Orders in Docket No. W-436, Sub 4, that may be issued as a result of any remand of such docket from the North Carolina Supreme Court.

16. The application for transfer in this proceeding is justified by the public convenience and necessity and should be approved.

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

The evidence supporting these findings of fact is uncontested in the record.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-5

In its application, Utilities, Inc., indicated that it did not intend to consolidate the Carolina Trace system with any other of its existing operating utilities. The Company represented that instead it was in the process of establishing a new operating subsidiary, Carolina Trace-Utilities, Inc., to which ownership of Carolina Trace will be transferred subsequent to approval from the Commission.

Company Witness Camaren testified at the hearing that he did not know whether Utilities, Inc., had authority to transact business within North Carolina at that time but acknowledged that such authority would be necessary before Utilities, Inc., could actually take over operations. Witness Camaren acknowledged that the Company would have to satisfy the Commission that it was qualified to conduct business before any order authorizing the transfer of the certificate could become operable. However, Witness Camaren requested that the Commission approve the transfer contingent upon receipt of proof that such authorization had been obtained.

Witness Camaren also requested the Commission to acknowledge that the Company was seeking permission to create a new operating subsidiary, Carolina Trace - Utilities, Inc., which would ultimately own the systems and hold the franchise. Witness Camaren requested the Commission to approve transfer of the assets and franchise from Utilities, Inc., to Carolina Trace - Utilities, Inc.,

contingent upon receipt of proof that Carolina Trace - Utilities, Inc., was a corporation duly authorized to conduct business in North Carolina and sufficiently capitalized to ensure proper operation and financial strength.

Witness Camaren also explained the basis for the Company's decision to operate the Carolina Trace systems on a stand alone basis. A pervasive issue in Carolina Water Service, Inc., of North Carolina rate cases has been the appropriateness of uniform rates and the need to retain cost and operating expense data on a system specific basis. Also, with a system as large as Carolina Trace, it is more appropriate for ratemaking purposes for rates to be established on the rate base and operating experience of that system alone.

The Commission determines that it is appropriate for the Carolina Trace system to be operated as a stand alone system. The Carolina Trace customers, through Mr. Kratz, stated their desire that the system not be combined with other systems owned and operated by Utilities, Inc., or its subsidiaries. The Public Staff has expressed no objection to operations of the system on a stand alone basis. Unless there is some compelling reason to rule otherwise, an acquiring utility should retain substantial latitude in determining how it will structure its utility operations.

Subsequent to the November 7, 1991, hearing, Utilities, Inc., has provided the Commission with evidence that it has qualified to do business in North Carolina as a foreign corporation. The Company has also provided evidence that Carolina Trace - Utilities, Inc., has been incorporated and exists as a Utilities, Inc., subsidiary. This subsidiary was established solely for the purpose of receiving and operating the Carolina Trace assets and franchise. The new corporation will be funded with the Carolina Trace assets and will receive sufficient cash working capital to ensure adequate uninterrupted operations. As a wholly-owned subsidiary of Utilities, Inc., Utilities, Inc., will provide sufficient capital and resources to provide for the needs of customers and for future growth.

The Commission notes that the application in this matter requests transfer to Utilities, Inc., and not to any subsidiary of Utilities, Inc. Therefore, the only viable transfer before this Commission in this proceeding is from CTC to Utilities, Inc. Therefore, the Commission concludes that Utilities, Inc., should file an application for transfer before Utilities, Inc., transfer's control of the Carolina Trace systems. Additionally, consistent with the General Statutes of North Carolina, said application should be approved before control of the Carolina Trace systems is transferred.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-8

The evidence supporting these findings of fact is found in the application and the testimonies of Company witness Camaren, Public Staff witness Lee, and Public witness Robert Kratz.

Utilities, Inc., intends to maintain the existing level of usage rates. Witness Camaren testified that it is impossible to predict the length of time the Company will wait before requesting to alter the existing usage rates because the Company has not begun to operate the systems and therefore has no accurate operating experience. Witness Camaren testified that it would be highly unlikely

that any request would be made within one year, but it was likely that a request would be made before three years.

Currently, Carolina Trace customers are billed on a monthly basis. Also, the reconnection charge is $15.00. Utilities, Inc., proposes to bill on a bimonthly basis and to increase the reconnection fee to $22. Utilities, Inc., proposes to charge customers who ask to be reconnected within nine months of disconnection the base facilities charge for the service period in which they were off line.

Some of the Carolina Trace customers, through witness Kratz, oppose these tariff changes. Under the existing tariff, customers are only billed for the first 6,000 gallons of sewer service with usage above that level provided without charge. Witness Kratz argued that under the existing tariff, customers who use less than 6,000 gallons one month and more than 6,000 gallons the next pay less than they would if billed on a bimonthly basis. Witness Kratz testified that any reduction in cost achieved by less frequent billing would not benefit the customer.

Witness Camaren testified that the Company requested bimonthly billing to reduce meter reading and billing and other administrative costs. Utilities, Inc., uses bimonthly billing in its other subsidiaries in North Carolina.

The Commission has carefully reviewed these proposed tariff changes and concludes that they should not be approved in this proceeding, but are better left to be addressed in a general rate case proceeding. Therefore, the Commission concludes that the current tariffs should not be changed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT 9

Article VI of the September 1, 1991, purchase agreement between Utilities, Inc., and CTC provides that "Purchaser agrees to indemnify Seller and hold harmless from any damage or expense (including legal fees) incurred as a result of any claims or litigation concerning the alleged letter agreement referenced in the March 8, 1991 proposal from Heater Utilities, Inc. to Seller." Attached to the application is a letter dated April 18, 1991, from William E. Grantmyre, President of Heater Utilities, Inc. (Heater), to Mr. Camaren arguing that a letter agreement between Heater and Carolina Trace gave Heater binding rights with respect to the Carolina Trace water and sewer utility assets. Mr. Grantmyre stated that Heater would hold Utilities, Inc., accountable for any interference with those rights.

Witness Camaren testified that Heater had made an offer that was contingent on the rates to be approved. Witness Camaren further testified that Utilities, Inc., was informed by counsel for Utilities, Inc., and counsel for Carolina Trace that Heater did not have a definitive agreement or an exclusive agreement and therefore there was no basis for a contractual interference claim. Witness Camaren testified that he had discussed the dispute with the parent corporation of Heater and had been informed that entity agreed that there was no basis for a contractual interference claim. Witness Camaren testified that Carolina Trace had nevertheless requested a provision that would save it harmless should it become involved in litigation from a suit by Heater.

The Public Staff cross-examined witness Camaren on his interpretation of this provision in the contract and whether the Company would seek to recover any payments made to indemnify Carolina Trace from customers through rates. Witness Camaren testified that if the Company were required to make payments for events transpiring prior to acquisition of the system or for inappropriate actions on the Company's part, no attempt would be made to recover the costs through rates.

Witness Lee testified for the Public Staff that it was inappropriate, in his view, for the Commission to start approving contracts for utilities containing provisions such as that at issue. Witness Lee asserted that the amount of the potential damages is unknown and it is impossible to determine the impact the provision might have on the acquiring utility. Witness Lee testified that the provision was inconsistent with the Commission's duty to promote harmony among utilities.

The Company, through its negotiations with CTC obligated itself to this contingent liability in order to obtain the seller's agreement to sell. The Company did so only after reaching the conclusion that the likelihood of making any such payments was remote. As of this time, there has been no action brought for contractual interference, nor has Heater participated in this docket. The Company has made no request for recovery of any future payments through rates.

The Commission has carefully reviewed this matter and concludes that Utilities, Inc., should not be allowed to recover from rate payers any future costs related to Article VI of the September 1, 1991, purchase agreement.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-11

In the last rate case for Carolina Trace, Docket No. W-436, Sub 4, the Commission determined that used and useful rate base for water operations was $89,081 and used and useful rate base for sewer operations was $526,099. Utilities, Inc., has agreed to pay $1,050,000 for the systems.

The Company has sought no determination of rate base in this transfer proceeding. Witness Camaren testified that the Company desired to avoid the delay necessary for a rate base determination and that the Company preferred to postpone rate base issues until a subsequent general rate case. It is the Company's position that rate base issues should not delay requests to obtain new certificates. The Public Staff suggests that it is necessary to determine whether it is possible that rate base will be the higher purchase price in order to assess whether the transfer is in the pubic interest. The Company insists that this Public Staff position is inconsistent with positions it has taken in certificate transfer requests by other companies where the Public Staff has requested no such determination.

As a general proposition, at transfer of existing utility facilities, rate base in the hands of the acquirer is the lesser of the net original cost at transfer or the purchase price. However, based on the facts of particular cases, the Commission has permitted inclusion within rate base of the difference between net original cost and the purchase price where purchase price exceeds net original costs. This difference is referred to as the debit plant acquisition adjustment (PAA).

The Commission, in Docket No. W-354, Sub 39, adopted the following criteria to be applied in determining whether rate base treatment should be allowed for debit PAA's:

1. The benefits to ratepayers should outweigh the cost of inclusion in rate base of the excess purchase price.

2. System deficiencies would have gone unaddressed if not for the acquisition by the acquiring company; and

3. The acquisitions were a result of arms'-length bargaining.

At the hearing, witness Camaren testified that he was unaware of any facts that would permit the Company to request inclusion within rate base of the difference between net original cost and the purchase price. In its proposed order, the Company has agreed that the starting point for determining its rate base in future rate adjustment proceedings will be the net original cost at the time of acquisition and not the purchase price. This agreement removes rate base and plant acquisition adjustment as an issue that must be resolved before the Commission approves the transfer.

In agreeing that the starting point for determining the Company's rate base will be net original cost, the Company stressed that it is inappropriate to limit rate base for purposes of future rate adjustment cases to that approved by the Commission in Docket No. W-436, Sub 4. In that case, a portion of Carolina Trace Corporation's investment was excluded from rate base on the theory that it constituted excess capacity. For example, investment in sewer lines in the Carr Creek area was excluded on this theory. Utilities, Inc., argues that to the extent plant capacity deemed excess capacity in Docket No. W-436, Sub 4, becomes more fully utilized due to future growth, nothing in this order should preclude Utilities, Inc., from arguing that a higher percentage of the investment in such plant should be included in rate base.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Under Article IV of the agreement between Utilities, Inc., and CTC, Utilities, Inc., agrees to assume CTC's contractual obligation to the Patten Corporation (Patten) and to indemnify Carolina Trace Corporation from any and all loss incurred by Seller if Purchaser fails to perform such assumed obligation.

Witness Camaren testified that CTC presently has a contract with Patten to provide service to undeveloped land. The agreement obligates the utility to provide service within the area on a timely basis.

A question arose as to whether the CTC's existing franchise permitted service to the Patten property. The existing franchise for Carolina Trace issued on September 5, 1974, describes the subdivision or service areas to be served as "Carolina Trace, Lee County."

The Commission is concerned with questions raised at the hearings as to whether the Patten property is contiguous to the Carolina Trace service area.

Because of this concern, the Commission concludes that Utilities, Inc., should notify the Commission and acquire Commission approval before constructing any utility plant into the Patten property.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Article III, paragraph 3, of the agreement between Utilities, Inc., and CTC contains a provision stating that for a period of five years from the date of closing, purchaser agrees to pay to seller one-half of any "net gain" resulting from the sale of the facilities to any other party, including municipalities, utility districts, or other governmental agencies. A question arose in the hearing as to whether such provision acted to limit the Commission's ability to rule that the gain on sale should be distributed in a different fashion. Witness Camaren testified that he was unaware of any precedential Commission decision addressing the issue of gain on sale at the time of complete liquidation that was inconsistent with the contractual provision. Nevertheless, witness Camaren testified that the provision at issue in the contract would not bind the Commission from addressing the gain on sale issue and from ruling without being bound by the terms of the contractual provision.

The Commission has carefully reviewed this matter. Based on this review, the Commission hereby places the parties to this agreement on notice should such a future sale occur that the determination of the amount of any gain realized therefrom and the distribution of such gain shall be determined by and disposed of in the manner to be prescribed by the Commission at such time and without regard to the subject provision of the aforementioned agreement between the parties. Specifically, Utilities, Inc., is hereby placed on notice that the Commission will determine the amount of the gain and the manner in which the gain shall be distributed should such a sale occur without regard to any payment made or any liability incurred by Utilities, Inc., arising from any contractual obligation it has entered into or it may entered into with CTC in this regard.

EVIDENCE AND CONCLUSIONS FOR FIND OF FACT NO. 14

In the Commission's May 31, 1991, Order, in Docket No. W-436, Sub 4, the Commission noted that there were certain service deficiencies requiring improvements. These service deficiencies had to do with discolored water, odor, service interruptions without notice, delays in road repairs, and the need for an altimeter control on an elevated storage tank. Carolina Trace was ordered to take steps necessary to improve the quality of the water, including sufficiently flushing the system. The Company also was ordered to make service improvements recommended by the Public Staff.

At the hearing, witness Kratz and the Public Staff were interested in obtaining a commitment from Utilities, Inc., that it would honor the service improvement requirements in the Commission's Order. Witness Camaren testified that Utilities, Inc., was ready, willing, and able to make such improvements. The Commission is satisfied from witness Camaren's representations that Utilities, Inc., will fulfill the requirements in its Order in Docket No. W-436, Sub 4, and concludes that the Company should so in a reasonable fashion.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The Public Staff has appealed the Commission's Final Order in the last general rate case for CTC in Docket No. W-436, Sub 4, to the North Carolina Supreme Court. Issues in the appeal deal with the treatment of the interconnection with the Town of Sanford and the question of alleged excess capacity in the new sewage treatment plant.

A question arose in the hearing as to the effect on this proposed transfer of the pending appeal. Witness Camaren testified that, in his view, should the North Carolina Supreme Court reverse and remand, Utilities, Inc., would be bound by any decision the Commission would make that had the effect of reducing rates. Based upon this testimony the Commission is satisfied that Utilities, Inc., is fully apprised of the appeal and intends to comply with any subsequent Commission Orders that may result from the appeal.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence to support this finding of fact is contained in the testimony of Company witness Camaren. Witness Camaren testified that Utilities, Inc., and its operating subsidiaries constitute a large utility company. The Company has much operating expertise. The Company has the financial wherewithal to make necessary improvements and provide ongoing maintenance. The Company can make investments for the long haul without being inhibited by temporary credit tightening. The Company has the interest to operate the utility as a long-term investment and a long-term enterprise rather than operate it as an adjunct to some other enterprise such as a development. The Company is willing and well equipped to make service improvements such as those ordered in the recent CTC rate case.

The operators that the Company will employ to run the system will be certified by the North Carolina water and sewer authorities for both water and wastewater operations. The Company has other operations in the vicinity such as those at Whispering Pines. This proximity of other operators enables the Company to have sufficient backup to supplement the Carolina Trace operations.

Witness Camaren testified that because Utilities, Inc., is the owner of many systems, the administrative overhead could be spread over many customers thereby enabling economies of scale greater than those that ordinarily may be achieved where each system is operated independently.

After carefully reviewing the entire record in this proceeding, the Commission agrees with the Public Staff's alternative position that the proposed transfer meets the public convenience and necessity test of G.S. 62-111(a), and therefore should be approved, only upon the following terms and conditions:

(a) Utilities, Inc., shall immediately review the status of all service deficiencies noted in CTC's last rate case, shall report on the status of those deficiencies within 30 days of the date of this Order, and shall take action to correct the deficiencies as soon as possible.

(b) The rate structure and rates to be charged by Utilities, Inc., shall conform in all respects to the rate structure and rates approved for CTC in its last rate case. If the CTC rate structure or rates are determined to be in error as a result of the pending appeal of that rate case, then any changes that would be appropriate if CTC still held the franchise shall be adopted by Utilities, Inc.

(c) Utilities, Inc., shall not receive rate base treatment for any portion of the acquisition adjustment. To the extent that any CTC plant that has been determined to be excess capacity subsequently becomes used and useful, then Utilities, Inc., may seek rate base treatment for such plant based on the net original cost of such plant to CTC.

(d) Utilities, Inc., shall bill Carolina Trace customers monthly in arrears for utility service.

(e) Utilities, Inc., shall operate the Carolina Trace water and sewer systems on a stand-alone basis.

(f) Utilities, Inc., is prohibited from seeking to include in rates for its utility customers any costs incurred by CTC which are related to claims by Heater Utilities, Inc., related to negotiations between CTC and Heater for acquisition of the Carolina Trace utilities.

(g) If Utilities, Inc., wants to have a subsidiary own and operate the Carolina Trace water and sewer systems, it must apply for and receive approval pursuant to G.S. 62-111(a) prior to effecting any transfer to a subsidiary.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of the utility franchise and assets from Carolina Trace Corporation to Utilities, Inc., for the water and sewer systems serving Carolina Trace Subdivision, Lee County, North Carolina is hereby approved, effective upon closing of the purchase agreement attached to the application, and subject to the terms and conditions stated in paragraphs (a) through (g) found in Evidence and Conclusion for Finding of Fact No. 16.

2. That Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates, attached as Appendix B, is hereby approved for Utilities, Inc., to charge in Carolina Trace Subdivision, and is deemed to be filed with the Commission pursuant to G.S. 62-138.

4. That Utilities, Inc., shall mail notice of the approval of the transfer and a copy of Appendix B to every customer as a bill insert in the first billing after closing of the purchase agreement.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Commissioner Hughes dissenting in part and concurring in part.

APPENDIX A

DOCKET NO. W-1000, SUB 1
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
UTILITIES, INC.
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water and sewer utility service
in
CAROLINA TRACE DEVELOPMENT
Lee 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 3rd day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX B

SCHEDULE OF RATES
for
UTILITIES, INC.
for providing water and sewer utility service in
CAROLINA TRACE DEVELOPMENT
Lee County, North Carolina

Metered Rates: (Residential Service)

Water base charge, zero usage	$ 7.39, minimum
Water usage charge	$ 2.13/1,000 gallons
Sewer base charge, zero usage	$ 6.36, minimum
Sewer usage charge (maximum 6,000 gal)	$ 2.41/1,000 gallons

Tap-on Fee:

Water service connection	$605 plus full gross up
Sewer service connection	$533 plus full gross up

Reconnection Charges:
If water service cut off by utility for good cause: $15.00
If water service discontinued at customer's request: $15.00
If sewer service discontinued at customer's request: $15.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1000, Sub 1, on this the 3rd day of February 1992.

COMMISSIONER CHARLES HUGHES, DISSENTING IN PART AND CONCURRING IN PART. I respectfully dissent from the decision of the Majority of the Commission in this case relating to treatment of the acquisition adjustment. As used herein, the term "acquisition adjustment" refers to the difference between the original cost of the water and sewer systems serving Carolina Trace Subdivision and the purchase price paid for said systems by Utilities, Inc. I concur in and support the remaining findings and conclusions in the instant proceeding, Docket No. W-1000, Sub 1.

The one major issue in this proceeding, which presumed Commission approval of the subject transfer, is the future ratemaking treatment to be accorded the acquisition adjustment. The Majority by this Order has approved transfer of the system. However, the Majority is unwilling to rule and has in fact deferred ruling on the propriety of the treatment of the acquisition adjustment in future general rate case proceedings. I firmly believe that the evidence in this case overwhelmingly dictates that, if the petition to transfer the subject system is to be allowed and it has been, it can be justified if and only if the Commission decrees in the strongest possible terms that the acquisition adjustment arising from this transfer is not to be included in the cost of service in future general rate case proceedings.

I fully recognize that any decision entered in this docket will not and can not bind future decisions of the Commission. However, virtually everyone involved in this proceeding, including Utilities, Inc., concedes that neither the quality of service nor the cost of service to ratepayers will be enhanced as a result of this transfer. Literally, throughout the entirety of the proceedings in this docket it has been abundantly clear that no party could identify any benefit or potential benefit accruing to the customers of these systems arising out of approval of the requested transfer; undoubtedly because none exist. Indeed, the Majority in its Order states that Company witness "... Camaren testified that he was unaware of any facts that would permit the Company to request inclusion within rate base of the difference between net original cost and the purchase price."

Therefore, to the maximum extent possible this Commission has an obligation to take any reasonable action it can to insure that rates will not be increase in the future solely because a change in the ownership of this system has occurred. Clearly, such action should include an unequivocal finding and conclusion in this Order to the effect that the acquisition adjustment arising from the purchase of the Carolina Trace system by Utilities, Inc. should not be included in the Company's cost of service in future general rate case proceedings. Since the Majority could not bring itself to make such a finding and conclusion, it is for that reason that I dissent in part and concur in part.

February 3, 1992 Charles H. Hughes, Commissioner

DOCKET NO. W-720, SUB 96
DOCKET NO. W-720, SUB 108

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Mid South Water Systems, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673 for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Bradfield Farms and Britley Subdivisions, Cabarrus and Mecklenburg Counties, North Carolina and for Approval of Rates	ORDER REVOKING TEMPORARY OPERATING AUTHORITY IN BRADFIELD PHASES III, IV, AND V, DECLARING SILVERTON EXTENSION UNAUTHORIZED, AND SCHEDULING FURTHER HEARING ON BRADFIELD II CERTIFICATE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on July 9-10, 1991

BEFORE: Commissioner Laurence A. Cobb, Presiding; Chairman William W. Redman and Commissioners Sarah Lindsay Tate, Robert O. Wells, Julius A. Wright, Charles H. Hughes, and Allyson K. Duncan

APPEARANCES:

For the Applicant:

Samuel H. Long, III and Stewart L. Cloer, Long, Cloer & Elliott, Post Office Box 3827, Hickory, North Carolina 28603

For Centex Real Estate Corp.

Thomas W. Steed, Jr., Moore and Van Allen, Post Office Box 26507, Raleigh, North Carolina 27611
For: John Crosland Company

For Carolina Water Service, Inc. of North Carolina

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

For the Using and Consuming Public:

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

BY THE COMMISSION: On July 10, 1989, Mid South Water Systems, Inc. ("Mid South") filed an application to acquire a franchise to provide water and sewer utility service in the Bradfield Farms, Phase II subdivision in Cabarrus County, North Carolina. Docket No. W-720, Sub 96. On August 7, 1989, Carolina Water

Service, Inc. of North Carolina ("Carolina Water") petitioned to intervene. By Order issued August 28, 1989, the Commission denied full intervention but permitted Carolina Water to file comments as amicus curiae.

The Public Staff brought the matter before the Commission in Staff Conference on August 14, 1989. The Commission set the matter for a hearing which was conducted on September 14, 1989. Although the Public Staff expressed concern that Mid South had obtained no reimbursement for contributions in aid of construction ("CIAC"), the Public Staff recommended that the certificate be issued.

On October 3, 1989, the Commission issued an Order approving issuance of the certificate for Bradfield Farms, Phase II to Mid South. The Commission stated that Mid South must obtain Commission approval before extending mains into any other phase of the Bradfield Farms Subdivision.

On October 5, 1989, Mid South informed the Commission of its intent to serve the Silverton Subdivision as a contiguous extension from Bradfield Farms Phase II.

On August 29, 1990, Mid South notified the Commission that Phases III and IV of Bradfield Farms had been installed and were ready to be served by Mid South. Mid South requested that its Phase II certificate be revised to reflect the contiguous extension. On November 15, 1990, the Commission issued an Order granting Mid South temporary operating authority to serve Phases III and IV. The Commission required Mid South to file additional information and resubmittal of applications pages from its July 10, 1989, filing.

On November 20, 1990, Mid South made a response to the Commission's request.

On September 5, 1990, Mid South filed an application to obtain the franchise to serve the Britley Subdivision in Cabarrus County in close proximity to Bradfield Farms. Docket No. W-720, Sub 108. On March 6, 1991, Carolina Water filed a Motion to Intervene in the Britley docket and in the Bradfield Farms docket, asking the Commission to deny Mid South's application to obtain the Britley franchise, to revoke the temporary operating authority for Bradfield Farms Phases III and IV, and to declare that Mid South's service to Silverton was unauthorized.

Mid South filed its response opposing Carolina Water's Motion on March 18, 1991. Carolina Water filed a reply on March 26, 1991.

On April 4, 1991, the Commission issued an Order allowing Carolina Water's intervention "in order to afford Carolina Water an opportunity to litigate the issues and concerns raised in its Motion." The Commission further noted that the matters raised in Carolina Water's Motion to Intervene "are also matters of concern to this Commission as it attempts to administer the provisions of its CIAC tax docket, Docket No. M-100, Sub 113." The Order also prohibited Mid South from providing service in the Britley Subdivision pending final order.

On April 16, 1991, in response to a verbal request from William Whitley, the developer in Britley Subdivision, the Commission authorized Mid South to provide emergency sewer service within Britley.

On May 8, 1991, the Commission issued an Order setting the matter for public hearing on June 11, 1991.

On May 28, 1991, Mid South filed a copy of its contract with Centex Real Estate Corporation under seal with a request for proprietary privilege.

By Order of June 7, 1991, upon Motion of Mid South, the Commission rescheduled the hearing for July 9, 1991.

During the course of the proceedings the parties have conducted substantial discovery. On June 13, 1991, Carolina Water filed a Motion to Compel. Mid South responded on June 21, 1991. The Commission conducted a prehearing conference and argument on the Motion to Compel on June 27, 1991.

On June 26, 1991, Centex Real Estate Corporation moved to intervene, which was allowed.

On June 28, 1991, the Commission issued an Order compelling Mid South to comply with discovery requests.

The matter came on for hearing as scheduled on July 9 and 10, 1991.

Mid South presented the testimony of Richard J. Durham, Assistant Regional Engineer, Division of Environmental Health, formerly General Manager/Executive Vice President of Mid South; William Whitley III of Whitley & Co., Real Estate; William Connelly Yandell, Land Development Manager, John Crosland Centex Corporation; Thomas William Scott, of B.V. Belk Investments, formerly Land Resources Manager, John Crosland Centex Corporation (by deposition); R. Stephen Pace, Pace Development Group (by deposition); Henry Holland, Jenkins, Davidson, Holland & Co.

Carolina Water presented the testimony of Jerry H. Tweed, of Heater Utilities, formerly Executive Vice President of Mid South (by deposition); James Camaren, Vice President of Business Development, Utilities, Inc.

On July 12, 1991, following the hearing, William Whitley of Whitley & Co. Real Estate submitted a letter seeking authorization for Mid South to provide water and sewer service to four additional houses within the Britley Subdivision. On July 19, 1991, Carolina Water filed a response to Mr. Whitley's request asking that it be denied pending provision of information in outstanding data requests and issuance of a final decision in these cases.

On July 23, 1991, the Commission issued an Order authorizing emergency water and sewer service to the four additional lots in the Britley Subdivision.

On July 31, 1991, Mid South submitted a request for temporary operating authority or a public utility status order for Bradfield Farms, Phase V.

On August 6, 1991, Carolina Water filed a response to Mid South's Motion for Extension of Time to File Brief and Proposed Order and Request of Mid South for Temporary Operating Authority. Carolina Water requested that the request for

Temporary Operating Authority or Public Utility Status be denied and that the Commission establish a date certain for Mid South to comply with the Order to Compel and establish a reasonable time thereafter when briefs and proposed orders should be due.

On August 13, 1991, the Commission issued an Order declaring temporary utility status for Bradfield Farms Phase V, allowing extension of time and requiring compliance with Order of June 28, 1991.

On September 11, 1991, William Whitley submitted a request for approval of water and sewer service for the lots remaining in Britley Phase I. On October 24, 1991, the Commission issued an Order authorizing sewer service to the remaining nine lots.

On January 29, 1992, the Commission issued an Order requiring Mid South within 30 days to file three copies each of revised Annual Reports for the calendar years 1987, 1988, 1989, and 1990, in accordance with the provisions of the Order. Mid South was further ordered to take such action as required in order to bring its books and records into compliance with Commission Rules and the Uniform System of Accounts and then continue to maintain its books and records in conformity with the Rules and the Uniform System of Accounts on a continuing basis.

On February 10, 1992, Whitley & Co. filed a letter requesting immediate approval of temporary service to the 50 lots in Britley, Phase II. On February 18, 1992, Carolina Water filed a Motion Opposing the Granting of Temporary Authority.

On February 13, 1992, Mid South filed a Motion for Extension of Time to Comply with the Commission's Order of January 29, 1992, requiring submission within 30 days of the revised Annual Reports. In support of its Motion, Mid South alleged that it had employed the services of a certified public accountant who has substantial experience in utility accounting, but that the Company would need additional time, until May 1, 1992, in which to comply with the Order. On February 18, 1992, Carolina Water filed a Motion Opposing the Request for Extension of Time. On February 24, 1992, Mid South filed a reply to Carolina Water's Motion for Extension of Time.

On March 2, 1992, the Commission issued an Order granting Mid South an extension of time to May 1, 1992, to comply with the Order of January 29, 1992.

On April 30, 1992, Mid South filed its revised Annual Reports for the years 1987, 1988, 1989, and 1990.

On June 4, 1992, Carolina Water filed a response to the Annual Reports filed by Mid South.

On June 26, 1992, Mid South filed a Motion to Dismiss Carolina Water as a party in this proceeding. Mid South also requested a hearing before the Commission upon the Motion at the earliest possible date.

On July 20, 1992, Mid South filed Reply to Response of Carolina Water Service to Filing of Partially Revised Annual Reports.

FINDINGS OF FACT

1. In the fall of 1987, John Crosland Company ("Crosland/Centex") was in the process of developing the Linden Glen (subsequently Bradfield Farms) development in the Harrisburg area of Mecklenburg and Cabarrus Counties.

2. The Bradfield Farms development consisted of approximately 1200 lots and would require central, non-municipal sewer service. The developer had an NPDES Permit for a 700,000 gallons per day sewage treatment plant. Also, the development would need central water service from seven wells.

3. Carolina Water submitted written proposals for water and sewer service in Bradfield Farms to Crosland/Centex. Mid South also submitted proposals.

4. On February 13, 1989, Crosland/Centex informed Carolina Water that it had decided to enter into a contract with Mid South. The contract with Mid South was executed on April 30, 1989, and provided that the Bradfield development was for 979 homes. Mid South agreed to supply all customers in the development with water and sewer service. The contract also stated that Mid South "had filed a Petition with the Commission for a Certificate of Public Convenience and Necessity."

5. By April 1987, a second developer, Stephen Pace, was in the process of developing property in the Harrisburg area near the Crosland/Centex development. This property subsequently was known as the Silverton development. Pace inquired of Carolina Water into the cost of sewage treatment at Carolina Water's steeplechase treatment plant.

6. On June 11, 1987, Carolina Water conveyed to Mr. Pace a proposal for constructing facilities and providing service, and on July 21, 1987, Carolina Water mailed Pace a formal proposed contract containing terms.

7. In the meantime, Pace learned of the Bradfield Farms development plans and that Crosland/Centex was making capacity available in the proposed Bradfield Farms sewage treatment plant. Pace could reach this plant by gravity flow. Pace met with Mid South to discuss terms of an agreement. After discussion, Pace and Weber reached an oral agreement whereby Mid South would serve Silverton with sewer service from the Bradfield plant. Mid South would provide water service from wells within the Silverton development.

8. On April 7, 1989, Crosland/Centex conveyed to Mid South the deeds to the utility property in Bradfield Farms. Development within Silverton and Bradfield Farms, Phase II, proceeded during the summer and fall of 1989. During July 1989, development had proceeded to the point where houses were nearing completion and new homeowners were seeking commitments from lenders to close loans.

9. On July 10, 1989, Mid South filed an application with the Commission to obtain a Certificate of Public Convenience and Necessity to provide water and sewer service within Bradfield Farms, Phase II. Mid South did not file the April 30, 1989, contract with Crosland/Centex. The approval requested was limited to the 166 lots proposed for Bradfidld Farms, Phase II.

10. Mid South provided with the application a map of Phase II that clearly limited the request to that phase only. The area between Phase II and Silverton was marked "common open space."

11. Mid South had contracted to collect "connection fees" from Crosland/Centex. Its application made no mention of this and stated that the proposed rates and tariffs would be the same as those proposed in Mid South's most recent rate case.

12. The application form requires, as attached exhibits, copies of contracts or agreements between the applicant and any other party regarding the proposed utility services including "contracts regarding tap fees, construction cost, . . . etc. (If none, write 'none.')."

13. Mid South did not include in the Bradfield, Phase II, application, the Crosland/Centex contract of April 30, 1989, that listed tap fees and information related to construction costs, but declined to write "none" either. Mid South failed to indicate that Crosland/Centex retained control of much of the sewage treatment plant capacity and had entered into contracts to sell the capacity to others.

14. Pursuant to its initial review of the Phase II application, the Public Staff on July 14, 1989, sought additional information from Mid South. Several pertinent requests and responses include:

"Request: The application is for Phase II of Bradford (sic) Farms Subdivision. Does a Phase I or other phases exist at this time and, if so, who provides sewer utility service for them?

"Response: Phase one of Bradfield Farms Subdivision does not exist at this time.

"Request: You are requesting the same rates approved in Mid South's recent rate case, W-720, Sub 94. What about tap-on fees? Your tariff approved in Sub 94 allow (sic) a conndction charge of $400 for water and $400 for sewer except where excluded by contract. Am I correct to assume no connection fees will be charged in Bradfield Farms Phase II since "the developer is contributing the entire cost of the utility systems?

"Response: No connection fee will be charged <u>to the customers</u> in Bradfield Farms since the developer is paying for the installation of the water and sewer systems.

"Request: The application and exhibits do not address the issue of tax on CIAC. Is Mid South requiring the developer to pay a gross-up to cover tax on CIAC?

"Response: Mid South is willing to accept, in the Commission's Order granting franchise for Bradfield Farms, the standard language of the Commission which provides:

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

It is not Mid South's intent to request a rate making treatment in any potential tax liability.

"Request: You did not include an Exhibit 7 which is a copy of agreements or contracts between the utility and developer. I assume that a contract or agreement would exist between the developer and utility company for a project of this magnitude. Please forward a copy of such agreement for our review, if any exist.

"Response: As indicated on page 5 of the application under REMARKS: "Water and sewer lines are being constructed by others and donated to Mid South. Well heads, tanks and some of the sewage treatment facilities are being constructed by Mid South's Construction Division and paid for by the developer." This results in zero costs to the utility for the system, and no rate implication to the customers.

"Our construction Division, just like the ones installing the water and sewer lines, is working for and being paid by the developer. The Utility Division is receiving the system at zero cost from the Construction Division. If you would like a statement to that effect from Carroll Weber, we will be happy to provide one."

15. Mid South concluded its responses by requesting: "Please expedite approval of this franchise since we will shortly be facing loan closings in Bradfield."

16. On August 29, 1989, the Public Staff sent Mid South a comprehensive data request designed to determine the amount of taxable CIAC received and the ability of Mid South to pay the taxes that would result if the utility were unsuccessful in arguing that no tax was due.

17. Mid South's response did not provide the Public Staff with sufficient information to answer its questions. Mid South provided no tax returns as requested. Mid South responded: "I have been unable to accumulate the information to properly list all of the systems and the original cost of each."

18. Just as Bradfield Farms Phase II was nearing completion, with loan closings imminent, Silverton also was nearing the point where customers were seeking to close loans. Construction of both water and sewer systems were completed and certified in June 1989.

19. On October 3, 1989, the Commission issued an Order granting a certificate of public convenience and necessity to provide water and sewer utility service in Bradfield Farms, Phase II. Ordering paragraph 2. of the Order stated as follows:

> "That this franchise is for Phase II only. Mid South must get Commission approval before extending its mains into any other phase of Bradfield Farms Subdivision."

20. Deeds conveying the Silverton facilities to Mid South were dated October 4, 1989. On October 5, 1989, Mid South informed the Commission and the Public Staff of its intent to serve Silverton as a "contiguous expansion (sic)" from Bradfield Farms pursuant to G.S. 62-110. At this time there was an open or common area between the two developments that was not occupied by Mid South. (A swim and tennis complex in this "open" area was developed later and began receiving service in July 1990.) The boundaries of Silverton and Bradfield Phase II did not touch at any point.

21. Mid South wrote to the Commission that it deemed the Commission's October 3, 1989, Order prohibiting expansion into other phases of Bradfield Farms without approval of the Commission to be in contravention of G.S. 62-110, but stated that extension of facilities into Silverton was not prohibited by the order. Mid South did not appeal the Order of October 3, 1989.

22. On October 18, 1989, in answer to Commission questions, Mid South provided the Commission with information explaining why there had been no application for a certificate to serve Silverton. In response to one question, Mid South explained that there was "no intent to deceive the Commission regarding Silverton."

23. Later in October 1989 Mid South applied to the Division of Environmental Management (DEM) for a permit to "construct and operate" the wastewater collection extension into Bradfield Farms Phase IV. By December 1989 Mid South had a permit to construct and operate the sewer expansion in Phase IV, and the Division of Environmental Health (DEH) had approved the plans and specifications submitted by Mid South for the water distribution system in Phase IV.

24. Mid South sought no adv'nce permission from the Commission for extension of water and sewer facilities into these subsequent phases of Bradfield Farms, even though it had obligated itself to serve Phases III, IV, and V in the April 30, 1989, contract with Crosland/Centex. Mid South stated that the expansion did not contravene the October 3, 1989 Commission Order because the developer rather than Mid South actually was performing the construction even though the permits and approvals were in Mid South's name.

25. On August 29, 1990, Mid South notified the Commission that "Phases III and IV have been installed and are ready to be served by Mid South." Mid South requested that its Phase II certificate be revised to reflect the contiguous extension into Phases III and IV.

26. On November 20, 1990, Mid South responded to the Commission's request for additional information and resubmitted the identical page five from the original application, still listing "0" for the original cost of the utility system to be borne by the developer. The only change was that Mid South added "(APPLICEBLE (sic) TO PHASE II, III, & IV)" in the remarks section.

27. Subsequently, Mid South obtained DEM and DEH permits for the extension of water and sewer service into additional phases of Bradfield Farms.

28. On February 21, 1989, William Whitley of Whitley & Co., Real Estate, requested from Carolina Water a proposal to provide water and sewer service in the Fox Meadow (later called Britley) Subdivision in the Harrisburg area north of the Silverton Development. In March 1989 Carolina Water by letter conveyed its willingness to provide the service, and on April 13, 1989, Carolina Water provided Whitley with a copy of a proposed construction agreement. Mr. Whitley encountered difficulty in obtaining an easement to interconnect with Carolina Water's Cabarrus Woods plant. Mr. Whitley also had difficulty understanding Carolina Water's proposal. Mr. Whitley subsequently entered into an agreement with Mid South for water and sewer service.

29. Development had proceeded in the Britley Subdivision to the extent that Whitley & Company had to ask the Commission to approve emergency and temporary authority for Mid South to provide water and sewer service. The Commission issued several orders granting such authority, the most recent order being March 2, 1992, authorizing Mid South to provide temporary service to the remaining lots in Britley, Phase II.

30. Mid South's representations to the Commission and the Public Staff in the course of its initial application in Docket No. W-720, Sub 96, were not forthright and candid.

31. Mid South was remiss in failing to provide the Crosland/Centex contract as requested to do so in the Bradfield Phase II application form and in the data request of the Public Staff.

32. On October 5, 1989, and January 1, 1990, Bradfield Farms, Phase II was not contiguous to Silverton for purposes of a contiguous extension of water and sewer service by Mid South pursuant to G.S. 62-110.

33. Mid South was not justified in participating in the extension of water and sewer lines into subsequent phases (III, IV, and V) of Bradfield Farms without first obtaining approval of the Commission as required in the October 3, 1989 Order.

34. Without having obtained advance approval by the Commission, Mid South was remiss in permitting others to engage in construction and operation of water and sewer facilities in subsequent phases of Bradfield Farms and Britley through reliance on DEM and DEH permits issued to Mid South.

35. Mid South has not carried the burden of proof as to its ability, from the standpoint of financial fitness, to provide public utility water and sewer services in the Britley Stbdivision 'nd Phases III, IV and V of the Bradfield Farms Subdivision.

36. Mid South's certificate to provide service within Bradfield Farms, Phase II, should be reopened and subject to further hearing as hereinafter provided.

37. Temporary operating authority for Mid South to provide service within Bradfield Farms Phases III and IV should be withdrawn and revoked.

38. Temporary operating status for Mid South to provide service within Bradfield Farms Phase V should be withdrawn and revoked.

39. Public utility status and temporary operating status for Mid South to provide service in Britley should be withdrawn and revoked.

40. Mid South's request for a certificate for Britley should be denied.

41. Mid South's service to Silverton by contiguous extension did not comply with G.S. 62-110 and is declared unlawful.

42. Mid South should be granted emergency operating authority, pursuant to G.S. 62-116(b), in these service areas for which authority has been withdrawn. Unless this emergency operating authority is granted by this Order, there will be a real emergency in these service areas, as defined by the statute.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-17, 23-31, 33-34

Elsewhere in this Order the Commission has found and concluded that Mid South has not carried the burden of proof of establishing its ability, from the standpoint of financial fitness, to provide public utility water and sewer services in the Britley Subdivision and Phases III, IV, and V of the Bradfield Farms Subdivision. In support of its decision, the Commission gave special attention to the difficulty it had in determining the financial fitness issue due to the "grossly deficient" information furnished to the Commission by Mid South.

In this section the Commission whll briefly discuss those findings of fact detailing the conduct of Mid South in submitting its application in the Bradfield docket, W-720, Sub 96. The manner in which Mid South prepared the application for Bradfield Phase 1I, and the manner in which it responded to the repeated

requests for information by the Commission and the Public Staff, seriously deprived the Commission of crucial information which it needed to understand the extent of the public utility obligations Mid South had assumed in the Bradfield development. In summary, the information supplied by Mid South came "too little" or "too late"; much of the information was nonresponsive or misleading.

The Commission calls special attention to the application which initiated the Bradfield docket, Docket No. W-720, Sub 96. On July 10, 1989, Mid South filed its application with the Commission to obtain a certificate to provide water and sewer service in Bradfield Farms, Phase II. The approval requested by Mid South was limited to the 166 lots proposed for Bradfield Farms, Phase II. With its application Mid South provided a map of Phase II that clearly limited the request to Phase II only.

The application form calls for, as attached exhibits (Exhibit 7), copies of contracts or agreements between the applicant and any other party regarding the proposed utility services including "contracts regarding tap fees, construction costs, . . etc. (If none, write "none.")." Mid South did not include the Crosland/Centex contract of April 30, 1989, which contained tap fees and information related to construction costs, but declined to write "none" either.

Pursuant to its initial review of the Phase II application, the Public Staff on July 14, 1989, sought additional information. Several pertinent requests and responses include:

"Request: The application is for Phase II of Bradford (sic) Farms Subdivision. Does a Phase I or other phases exist at this time and, if so, who provhdes sewer ttility service for them?

"Response: Phase one of Bradfield Farms Subdivision does not exist at this time.

* * * * *

"Request: You did not include an Exhibit 7 which is a copy of agreements or contracts between the utility and developer. I assume that a contract or agreement would exist between the developer and utility company for a project of this magnitude. Please forward a copy of such agreement for our review, if any exist.

"Response: As indicated on page 5 of the application under REMARKS: "Water and sewer lines are being constructed by others and donated to Mid South. Well heads, tanks and some of the sewage treatment facilities are being constructed by Mid South's Construction

> Division and paid for by the developer. This results in zero costs to the utility for the system, and no rate implication to the customers.
>
> Our Construction Division, just like the ones installing the water and sewer lines, is working for and being paid by the developer. The Utility Division is receiving the system at zero cost from the Construction Division. If you would like a statement to that effect from Carroll Weber, we will be happy to provide one." (Emphasis added.)

Mid South did not produce the April 30, 1989, contract between the Company and Crosland/Centex until two years later when it was required to do so as a result of discovery by Carolina Water. The failure of Mid South to file the contract with its application, as was required by the application form, or to subsequently provide the contract pursuant to the Public Staff data request, deprived the Commission of crucial information relating to the scope of Mid South's public utility obligations in the Bradfield development. For example, the contract provided that Mid South was to furnish utility services to the entire development, which upon completion would comprise approximately 979 homes. (The Phase II application listed only 166 lots.) Moreover, if Mid South had fully completed the application form, it would have provided the Commission with information permitting an informed decision on the CIAC tax liability issue. The Crosland/Centex contract would have shown the Commission that Mid South had contracted to receive from the developer $860,000 in taxable cash contributions and in facilities with capacity to serve far more than the 166 lots described in the application. Further, the Public Staff information request asked if Mid South intended to charge tap fees. Mid South answered that it would charge no tap fees "to customers." Yet the contract with Crosland/Centex expressly provided that Mid South would charge tap fees to the developer. The contract in question was dated April 30, 1989, and was signed by representatives of Crosland and by Carroll Weber, the President of Mid South. Thus, at the time Mid South filed the Phase II application with the Commission, and at the time of the Public Staff data request of July 14, 1989, the contract was in existence. Had the contract been made available at the time the Company filed its application, or at least at the time the Public Staff requested a copy of a contract, the Commission and the Public Staff would have been permitted a full and meaningful assessment of Mid South's application in Docket No. W-720, Sub 96. (Apparently, the Commission and the Public Staff were not the only ones kept "in the dark" about the April 30, 1989, contract. The Bradfield II application was prepared by Jerry H. Tweed, Mid South's Executive Vice President in charge of utility operations, who, strangely enough, had not read the contract while preparing the application or during his tenure at Mid South. On his direct examination, Mr. Tweed was generally uncertain about much of the information he supplied on the Bradfield II application and to the Public Staff's data request. Apparently, what information Mr. Tweed was privy to came from Carroll Weber, the President of Mid South, and Richard Durham, who was in charge of Mid South's construction division.)

Moreover, at the time Mid South filed its application in Sub 96, the Company had reached an oral argument with the Pace Company to provide service in Silverton Subdivision. Silverton was being developed at the same time as Bradfield Phase II. The same sewage treatment plant was to treat sewage from both Silverton and Bradfield II. The Commission concludes that Mid South was remiss in failing to make it clear during the hearing on the Phase II certificate that it intended to use the requested Phase II certificate to serve Silverton. Instead, the Company was silent on this matter, allowed the Commission to rule, and within two days after receiving the Phase II certificate notified the Commission that it was serving Silverton by contiguous extension.

Therefore, the manner in which Mid South proceeded in the Bradfield and Silverton developments misled the Commission and the Public Staff, at the beginning of the application process, as to the magnitude of the obligations that Mid South was undertaking. Only as a result of the extensive proceedings in these dockets, including the intervention of Carolina Water, has the Commission learned of the extent of Mid South's service obligations in the Bradfield development, the nature of the contractual relationship between Mid South and Crosland/Centex, the facts surrounding the "contiguous" extension into Silverton, and the uncertain status of Mid South's financial fitness to serve these developments.

The Commission is also concerned about Mid South's role in subsequently extending water and sewer service into Bradfield Phases III, IV, and V. The Commission's Order of October 3, 1989, granted Mid South a certificate for Bradfield Phase II only and further provided that "Mid South must get Commission approval before extending its mains into any other phase of Bradfield Farms Subdivision."

The evidence reveals that at the time the October 3, 1989, Order came out, other phases of the Bradfield development were well underway. Yet Mid South did nothing to apprise the Commission of this. Within a few weeks of the October 3, 1989 Order, Mid South was applying to other State agencies for permits to construct and operate utility facilities within the other phases. In spite of the prohibition in the Commission's Order, Mid South applied for and obtained the permits, oversaw the construction, and permitted the construction to proceed to the point of completion without informing the Commission or seeking its approval.

Mid South continued to ignore the clear intent of the Order until well after the hearings in this case concluded in July 1991. Mid South was a primary player in the construction of the water and sewer facilities into the subsequent phases of Bradfield Farms. Mid South came to the Commission, not <u>prior</u> to construction as the October 3, 1989 Order clearly required, but only after construction was complete and Mid South was prepared to accept ownership. Mid South's justification for this disregard of the Commission's Order is that during the Phases III, IV, and V construction undertaken through the authority of Mid South permits, the actual construction was performed by another Crosland/Centex contractor.

The Commission determines that this assertion ignores Mid South's role in extending the facilities. In its initial proposal to Crosland/Centex, Mid South stated its desire to "place a certified operator with office trailer, truck, radio, and phone on site during all phases of construction. It is Mid South's

desire to provide the best service possible by establishing a base of operation during construction. This will insure uninterrupted service for both the construction operations and utility service. . . "

These features of the proposal were incorporated into Mid South's contract of April 30, 1989, with Crosland/Centex. Mid South was to provide consulting engineering service to Crosland/Centex and to coordinate engineering plans with the developer and its engineers. Mid South was to inspect construction and installation of the facilities and improvements installed by Crosland/Centex "which comprise part of the sewer and water system." Mid South was to have a certified operator on site during all phases of construction.

These contract terms are at odds with Mid South's testimony at the hearing. Mid South said its name on the permits was a mere formality. Also, Mr. Durham testified that Mid South had no control over the developer or contractor.

Apparently because the October 1989 Order prohibited Mid South from extending lines into other phases of Bradfield without Commission approval, Mid South relies upon an overly technical interpretation of the Order. As Mid South admits, it was unusual for the Commission to prohibit Mid South from using its Phase II certificate to make contiguous extensions into other Bradfield Farms phases. This history of the Phase II application and the other language in the October 3, 1989 Order affirm that the Commission included the prohibition to ensure that Mid South did not receive CIAC without review by the Commission.

In order to avoid harm to innocent third party lot owners, the Commission has permitted Mid South to provide service within Phases III, IV, and V as a temporary operator. Even this limited authority was granted with the request that Mid South provide information detailing the seller's net original cost. This information would have permitted the Commission to quantify the CIAC Mid South was assuming. Mid South declined to provide the requested information. Instead, Mid South has continued to provide use of its permit authorizations for construction of water and sewer lines into the additional phases of the Bradfield Farms development and to rdquest permhssion to serve therein after all the lines and mains are in place and when refusal by the Commission to act will result in economic hardship to the non-utility interests in the area. Once again the Commission was effectively deprived of important information concerning the extent of Mid South's utility obligations in the Bradfield development.

Effective regulation requires that the utilities under our jurisdiction act in good faith in their dealings with the Commission and the Public Staff. Utilities, at a minimum, should furnish in a timely manner the information needed by the Commission and the Public Staff to make a meaningful assessment of the utility action under review. It is clear from the evidence in this proceeding that Mid South did not act in good faith with respect to the matters discussed above, and the Commission so finds and concludes.

EVIDENCE AND CONCLUSIONS FOR FINOINGS OF FACT NOS. 18-22, 32, 41

G.S. 62-110 provides that:

> "No public utility shall begin the construction or operation of any public utility plant or system or acquire ownership

> or control thereof, whether 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."

The statute, however, provides that the prohibition shall not apply "to construction into territory contiguous to that already occupied and not receiving similar service from another public utility. . . "

On October 5, 1989, Mid South represented to the Commission that it was undertaking to serve the Silverton subdivision under the contiguous extension provision of G.S. 62-110 by reliance on the Bradfield Farms, Phase II certificate. (The Bradfield Phase II certificate was granted by Order of October 3, 1989.) Mid South has advanced three theories justifying such representation. The first theory is that Silverton was contigtous to the boundaries of the entire 1200-lot, multi-phase Bradfield Farms development that contained Bradfield Farms, Phase II, the phase of which Mid South had a certificate. The second theory is that Silverton was contiguous to Bradfield Farms, Phase II as the boundaries of Phase II existed after construction of a swim and tennis complex. The third theory is that Silverton was contiguous to Phase II because both developments were served by the same sewage treatment plant and were interconnected through the same force main.

The Commission concludes that Mid South has failed to establish a contiguous extension into Silverton within the meaning of G.S. 62-110. First, common boundaries between Silverton and the greater Bradfield Farms development on October 5, 1989, is insufficient contiguity to qualify under G.S. 62-110. This statute permits construction into territory contiguous to that already occupied. In late 1989 and early 1990 when Mid South began to provide service to Silverton, the only territory it already occupied and for which it had a certificate was Phase II. Mid South had purposefully limited its certificate application to Phase II to avoid the more comprehensive bond requirements that would have been called for had it applied for a certificate to serve a greater portion of the subdivision.[1] Having expressly limited its original certificate to Phase II, Mid South cannot now assert that it already occupied the area within Bradfield Farms between Phase II and Silverton so as to claim authorization to serve Silverton by contiguous extension.

Mid South contends that the swim and tennis complex, completed and receiving water and sewer service in July 1990, well after it started serving Silverton, is part of Phase II and that Silverton is across McKee Creek from the swim and tennis complex and therefore contiguous. In filing its application to obtain a franchise for Phase II, Mid South was required to file a map of the requested service area. Although the map Mid South filed showed a common open area in the northwest portion of Phase II in the direction of Silverton, such common open area and Silverton are not contiguous. Several hundred yards separate the two areas.

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[1] Although Mid South claims it limited its Bradfield Farms application to Phase II to limit the bond it had to post, the statute requiring the bond, G.S. 62-110.3, requires the Commission to take into consideration the likelihood of future expansion in setting the amount of the bond.

Examination of the maps, exhibits and testimony in this case reveals that the subsequently constructed swim and tennis complex area is much larger than the common area listed on the map of Phase II filed with the Commission. A portion of the swim and tennis complex is across McKee Creek from Silverton. Mr. Scott of Centex testified that the tennis and swim complex was not originally a part of Phase II: "Well, Phase II really was the lots. We had a community swim club facility that was off of Phase II." Also, "on a swim club facility, that is required by Mecklenburg County, has to be basically reviewed and approved by itself unless it's a part of the overall design plan you're in. And that particular facility I believe was designed and submitted to Mecklenburg County in a different fashion than Phase II was."

Construction and planning of the swim and tennis complex were just getting underway in the Fall of 1989 when Phase II and Silverton were being completed and when Mid South began to provide service.

> "Q. At the time Bradfield Farms Two and Silverton were completed, there were no lines into the swimming pool complex for water and sewer, were there?
>
> "A. (Mr. Scott) No. The only, I believe the only sewer line that was adjacent to the swim club, so it was the trunk that was in McKee Creek, I believe it was a 10-inch trunk line that went to the plant."

If Mid South began to provide service in early 1990, based upon a contiguous extension from Bradfield Farms Phase II, such service is not authorized under G.S. 62-110 unless the boundaries of Silverton and Bradfield Farms, Phase II were contiguous at that time. More than two years have passed since Mid South began to serve in Silverton without a certificate. The Commission determines that it makes no difference that the swim and tennis complex has been added in the meantime and that Mid South can now claim that the expanded boundaries of Phase II, as reconfigured with the addition of the swim and tennis complex, coincidentally expand to the Silverton boundary. It is the Commission's determination that if Phase II and Silverton were not contiguous on October 5, 1989, when Mid South represented to the Commission that they were, and in January 1990 when Mid South began providing service in Silverton, Mid South's representations were inaccurate and its service unauthorized.

Nor has Mid South shown that it was entitled to extend water and sewer service into Silverton by virtue of the common connection of Silverton and Bradfield Phase II to the sewage treatment plant. First, any "common connection" of the Bradfield and Silverton sewer service, even if lawful, would not justify the providing of water service in Silverton under the contiguous extension statute. Silverton has its own water system. Mid South cannot serve Silverton with water service without a certificate even if it could lawfully provide sewer service through a contiguous extension.

The existence of a common sewer connection between Bradfield Phase II and Silverton does not establish, under the facts of this case, the right of Mid South to provide sewer service in Silverton by contiguous extension. Mid South's certificate to serve Bradfield Farms, Phase II, was expressly limited to that phase only. The Commission's Order granting the certificate required Mid South

to obtain permission from the Commission before extending facilities into another phase. Thus, on October 5, 1989, not only had Mid South failed to undertake a public service obligation for the territory between Phase II and Silverton, but Mid South was expressly forbidden by Commission Order from serving within the intervening territory. Thus, once again the element of contiguity is lacking. As of October 5, 1989, there was an open space between Phase II and Silverton in which Mid South was expressly forbidden to serve. Mid South should not be allowed to use the existence of a sewer line crossing several hundred yards of forbidden territory to claim that Silverton is "contiguous" to Bradfield Phase II. Under this theory, Mid South would be able to disregard the concept of contiguity required by the plain terms of the statute. To take Mid South's argument to the extreme, the Company would be able to extend a sewer line in any direction from the sewage treatment plant through territory which it was prohibited from serving and thereby claim authority to serve by contiguous extension a development several miles away. The Commission does not believe that G.S. 62-110 permits such a strained interpretation.

The Commission therefore concludes that the extension into Silverton was not a contiguous extension within the meaning of G.S. 62-110 and was therefore unlawful. This Order will require Mid South to file an application for a certificate of public convenience and necessity to provide water and sewer service to the Silverton Subdivision within 30 days after the date of this Order. In the meantime, the Commission will grant Mid South emergency operating authority pursuant to G.S. 62-116(b) to continue to provide water and sewer service in Silverton to prevent the loss of water and sewer service therein during the transition period. See Evidence and Conclusions for Finding of Fact No. 36 for further discussion.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 33, 35, 37-40

The primary issue to be resolved here is the question of Mid South's financial fitness to provide public utility water and sewer services in the subdivisions here under review.

The Applicant and the Public Staff contend that the Company is financially fit. Specifically, the Public Staff in its proposed order filed in these dockets on September 18, 1991, states in its proposed Finding of Fact No. 7 that "Mid South is [financially and] technically qualified to provide water and sewer utility service in all of the service areas concerned in this proceeding." (Brackets were included in the Public Staff's original proposed order.)

Carolina Water contends that Mid South is not financially able to meet its potential future income tax liability which arises as a result of Mid South's having received substantial amounts of contributions in aid of construction (CIAC), which are taxable for federal and state income tax purposes. Carolina Water therefore contends that Mid South is financially unfit to provide utility services in the subject subdivisions. In its brief filed in these dockets on September 20, 1991, Carolina Water states that it "... has demonstrated that Mid South has received taxable CIAC of at least $6 million for these systems alone." If such allegations are correct, Mid South in all likelihood would be faced with an income tax liability, arising from such CIAC, in the range of $2,347,000 before consideration of any penalty and interest that might be due.

As indicated by Carolina Water in its brief, the Commission had become increasingly concerned, and continues to be very much concerned, regarding the exceedingly negative consequences that might arise should Mid South be faced with an income tax liability it would be unable to meet. After having received the Applicant's and the Public Staff's proposed orders and Carolina Water's proposed order and brief, and after having carefully reviewed said filings and the entire evidence of record, the Commission clearly recognized and concluded that its concerns were not misplaced. At this juncture, the Commission also clearly recognized that virtually no evidence or other information had been presented from which one could determine the soundness of Mid South's overall financial position and thus its financial fitness to serve, notwithstanding the Public Staff's assertion that Mid South was financially fit.

In an attempt to acquire the information needed in order to make a reasonably informed decision as to Mid South's fitness to provide service from the standpoint of its overall financial position, the Commission retrieved and examined Mid South's annual reports on file with the Commission for calendar years 1987 through 1990, of which the Commission hereby takes judicial notice. This examination revealed that these annual reports were grossly deficient and virtually meaningless for the purpose of determining Mid South's financial fitness.

In a further attempt to acquire the information needed in order to reach an informed decision as to Mid South's financial fitness to serve, or the lack thereof, the Commission, on January 29, 1992, issued an Order requiring the Company to file revised annual reports for the calendar years 1987 through 1990. This Order states, in part, as follows:

> "The Commission hereby places Mid South on notice that its annual reports for calendar years 1987, 1988, 1989 and 1990 are deficient and are not in compliance with statutory requirements or Commission Rules. The information and data the Commission now needs in order to allow it to reach a final determination with respect to the matters here under review should have been ascertainable from the foregoing reports. Mid South is hereby directed by this Order to take such action as required to allow it to complete in full detail, and file with the Commission, revised and fully completed copies of its annual reports for calendar years 1987, 1988, 1989 and 1990.
>
> "The foregoing reporting requirements include a complete detailed accounting and reporting of all contributed property received by Mid South through December 31, 1990. To the extent that contributed property or, for that matter, any public utility property is not now reflected in the books of Mid South, the Company shall take action as required in order to permit it to record and fully reflect all such assets and all such capital, including CIAC, in its books and records."

The Commission, in its Order of January 29, 1992, also directed Mid South to bring its books and records into compliance with long-standing Commission Rules. Instructions contained in certain accounting requirements adopted by the

Commission relating to CIAC were specifically cited by the Commission in its January 29, 1992, Order. In this regard, the Commission stated, in part, as follows:

> "D. Utility plant contributed to the utility or constructed by it from contributions to it of cash or its equivalent shall be charged to the utility plant accounts as cost of construction, estimated if not known. There shall be credited to the account for accumulated depreciation and amortization the estimated amount of depreciation and amortization applicable to the property at the time of its contribution to the utility. The difference between the amounts included in the utility plant accounts and the accumulated depreciation and amortization shall be credited to account 271, Contribution in Aid of Construction."

After having requested and received a 90-day extension of time for the filing of the revised annual reports, the Company, on April 30, 1992, filed same. The Commission hereby takes judicial notice of such reports.

Except for certain information related to contributions in aid of construction, the revised annual reports for calendar years 1987 through 1989 are virtually the same as those previously found deficient. These "revised" reports do not include income statements, and the balance sheets are woefully incomplete. The revised annual report for the calendar year 1990 does contain certain information related to CIAC, an income statement and an incomplete balance sheet which does not balance and which does not reflect sub-totals or a grand total for the liability and capital sections of said statement. Further, $12,377,000 of CIAC, which is reported in another section of the annual report, and the related assets do not appear on the balance sheet at all as required by Commission Rules and generally accepted accounting principles.

The primary purpose for requiring the revised annual reports was to obtain the basic information needed by the Commission to allow it to determine whether Mid South was financially fit to provide water and sewer services within the subject subdivisions, including information that was needed in order for the Commission to make an informed judgment as to the magnitude of any potential future income tax liability with which Mid South might one day be faced as a result of having received taxable CIAC.

With respect to Lid South's potential income tax liability arising from CIAC, it appears, based upon information contained in the Company's 1990 annual report under a worst case scenario, that such liability would be in the range of $534,000 before consideration of any penalty or interest that might be due. Mid South reports in its 1990 annual report that over the years it has received a total of $12,377,000 of CIAC of which $1,364,000 is reported as taxable.

Regarding Mid South's current financial standing, it would be very difficult to conclude, based upon information currently available to the Commission, that Mid South's ability to maintain its financial integrity, if it now exists, was reasonably certain including or excluding a presumption that the Company is faced with an unrecorded income tax liability in the range of $534,000. Because of the incompleteness of the 1990 balance sheet which also calls into question the reliability of the information that is provided, and because of the

unavailability of balance sheets and income statements for earlier years, the most reasonable and supportable conclusion one can reach from the information provided is that the Commission, because of the lack of adequate information, cannot make a determination regarding the soundness of the Company's financial standing.

Mid South's filing in response to the Commission's Order of January 29, 1992, is "patently inadequate". Further, as stated by Carolina Water in its filing of June 4, 1992, in these dockets captioned "RESPONSE TO ANNUAL REPORTS FOR YEARS 1990, 1989, 1988, AND 1987 FILED BY MID SOUTH", "[d]espite more than three months of additional preparation time, Mid South has once again produced financial reports that are grossly inadequate. Of course, these reports should have been properly generated in the year they were due. The incompleteness of the reports at this late date, particularly the skeletal nature of the reports for years 1987-1989, shows that . . . Mid South is either unable or unwilling to comply with the Commission's financial reporting requirements."

Major considerations underlying the Commission's conclusion that it cannot make a determination regarding the soundness of the Company's overall financial standing, in addition to many, if not most, of the shortcomings identified by Carolina Water in its June 4, 1992 filing which the Commission finds valid, include the following:

(1) Mid South's 1990 annual report reflects net income of $131,000, but it also reflects negative total equity capital of $177,000;

(2) Mid South's 1990 balance sheet reflects total net assets of $3,495,000, but another section of its 1990 annual report implies an additional $12,377,000 in assets which are not reflected on Mid South's balance sheet and which were acquired as CIAC;

(3) Mid South's 1990 balance sheet is $304,000 out of balance (debits exceed credits);

(4) Mid South's balance sheets and income statements for earlier years do not appear to exist;

(5) Under a worst case scenario and based upon information provided by the Company, Mid South's potential income tax liability arising from CIAC, before consideration of any penalty or interest that might be due, is in the range of $534,000;

(6) Mid South states that it has tax losses of $273,000 which could be used to partially offset taxable CIAC. Based on a $273,000 tax loss, the tax offset to the foregoing $534,000 tax liability would be $107,000, resulting in net tax due of $427,000;

(7) Because of the lack of information, one cannot reach an informed conclusion regarding the adequacy, or lack thereof, of Mid South's liquidity or overall cash flow; and

(8) Because of the incompleteness of the financial data provided by the Company and its apparent failure to recognize the importance of properly prepared

financial statements and the importance of organizing and maintaining financial records, it is exceedingly difficult to rely on the information which has been provided with virtually any degree of confidence.

Based on the foregoing and the entire evidence of record, the Commission concludes that Mid South has not carried the burden of proof as to its ability, from the standpoint of financial fitness, to provide public utility services in the Britley Subdivision and in Phases III, IV and V of the Bradfield Farms Subdivision. Further, the Commission concludes that Mid South should not be permitted to continue to operate in the Britley Subdivision and Phases III, IV and V of the Bradfield Farms Subdivision. Finally, the Commission concludes that Mid South should notify its customers and all real estate developers located and/or operating within these areas of the Commission's instant decision; and that Mid South, Mid South's customers, affected real estate developers and other interested parties should work in conjunction with the Commission Staff to facilitate an orderly transfer of applicable operating authority for and ownership of said systems to a qualified operator(s) while maintaining the continuity of services to existing customers.

The Commission has concluded that Mid South has not carried the burden of proof as to its financial fitness. However, one should not thereby conclude that the Commission has summarily dismissed Carolina Water's suggestion that Mid South's financial position is precarious and even more severe than Mid South is willing or able to admit, for this matter continues to be of paramount concern to the Commission. Mid South's financial position appears to be approaching technical insolvency. (Technical insolvency as used herein is defined as the inability of the firm to meet cash payments on contractual obligations; i.e., the lack of cash to meet payments of accounts payable, wages, taxes, interest, and debt retirement.) The propriety of this conclusion is manifested by a recent action taken against Mid South by the United States Department of the Treasury-Internal Revenue Service (IRS).

An IRS "Notice of Levy", of which the Commission hereby takes judicial notice, dated July 7, 1992, pertaining to Mid South was sent to United Carolina Bank, the Commission's agent in administering the water and sewer bond program established by G.S. 62-110.3. A notice of levy is used to collect from a third party money owed the IRS by a delinquent taxpayer, in this instance Mid South. The need for this action apparently arose as a result of Mid South's failure to make a timely remittance of taxes which Mid South had withheld from the earnings of its employees for the tax period ended December 31, 1991. The IRS was attempting to collect the past due taxes by a notice of levy against funds which had been placed on deposit by Mid South in order to satisfy certain bonding requirements of this Commission. This notice of levy was in the amount of $11,536 and apparently included a penalty and/or interest.

A "Release of Levy/Release of Property from Levy" dated July 14, 1992, of which the Commission hereby takes judicial notice, was subsequently sent to United Carolina Bank, apparently as a result of Mid South's having made payment of the $11,536 arrearage. Such payment, however, does very little to diminish the Commission's heightened concern regarding Mid South's financial condition.

The Commission did not consider the IRS Notice of Levy and the Release in making its decision in these dockets. However, the Commission takes judicial

notice of these documents, pursuant to G.S. 62-65(b), in making these additional comments on the overall financial status of Mid South. Pursuant to the statute, Mid South will be afforded the opportunity to respond to the judicial notice of these IRS documents at the hearing scheduled below for Bradfield Phase II.

The Commission hereinabove has stated that, because of the lack of information, it cannot reach an informed conclusion regarding the adequacy, or lack thereof, of Mid South's liquidity or overall cash flow. However, the Commission would be remiss if it failed to make note of certain relevant information that is revealed by Mid South's revised annual report for 1990, relating to its liquidity; notwithstanding the gross incompleteness of the 1990 report. The Company's 1990 annual report reflects current assets of $1,764,000 and current liabilities of $1,953,000. This report, as previously stated, also shows the balance of total common equity capital of Mid South to be a negative $177,000. The Company has no preferred equity capital and its long-term debt outstanding is $1,112,000.

The fact that this Company appears to be 100 percent debt financed, the fact that current liabilities appear to exceed current assets by $189,000, the fact that the Company's current liabilities appear to exceed its liquid assets (i.e., cash and cash equivalents) by $1,751,000, the fact that the Company's current liabilities appear to exceed its liquid assets and its accounts receivable by $1,170,000, the fact that the Company appears to have a negative net worth together with the fact that Mid South appears to have been financially unable to make payment of taxes withheld from employees to the IRS in a timely manner, not to mention the fact that Mid South faces an unrecorded potential income tax liability of $534,000 related to taxable CIAC, all raise serious doubt as to the Company's continuing financial viability unless some action is taken to improve its financial health. The Commission's decision, as set forth herein, may relieve some of the financial strain under which the Company now appears to be operating.

The Commission is not unmindful of other factors which are ordinarily taken into account when examining the capital requirements, cash flow and the liquidity of a firm; e.g., the level of depreciation expense reflected as a deduction in determining operating income, changes in the reported levels of individual asset and liability accounts reflected on the balance sheet from one reporting period to the next, the need for funds for additional investment, major repairs and debt retirement, etc. However, because of Mid South's failure to provide even marginally adequate financial data, the Commission is precluded from examining the Company's overall financial position and needs in these regards.

There is one final matter which needs to be addressed. Carolina Water asserts that Mid South should be fined for its failure to comply with Commission accounting and reporting requirements. While such fines might appear to be warranted, it is the Commission's understanding that Mid South is now in the process of making major revisions to its practices and procedures so as to strictly comply with the Commission's accounting and reporting requirements. Therefore, the Commission will defer judgement as to whether fines or additional penalties should be imposed on Mid South until such time as Mid South has been afforded an additional reasonable period of time to effectuate such changes.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 36

Based upon the findings and conclusions reached in this Order, the Commission denies the application of Mid South for a certificate of public convenience and necessity in the Britley Subdivision (Docket No. W-720, Sub 108). This Order also withdraws and revokes the temporary operating authority previously granted Mid South in Bradfield Phases III, IV, and V. The Commission also declared that the Mid South water and sewer service in the Silverton Subdivision is unauthorized because the circumstances of extending service in Silverton did not meet the standard of contiguous extension under G. S. 62-110.

The certificate granted Mid South to provide service in Bradfield II was not an issue in this docket. Based upon the findings and conclusions in this docket, the Commission is further of the opinion, and so finds and concludes, that it should reexamine the Order Granting Certificate in Bradfield Phase II. These findings and conclusions are:

(1) The Bradfield water and sewer systems are interconnected; Phase II, together with Phases III, IV, and V, are one water and sewer system. Therefore, the denial to Mid South of water and sewer service in Bradfield Phases III, IV, and V will affect the overall provision of service in the Bradfield development. It follows from the decisions reached in this Order that there will possibly be at least two providers of service in the Bradfield development--Mid South in Bradfield II and another provider in Phases III, IV, and V. The Commission is very much concerned about the impact on customer service arising from the division of water and sewer service in Bradfield.

(2) The Commission has found and concluded that Mid South's representations to the Commission and the Public Staff in the course of its initial Bradfield Phase II application and to the Public Staff data requests were not "forthright and candid" and that Mid South was "remiss" in failing to provide the April 30, 1989, contract with Crosland/Centex when requested to do so.

(3) This Order has also found and concluded that Mid South is not financially fit to provide service in Phases III, IV, and V. Mid South's financial fitness to serve in Bradfield Phase II should therefore also be examined in light of the findings and conclusions in this Order.

Consequently, the Commission by this Order will schedule a further hearing in order to determine whether or not, in light of the three matters set forth immediately above, the certificate granted Mid South in Bradfield II should be revoked. The proceeding will not be de novo, but will bring forward and incorporate into the hearing all of the evidence of record in these dockets and this Order including findings and conclusions.

The Commission has also found and concluded that the service by contiguous extension into the Silverton development did not comply with G.S. 62-110 and therefore was unauthorized and unlawful. This Order will require Mid South, if it desires to provide water and sewer service in Silverton under a certificate

of public convenience and necessity, to apply to the Commission for such certificate within 30 days after the date of this Order. The application of Mid South to serve Silverton, if filed, will also be set for hearing at the hearing on the Bradfield II certificate. In order to prevent the loss of water and sewer services to the customers in the Silverton development pending further proceedings in this docket on any Silverton application, Mid South is hereby granted emergency authority under G.S. 62-116(b) to provide service in the Silverton Subdivision during this transition period and pending further Order.

Mid South also is presently providing water and sewer service in Britley Subdivision and in Bradfield Phases III, IV, and V pursuant to Orders of the Commission granting temporary authority to provide such service. This Order denies Mid South the authority to provide service therein on and after the date of this Order and cancels the existing authority that has been granted by Commission Orders. The Commission is concerned that there will not be a loss of utility service to the existing and future customers in the Britley Subdivision and in Bradfield Phases III, IV, and V pending the application by some new party or parties for authority to provide service in these areas. Mid South shall be required to immediately notify the developers of these subdivisions of the Commission's decision reached here today. (Crosland/Centex is a party of record in this docket and will receive a copy of this Order.) In order to prevent a loss of water and sewer service in Britley and in Bradfield Phases III, IV, and V,--and also in Silverton--the Commission grants Mid South emergency operating authority pursuant to G.S. 62-116(b) in these service areas pending the hearing scheduled below on August 5, 1992. Mid South is ordered to appear before the Commission on August 5, 1992, for purposes of determining the provision of water and sewer service in these service areas and in Silverton during the transition period created by this Order. The hearing on August 5, 1992, will also consider the grant of emergency authority pursuant to G.S. 62-116(b) and whether or not it should be continued and with Mid South as the emergency operator. Other interested persons are also invited to appear at this hearing on Wednesday, August 5, 1992, to address the concern of the Commission that the denial of Mid South service in these service areas will not result in a loss of utility service pending the filing of new applications by others to provide service in these areas.

On June 26, 1992, Mid South filed a Motion to Dismiss Carolina Water as an intervening party in this docket. Carolina Water has filed a response to this Motion, requesting that the Motion be denied. The Commission is of the opinion, and so finds and concludes, that the Motion of Mid South should be denied.

IT IS, THEREFORE, ORDERED as follows:

1. That Mid South's application for a certificate of public convenience and necessity to service Britley Subdivision (Docket No. W-720, Sub 108) is hereby denied.

2. That the grants to Mid South of temporary and emergency authority to serve the Britley Subdivision are hereby withdrawn and revoked.

3. That the requests of Mid South to provide water and sewer service into Bradfield Farms Phases III, IV, and V are hereby denied.

4. That the grants of temporary authority to provide water and sewer service within Bradfield Farms Phases III, IV, and V are hereby withdrawn and revoked.

5. That Mid South's service to Silverton by contiguous extension was unauthorized and is therefore unlawful. Mid South shall file an application for water and sewer service in Silverton within 30 days after the date of this Order if it desires to serve Silverton. The application will be set for hearing on Thursday, September 17, 1992, at the time and place set forth below for Bradfield Phase II.

6. That a further hearing is hereby scheduled in these dockets, pursuant to G.S. 62-80, in order to reexamine the Certificate previously granted Mid South in Bradfield Phase II and whether its Certificate should be revoked; the hearing will consider the matters raised on pages 23 and 24 of this Order. The entire record in these dockets, including all evidence and exhibits and the findings and conclusions in this Order, shall be a part of the hearing. The time and place of the hearing is as follows:

> Thursday, September 17, 1992, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

This hearing will also afford Mid South the opportunity to address the IRS Levy and Release of Levy.

7. That, pursuant to G.S. 62-116(b), Mid South is granted emergency operating authority in Britley Subdivision, Bradfield Farms Phases III, IV, and V, and Silverton Subdivision, in order to prevent the actual loss of water and sewer service in these subdivisions pending further developments in these dockets and further Order of the Commission. Mid South shall appear before the Commission on Wednesday, August 5, 1992, at 10:00 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, for purpose of determining if the emergency operator status granted Mid South pursuant to this Order should continue in effect pending the filing of new applications for these service areas. Other interested persons are also invited to attend and participate in this hearing.

8. That, within two days after receipt of this Order, Mid South shall notify the developers in the Britley, Silverton, and Bradfield developments of the Commission's decisions reached in this Order.

9. That the Motion of Mid South to Dismiss Carolina Water as an intervening party in this docket is hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of July 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. W-720, SUB 96
DOCKET NO. W-720, SUB 108

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Mid South Water Systems, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673 for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Bradfield Farms and Britley Subdivisions, Cabarrus and Mecklenburg Counties, North Carolina and for Approval of Rates	ORDER REVOKING FRANCHISE IN BRADFIELD FARMS PHASE II

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on September 17 and 22, 1992

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

APPEARANCES:

For the Applicant:

Robert F. Page, Crisp, Davis, Schwentker, Page, Currin & Nichols, Suite 400, 4011 Westchase Boulevard, Raleigh, North Carolina 27607

For John Crosland Company:

Tom Steed, Jr., Moore & Van Allen, Post Office Box 26507, Raleigh, North Carolina 27611

For Carolina Water Service, Inc. of North Carolina:

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

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0510

BY THE COMMISSION: By Order dated July 28, 1992, issued in these dockets, the Commission among other things denied Mid South Water Systems, Inc.'s (Mid South) requests to serve the Bradfield Farms Subdivision Phases III, IV, and V and revoked its temporary operating authority to provide water and sewer services within these phases of the subdivision. Further, the Commission found and concluded that Mid South's service by contiguous extension into the Silverton Subdivision did not comply with G.S. 62-110 and therefore was unauthorized and

unlawful. Based upon the findings and conclusions reached in its July 28,1992, Order regarding certain matters including the foregoing, the Commission found and concluded that, if Mid South wished to serve the Silverton Subdivision, it should be required to file an application for a certificate to do so; and the Commission found and concluded that it should reexamine the granting of authority to Mid South to provide water and sewer utility services within Phase II of the Bradfield Farms Subdivision.

In reaching its conclusion regarding Phase II, the Commission in its Order of July 28, 1992, stated as follows:

> "The certificate granted Mid South to provide service in Bradfield II was not an issue in this docket. Based upon the findings and conclusions in this docket, the Commission is further of the opinion, and so finds and concludes, that it should reexamine the Order Granting Certificate in Bradfield Phase II. These findings and conclusions are:
>
> "(1) The Bradfield water and sewer systems are interconnected; Phase II, together with Phases III, IV, and V, are one water and sewer system. Therefore, the denial to Mid South of water and sewer service in Bradfield Phases III, IV, and V will affect the overall provision of service in the Bradfield development. It follows from the decisions reached in this Order that there will possibly be at least two providers of service in the Bradfield development--Mid South in Bradfield II and another provider in Phases III, IV, and V. The Commission is very much concerned about the impact on customer service arising from the division of water and sewer service in Bradfield.
>
> "(2) The Commission has found and concluded that Mid South's representations to the Commission and the Public Staff in the course of its initial Bradfield Phase II application and to the Public Staff data requests were not 'forthright and candid' and that Mid South was 'remiss' in failing to provide the April 30, 1989, contract with Crosland/Centex when requested to do so.
>
> "(3) This Order has also found and concluded that Mid South is not financially fit to provide service in Phases III, IV, and V. Mid South's financial fitness to serve in Bradfield Phase II should therefore also be examined in light of the findings and conclusion in this Order.
>
> "Consequently, the Commission by this Order will schedule a further hearing in order to determine whether or not, in light of the three matters set forth immediately above, the certificate granted Mid South in Bradfield II should be revoked. The proceeding will not be de novo, but will bring forward and incorporate into the hearing all of the evidence of record in these dockets and this Order including findings and conclusions."

The Commission's Order of July 28, 1992, also provided that, should Mid South file an application for a certificate of public convenience and necessity to serve the Silverton Subdivision, such application would be scheduled for hearing so as to allow this matter to be heard in conjunction with the matter of the Bradfield II certificate, which by the Commission's Order of July 28, 1992 was scheduled for hearing on September 17, 1992. Mid South filed an application for a certificate to serve the Silverton Subdivision on September 16, 1992, one day prior to the hearing previously scheduled in the matter of Bradfield Farms Phase II.

The Bradfield Farms Phase II matter came on for hearing as scheduled. However, Mid South's application for a certificate to serve the Silverton Subdivision was not made a part of said hearing due to the timing of the filing of the Silverton request. The Silverton matter is currently before the Commission in Docket No.W-720, Sub 121.

Bradfield Farms Phase II hearings were conducted on September 17 and 22, 1992. During the course of these hearings, Mid South offered the testimony and exhibits of the following witnesses: Mr. Thomas Carroll Weber, President of Mid South; Ms. Jocelyn M. Perkerson, Vice President of Financial Affairs and Regulatory Matters for Mid South; Mr. William C. Yandell, Land Development Manager for John Crosland Company, the developer of Bradfield Farms; and Mr. Jerry Tweed, an employee of Heater Utilities, Inc., who had been the Executive Vice President of Mid South at the time the initial Bradfield Farms Phase II application was filed with the Commission. No other evidence was offered by any other party to the proceedings.

FINDINGS OF FACT

1. The findings of fact and the conclusions set forth in the Commission's Order of July 28, 1992, issued in these dockets, are incorporated herein by reference as if fully set out and are made a part of this Order.

2. Mid South's attempt to overcome the Commission's earlier finding and conclusion that Mid South had not been "forthright and candid" in its dealings with the Commission and the Public Staff in certain matters relating to its initial Bradfield Phase II application is insufficient to cause the Commission to reverse its earlier conclusion.

3. Mid South has not carried the burden of proof to establish its ability, from the standpoint of financial fitness, to provide public utility water and sewer services in Phase II of the Bradfield Farms Subdivision.

4. Mid South's certificate to provide service within Phase II of the Bradfield Farms Subdivision should be withdrawn and revoked.

5. By extension of the emergency operating authority granted to Mid South by the Commission's Order of November 11, 1992, relating to Phases III, IV, and V of the Bradfield Farms Subdivision, the Company is hereby granted such authority with respect to Phase II pending further Order of the Commission. Unless this emergency operating authority is granted, there will be a real emergency in this service area, as defined by the statute.

6. It would be detrimental to customer service for one utility to serve Bradfield Farms Phase II and for another utility to serve the other Bradfield phases.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT

Regarding the Commission's concern relating to the division of water and sewer service in the Bradfield Farms Subdivision, witness Weber testified that it would be unwise for one utility to serve Bradfield Farms Phase II and for another utility to serve the other Bradfield phases. The Commission agrees with witness Weber.

Regarding the conclusion set forth in the Commission's Order of July 28, 1992, providing that in certain respects Mid South had not been "forthright and candid" in its dealings with the Commission and the Public Staff in matters relating to its initial Bradfield Phase II application, witness Weber's testimony that there was never any intent to contravene the Commission's requirements or mislead the Commission through any action taken by the Company is insufficient to cause the Commission to reverse it earlier decision. Notwithstanding the protestations of the Company, the Commission reaffirms its earlier finding and conclusion in this regard.

Regarding the Commission's concern that Mid South may not be financially fit to serve Bradfield Farms Phase II, the Company has not presented evidence sufficient to cause the Commission to reach a conclusion any different from that previously reached with respect to Phases III, IV, and V of the Bradfield Farms Subdivision; i.e., Mid South has not carried the burden of proof as to its ability, from the standpoint of financial fitness, to provide public utility services in Phase II of the Bradfield Farms Subdivision.

During the hearings held on September 17 and 22, 1992, Mid South did offer further testimony as to the state of its financial position. However, other than witness Perkerson's emphatic assurances of financial soundness, the record in these proceedings reveals little that would lead the Commission to such a conclusion. The record is, however, replete with evidence which causes the Commission to have great concern as to Mid South's fitness to serve from the standpoint of its overall financial condition. Therefore, for reasons set forth in the Commission's Order of July 28, 1992, issued in these dockets, and for reasons set forth in the brief of Carolina Water Service, Inc. of North Carolina filed in these dockets on October 26, 1992, the Commission finds and concludes that Mid South has not carried the burden of proof as to its ability, from the standpoint of financial fitness, to provide public utility services in Phase II of the Bradfield Farms Subdivision.

Therefore, the Commission further finds and concludes, based upon the forgoing and the entire evidence of record, that the certificate of public convenience and necessity previously issued to Mid South to provide water and sewer services within Phase II of the Bradfield Farms Subdivision should be withdrawn and revoked. Finally, the Commission concludes that Mid South should notify its customers and all real estate developers located and/or operating within this area of the Commission's instant decision; and that Mid South, Mid South's customers, affected real estate developers, and other interest parties

should work in conjunction with the Commission to facilitate an orderly transfer of applicable operating authority for and ownership of said systems to a qualified operator while maintaining the continuity of services to existing customers.

The Commission, however, is of the further opinion that Mid South should be appointed emergency operator in Bradfield Farms Phase II in order to prevent the actual loss of water and sewer services to customers within this area pending further developments in these dockets and further Order of the Commission. See Order of July 28, 1992.

By Order of November 11, 1992, issued in these dockets, the Commission extended the emergency operating authority of Mid South in Phases III, IV, and V of the Bradfield Farms Subdivision in order to allow the entity proposed by Mid South and John Crosland Company the opportunity to file applications for authority to provide utility services within these areas. The Commission anticipates that these companies will also file for authority to serve Phase II. If no application is filed for authority to serve Phase II within 30 days from the issuance date of this Order, the Commission will reconsider its granting of emergency operating authority for Phase II.

IT IS, THEREFORE, ORDERED as follows:

(1) That Mid South's certificate of public convenience and necessity to provide water and sewer utility services to Phase II of Bradfield Farms Subdivision shall be, and hereby is, withdrawn and revoked.

(2) That, pursuant to G.S. 62-116(b) and by extension of the emergency operating authority granted Mid South by Commission Order issued in these dockets on November 10, 1992, Mid South is hereby granted emergency operating authority in Bradfield Farms Phase II, in order to prevent the actual loss of water and sewer services to customers within this area pending further developments in these dockets and further Order of the Commission. The Commission will review the granting of this emergency authority if no application is filed for a certificate of public convenience and necessity to serve Phase II within 30 days from the issuance date of this Order.

(3) That, within two days after receipt of this Order, Mid South shall notify the developer(s) of Bradfield Farms Phase II of the Commission's decision reached in this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of December 1992.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-953

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Corolla North Utilities, Inc., 4826 North Croaton Highway, Kitty Hawk, North Carolina 27949, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in the Villages at Ocean Hill Subdivision, Currituck County, North Carolina, and for Approval of Rates	ORDER REQUIRING AUDITED FINANCIAL STATEMENT OR REQUEST FOR HEARING

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 6, 1991, at 2:00 p.m.

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

APPEARANCES:

For Corolla North Utilities, Inc.:

Bernard A. Harrell, Attorney at Law, Smith Debnam Hibbert & Pahl, 4700 New Bern Avenue, Post Office Box 26268, Raleigh, North Carolina 27611-6268

For the Commission Staff:

Wilson B. Partin, Jr., Deputy General Counsel, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510

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

BY THE COMMISSION: On October 14, 1991, the Public Staff of the North Carolina Utilities Commission filed a petition requesting the Commission to enter an Order requiring Corolla North Utilities, Inc. (Corolla North or Company), to appear and show cause, if any there be, why the certificate of public convenience and necessity issued in this docket should not be canceled and an emergency operator appointed, and why other sanctions including fines should not be imposed, for failure by Corolla North to post the required bond with security in the amount of $56,000. The service area involved in this docket is the Villages at Ocean Hill Subdivision, Currituck County, North Carolina.

By Order dated November 13, 1991, the Commission granted the Public Staff's motion for show cause proceeding and scheduled the matter for hearing on Friday,

December 6, 1991, in order to fully inquire into the circumstances surrounding Corolla North's failure to file the appropriate bond and post the security required by law.

On November 22, 1991, Corolla North filed a response to the Public Staff's petition requesting that the Commission authorize the Company to post a bond in a form other than cash or a certificate of deposit, such as a property bond of value equivalent to the bond requirement or, alternatively, that the amount of the bond be reduced to no more than $20,000 or some other equitable amount.

Upon call of the show cause proceeding for hearing at the appointed time and place, Corolla North presented the testimony of James C. Ward, its President. The Commission Staff offered the testimony of Cynthia K. Smith, Secretary to the Water and Sewer Division of the Public Staff; Sandra Sawyer, Trust Officer with United Carolina Bank; and David Snyder, Vice President and Regional Trust Manager for United Carolina Bank.

On December 9, 1991, Corolla North filed an individual surety bond in the amount of $56,000 signed by E. Fletcher Humphries and an unaudited financial statement of the proposed surety.

On January 15, 1992, the Commission Staff and Public Staff filed the following joint recommendations in this docket:

> "Corolla North Utilities, Inc. (W-953) filed a bond with individual security. Commission Rule R7-37(d). It is our opinion that an audited financial statement on the person acting as security is needed to perfect this bond. We recommend that the utility be given 30 additional days to provide this financial statement. If this cannot be done, and no other appropriate security is provided, we recommend that Corolla North be given 30 days in which to either post bond or transfer the system. . ."

On January 15, 1992, Corolla North filed a legal brief in support of its position in this docket.

On January 29, 1992, the Company filed a letter in this docket requesting an opinion from the Commission as to whether bonds issued by the North Carolina Medical Care Commission qualify as an acceptable bond under G.S. 62-110.3 and Commission Rules R7-37 and R10-24.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On July 16, 1990, Commission Hearing Examiner Rudy Shaw entered a Recommended Order in this docket granting a certificate of public convenience and necessity to Corolla North Utilities, Inc., to provide water and sewer utility service in the Villages at Ocean Hill Subdivision in Currituck County, North Carolina. Decretal paragraph number 7 of the Recommended Order required Corolla North to post a bond in the amount of $56,000 pursuant to G.S. 62-110.3 within 60 days. The Recommended Order became effective and final on August 4, 1990. Because the bond in the amount of $56,000 was not thereafter filed by Corolla

North, the Public Staff requested the Commission to initiate a show cause proceeding against the Company. By Order dated November 13, 1991, the Commission initiated a show cause proceeding in this docket against Corolla North and scheduled a public hearing to consider the matter. Corolla North witness Ward testified that the Company presently serves only six (6) part-time or seasonal customers who are not being charged for utility service; that the developer of the subdivision, Ocean Hill Properties, Inc., is paying all operating expenses of the water and sewer systems; that there are three (3) homes currently under construction in the subdivision; that the Company has invested over $2 million in the water and sewer systems in question; that the Company's investment in utility plant is essentially debt-free and unencumbered; that the Company currently has less than $500 in the bank; and that neither the utility nor the developer is able to post the bond of $56,000 in the form of cash or a certificate of deposit.

At the show cause hearing and in its legal brief, Corolla North has requested the Commission to authorize the Company to satisfy the bonding requirement in this case through use of a perpetual surety bond in the amount of $56,000 signed by an individual with an asserted net worth of approximately $7.6 million. Commission Rules R7-37(d) and R10-24(d) provide that (1) the bond required by G.S. 62-110.3 may be secured by the joinder of an individual surety with a net worth of at least 20 times the amount of the bond or $500,000, whichever is less, and (2) the net worth of the proposed surety must be demonstrated by the annual filing of an audited financial statement. The Commission Staff and Public Staff have recommended that Corolla North be allowed 30 days to provide an audited financial statement from the Company's proposed individual surety. The Company counters by asserting that the cost of an audited financial statement conducted by a certified public accountant for its proposed individual surety would be at least $24,000 and that such cost, in effect, rules out the Company's ability to use an individual surety. Therefore, Corolla North requests that the Commission not require individual sureties to provide audited financial statements on an annual basis, but, in lieu thereof, require individual sureties to file financial statements under oath or penalty of perjury.

The Commission has carefully reviewed this matter and concludes that the provisions of Rules R7-37 and R10-24 which require audited financial statements from individual sureties should not be waived or amended as requested by Corolla North. Audited financial statements serve a legitimate purpose in that they ensure, insofar as it is practicable to do so, that individual sureties possess the requisite net worth necessary to justify acceptance of a bond of sufficient liquidity to guarantee the financial integrity of such bond. Accordingly, the Commission finds good cause to grant Corolla North thirty (30) days to file an audited financial statement for its proposed individual surety or, in the alternative, request that a hearing be scheduled to consider the acceptability of its most recent proposal related to bonds issued by the North Carolina Medical Care Commission.

IT IS, THEREFORE, ORDERED that Corolla North Utilities, Inc., be, and the same is hereby, granted a 30-day extension of time from the date of this Order to either file an audited financial statement for its proposed individual surety

or, in lieu thereof, request that a hearing be scheduled to consider the acceptability under G.S. 62-110.3 and Rules R7-37 and R10-24 of bonds issued by the North Carolina Medical Care Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

ORDERS AND DECISIONS - PRINTED

TABLE OF CONTENTS

RATES

SALES AND TRANSFERS

TEMPORARY OPERATING AUTHORITY

MISCELLANEOUS

TABLE OF CONTENTS
ORDERS AND DECISIONS LISTED

E-100, Sub 64 - Order Denying Motion to Include Clean Air Act Compliance (8-19-92)

E-100, Sub 64 - Order Allowing Request for Proposals for 25 MW of DSM Resources (8-26-92)

E-100, Sub 64 - Order Accepting DSM Evaluation Plan (9-30-92)

E-100, Sub 64 - Order Granting CIGFUR an Extension of Time (10-9-92)

E-100, Sub 64 - Order Approving Revision (12-9-92)

E-100, Sub 64 - Order Approving Pilot Program (12-9-92)

E-100, Sub 64 - Order Approving Demand Side Program Revisions (12-9-92)

E-100, Sub 64 - Order Approving a Residential Duct Leakage and Analysis Repair Pilot Program and Deferral of Certain Associated Costs (12-16-92)

E-100, Sub 64 - Order Approving Demand Side Program for Manufactured Housing Payment Program for New Residential Structures (12-22-92)

E-100, Sub 64 - Order Approving Demand Side Program for High Efficiency Agricultural Ventilation Payment Program (12-22-92)

E-100, Sub 64 - Order Approving Program, Cost Deferral, and Rewards of a Duct Sealing Payment Program for New Residential Structures (12-22-92)

E-100, Sub 65 - Order Granting Petition to Intervene Rulemaking Proceeding to Implement North Carolina Electric Membership Corporation Participation in Least Cost Integrated Resource Planning Proceedings (4-21-92)

GAS

G-100, Sub 57 - Order Approving Reporting Forms and Tracking for Natural Gas Local Distribution Company to Create a Special Natural Gas Expansion Fund (8-18-92)

G-100, Sub 58 - Order Adopting Reporting Form for Natural Gas Local Distribution Companies (8-18-92)

G-100, Sub 59 - Order Allowing Withdrawal of Application of City of Monroe for Declaratory Ruling (7-22-92)

G-100, Sub 61 - Order Denying Petition and Complaints for an Investigation of the Reasonableness of the Weather Normalization Adjustment Trackers Approved for Piedmont Natural Gas Company, Public Service Company of North Carolina and North Carolina Natural Gas Corporation (8-4-92)

G-100, Sub 62 - Order Proposing Revised Rule R6-80 (7-22-92)

MOTOR TRUCKS

T-100, Sub 14 - Order Clarifying Order Amending Rules R2-37 and R2-52 (7-21-92)

T-100, Sub 21 - Order Denying Petition and Closing Docket (12-10-92)

TELEPHONE

P-100, Sub 80 - Order Denying Request to Reopen Rulemaking (3-17-92)

P-100, Sub 84 - Order Initiating Rulemaking Regarding Rule R13-5(h) (11-10-92)

P-100, Sub 84; SC-712, Sub 2 - Order Dismissing Tariff Filing (12-11-92)

P-100, Sub 114 - Order Denying NCCA Motion for Reconsideration (4-28-92)

P-100, Sub 114 - Order Convening Conference for Settlement of Record on Appeal (5-28-92)

P-100, Sub 114 - Order Indicating Denial of Motion Pursuant to Rule 60(b) (6-4-92)

P-100, Sub 115 - Order Authorizing Study of Limited Duration of Local Calls from Public Payphones as Modified (1-17-92)

P-100, Sub 117 - Order Allowing Petition to Intervene (1-17-92)

P-100, Sub 117 - Order Withdrawing Proposed Rule R16.2 (6-3-92)

P-100, Sub 118; P-55, Sub 966 - Order Concerning Rates for Part 90 Licensees (9-10-92)

WATER

W-100, Sub 10 - Recommended Order Denying Petition of an Investigation and Rulemaking into the Advisability of Formulating a Policy on the Softening of Hard Water (4-10-92)

W-100, Sub 13; W-354, Sub 111; W-274, Sub 68 - Order Denying Motion (cross-referenced) (2-26-92)

W-100, Sub 13 - Order Requiring System-Specific Data and Closing Docket (Commission Wells dissents.) (9-11-92)

W-100, Sub 19 - Order Interpreting Disconnection Rules (7-8-92)

ELECTRICITY

APPLICATIONS WITHDRAWN OR DISMISSED

Avalon Hydro Associates - Order Dismissing Application for Certificate of Construction of a Hydroelectric Facility to be Located at the Avalon Dam on the Mayo River Near the Town of Mayodan
SP-41 (8-13-92)

Carrasan Power Company, Inc. - Order Dismissing Application for Certificate of Construction of a Hydroelectric Facility Located on the Horsepasture River, Transylvania County, Known as the Horsepasture Project
SP-20 (8-13-92)

Empire Power Company - Order on Motion to Dismiss for a Certificate for Construction of a Combustion Turbine Electric Generating Facility
SP-91 (4-23-92)

Mayo Hydro Associates - Order Dismissing Application for Certificate of Construction of a Hydroelectric Facility to be Located at the Mayo Dam on the Mayo River Near the Town of Mayodan
SP-42 (8-13-92)

CANCELLATIONS

Bellamy's Mill Power, Ltd. - Order Canceling Certificate for Construction of a Hydroelectric Facility to be Located on Fishing Creek in North Whitakers/Brinkleyville Townships, in the Counties of Nash and Halifax
SP-61 (8-13-92)

C&H Waste Energy, Inc. - Order Canceling Certificate for Construction of a Cogeneration Facility to be Located on Guilford Mills Inc., Property on West Market Street in Greensboro
SP-39, Sub 2 (8-13-92)

C&H Waste Energy, Inc. - Order Canceling Certificate for Construction of a Cogeneration Facility to be Located on Guilford Mills Inc., Property on Wendover Road in Greensboro
SP-39, Sub 3 (8-13-92)

C&H Waste Energy, Inc. - Order Canceling Certificate for Construction of a Cogeneration Facility to be Located at the Rowan County Landfill Property on 29 and 601 South of Salisbury
SP-39, Sub 7 (8-13-92)

Cogentrix of North Carolina, Inc. - Order Canceling Certificate Authorizing the Guilford Mills, Inc., Project in Greensboro
SP-16, Sub 1 (8-13-92)

Cogentrix of North Carolina, Inc. - Order Canceling Certificate Authorizing the West Point Pepperell Project in Hamilton
SP-16, Sub 3 (8-13-92)

Cogentrix of North Carolina, Inc. - Order Canceling Certificate Authorizing the Guilford Mills, Inc., (West Market Street Plant)
SP-16, Sub 5 (8-13-92)

CERTIFICATES

Carolina Power & Light Company - Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity
E-2, Sub 623 (10-2-92)

Carolina Power & Light Company - Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity and Waiving Public Notice and Hearing
E-2, Sub 624 (6-2-92)

Carolina Power & Light Company - Order Closing Docket in Complaint of John F. Freeman
E-2, Sub 627 (11-4-92)

Carolina Power & Light Company - Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity, and Waiving Public Notice and Hearing
E-2, Sub 629 (9-11-92)

Carolina Power & Light Company - Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity, and Waiving Public Notice and Hearing
E-2, Sub 630 (12-16-92)

Carolina Power and Light Company - Order Closing Docket in Complaint of Wilmington National Peening
E-2, Sub 633 (12-1-92)

Duke Power Company - Order Closing Docket in Complaint of Charles E. Nelson
E-7, Sub 515 (11-25-92)

Empire Power Company - Order Denying Reconsideration for Construction of a Combustion Turbine Electric Generating Facility, Located at the End of Jarrell Road, Between State Highway 87 and State Highway 14, South of the City of Eden, Rockingham County
SP-91 (7-29-92)

North Carolina Eastern Municipal Power Agency - Order Granting Certificate Authorizing Construction of a Combustion Turbine Electric Generating Plant, Nash County, and Approving Determination of Power and Energy Needs of Agency
E-48 (2-3-92)

North Carolina Eastern Municipal Power Agency - Order Granting Certificate Authorizing Construction of a Combustion Turbine Electric Generating Plant, Edgecombe County, and Approving Determination of Power and Energy Needs of Agency
E-48, Sub 1 (2-3-92)

North Carolina Eastern Municipal Power Agency - Order Granting Certificate Authorizing Construction of a Transmission Tap Line in Connection with the Construction of a Combustion Turbine Electric Generating Plant, Edgecombe County, with Request for Waiver of Notice and Hearing
E-48, Sub 2 (5-26-92)

North Carolina Power - Order Denying Motion for Reconsideration in Complaint of Frank C. Weaver, Jr.
E-22, Sub 326 (11-4-92)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct a 5.1 Megawatt Cogeneration Facility in Cofield
SP-82 (3-18-92)

Westmoreland Energy, Inc., Westmoreland-LG&E Partners, c/o - Order Issuing Certificate for Construction of a Cogeneration Facility to be Located on the Site of the Roanoke Valley I Project, a Tract of Land of 113 Acres Located near Roanoke Rapids and Weldon
SP-77, Sub 2 (12-22-92)

COMPLAINTS

Carolina Power & Light Company - Order Providing Notice of Intent to Close Docket Without Prejudice in Complaint of Pinehurst Hotel Investors, Inc.
E-2, Sub 556 (9-4-92)

Carolina Power & Light Company - Order Closing Docket Without Prejudice in Complaint of Pinehurst Hotel Investors, Inc.
E-2, Sub 556 (12-15-92)

Carolina Power & Light Company - Order Allowing Dismissal of Complaint of Lake Forest, Inc., Without Prejudice
E-2, Sub 597 (10-14-92)

Carolina Power & Light Company - Order Closing Docket in Complaint of R. Dan Murrell
E-2, Sub 602 (3-10-92)

Carolina Power & Light Company - Order Denying Summary Judgment and Scheduling Hearing in Complaint of Joe R. Ellen, Jr., d/b/a Rocky River Power Plant
E-2, Sub 605 (1-24-92)

Carolina Power & Light Company - Order Dismissing Complaint of Strickland Insurance and Realty, Inc.
E-2, Sub 608 (4-1-92)

Carolina Power & Light Company - Recommended Order Denying Complaint of Nancy C. Warner
E-2, Sub 610 (3-24-92)

Carolina Power & Light Company - Order Closing Docket in Complaint of Alfred F. Yarur, President, Metaltek Instruments
E-2, Sub 612 (4-28-92)

Carolina Power & Light Company - Order Granting Summary Judgment in Favor of Carolina Power & Light in Complaint of Reginald L. Frazier
E-2, Sub 614 (6-12-92)

Carolina Power & Light Company - Order Closing Docket in Complaint of Evelyn Newkirk
E-2, Sub 620 (5-27-92)

Carolina Power & Light Company - Recommended Order Denying Complaint of Mary Stokes
E-2, Sub 628 (12-16-92)

Carolina Power & Light Company - Recommended Order Denying Complaint of Mary Stokes
E-2, Sub 628 (12-17-92) (Reissued)

Duke Power Company - Order Closing Docket in Complaint of L. Lawrence Potts
E-7, Sub 451 (3-10-92)

Duke Power Company; Haywood Electric Membership Corporation - Order Affirming Party Status of Nantahala in Complaint of Mrs. Delora Dennis, Thomas W. McGohey and Other Customers of Haywood Electric Membership Corporation, Carmaletta Moses
E-7, Sub 474; EC-10, Sub 37 (4-22-92)

Duke Power Company - Order Denying Reconsideration in Complaint of Empire Power Company
E-7, Sub 492 (7-29-92)

Duke Power Company - Order Serving Witness Request on Duke and the Public Staff in Complaint of Warren Lambert
E-7, Sub 495 (3-16-92)

Duke Power Company - Order Denying Motion to Dismiss and Denying Requests for Witnesses and Information in Complaint of Warren Lambert
E-7, Sub 495 (4-20-92)

Duke Power Company - Final Order Overruling Exceptions and Affirming Recommended Order in Complaint of Warren Lambert
E-7, Sub 495 (8-14-92)

Duke Power Company - Order Closing Docket in Complaint of Elam Muganda
E-7, Sub 506 (6-26-92)

Duke Power Company - Order Closing Docket in Complaint of North Central Farm Credit
E-7, Sub 508 (9-21-92)

ORDERS AND DECISIONS LISTED

Duke Power company - Drder Closing Docket in Complaint of Frank Barnes
E-7, Sub 510 (12-15-92)

Nantahala Power & Light Company - Order Closing Docket in Complaint of Robert Joe Thomas
E-13, Sub 153 (3-2-92)

Nantahala Power & Light Company - Recommended Order Dismissing Complaint of James Bridgman
E-13, Sub 154 (3-31-92)

North Carolina Power - Recommended Drder in Complaint of Frank C. Weaver, Jr.
E-22, Sub 326 (4-28-92)

North Carolina Power - Final Order Overruling Exceptions and Affirming Recommended Order in Complaint of Frank C. Weaver, Jr. (Commissioner Cobb dissents.)
E-22, Sub 326 (7-15-92)

North Carolina Power - Order Tentatively Authorizing Disconnection of Service on September 8, 1992, and Providing Complainant an Opportunity to be Heard in Complaint of Velma Saunders
E-22, Sub 332 (8-6-92)

North Carolina Power - Final Order Dismissing Complaint and Authorizing Disconnection of Service on September 8, 1992, in Complaint of Velma Saunders
E-22, Sub 332 (9-1-92)

Carolina Power & Light Company - Drder Providing Notice and Opportunity to be Heard in Complaint John F. Freeman
E-2, Sub 627 (8-31-92)

APPROVING PURCHASE POWER ADJUSTMENT

Company	Cents per kWh	Docket No.	Date
Nantahala Power and Light Company	.017052	E-13, Sub 142	4-14-92

RATES

Carolina Power & Light Company - Order Approving Rate Schedules
E-2, Sub 622 (10-20-92)

Duke Power Company - Order Approving Closure of the Water Heating Load Control Provisions of Rider LC
E-7, Sub 270 (12-16-92)

Duke Power Company - Order on Second Remand Adjusting Rate of Return and Requiring Rate Reductions and Refunds (Commissioner Cobb did not participate in this decision.)
E-7, Sub 408 (10-26-92)

Duke Power Company - Order on Tax Refund Component of Refund Plan Filed by Duke (Commissioners Wells and Wright dissenting.)
E-7, Sub 408 (11-10-92)

Duke Power Company - Order Approving Revised Refund Plan
E-7, Sub 408 (11-24-92)

Duke Power Company - Order Approving Revisions to Its Residential Comfort Machine Loan Program and Notification of Interest Rate Change
E-7, Sub 456 (12-16-92)

Duke Power Company - Order Approving Revised Rate Schedules OL and FL
E-7, Sub 499 (2-18-92)

Duke Power Company - Order Approving Revision to Its Rider SG - Standby Generator Control Program
E-7, Sub 516 (12-16-92)

New River Light and Power Company - Order Approving Rate Adjustments and Requiring Notice
E-34, Sub 30 (7-7-92)

North Carolina Power, Virginia Electric and Power Company d/b/a - Order Approving Revisions and Further Modification to Residential Rate Schedules
E-22, Sub 337 (10-13-92)

Shipyard Power and Light Company - Recommended Order Granting Rate Increase
E-47, Sub 1 (10-19-92) Order Allowing Recommended Order to Become Effective and Final (10-19-92)

SALES AND TRANSFER

Duke Power Company - Order Transferring Customers with the Town of Pineville for the Purchase of Electrical Distribution System and Customer Electrical Accounts in the Sterling Development
E-7, Sub 500 (4-14-92)

Solar Research Corporation - Order Transferring Certificate Authorizing a Hydroelectric Generating Facility Located at the Milburnie Dam on the Neuse River in St. Matthews Township, Wake County, from Solar Research Corporation to H&H Properties
SP-23; Sp-76, Sub 1 (8-12-92)

SECURITIES

Carolina Power & Light Company - Order Granting Authority to Amend Pollution Control Financing
E-2, Sub 617 (3-18-92)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Long-Term Debt and Common Stock)
E-2, Sub 621 (6-1-92)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Long-Term Debt and Common Stock)
E-2, Sub 634 (12-9-92)

Carolina Power & Light Company - Order Granting Authority to Issue Additional Securities (Common Stock)
E-2, Sub 635 (12-23-92)

Duke Power Company - Order Approving Long-Term Debt Securities and Medium Term Notes
E-7, Sub 498 (2-10-92)

Duke Power Company - Order Approving Long-Term Debt Securities and Medium-Term Notes
E-7, Sub 503 (5-12-92) Errata Order (5-14-92)

Duke Power Company - Order Approving Preferred Stock A
E-7, Sub 504 (5-12-92)

Duke Power Company - Order Granting Authority to Issue and Sell Preferred Stock Par Value $100.00 Per Share
E-7, Sub 509 (8-20-92)

Duke Power Company - Order Approving Long-Term Debt Securities
E-7, Sub 512 (9-16-92)

Duke Power Company - Order Approving the Issuance and Sale of Long-Term Debt Securities
E-7, Sub 514 (10-27-92)

Nantahala Power and Light Company - Order Granting Authority to Issue Notes
E-13, Sub 156 (11-12-92)

TARIFFS

Carolina Power & Light Company - Order Approving Rider No. 57B Supplementary and Interruptible Standby Service
E-2, Sub 615 (1-14-92)

Carolina Power & Light Company - Order Approving Enhancements and Establishment of Pilot Program
E-2, Sub 616 (1-30-92)

Carolina Power & Light Company - Order Approving Rider CL-76
E-2, Sub 625 (6-23-92)

Duke Power Company - Order Approving Revisions Without Prejudice
E-7, Sub 456 (1-14-92)

MISCELLANEOUS

Burroughs Wellcome - Order Accepting Report of Construction and Granting Exemption
SP-95 (8-25-92)

Carolina Power & Light Company - Order Granting Authority to Enter into a Pollution Control Financing
E-2, Sub 619 (4-2-92)

Carolina Power & Light Company - Order Requiring Information and Data
E-2, Sub 626 (7-7-92)

Duke Power Company - Order on Public Staff Motion to Recuse (Second Remand)
E-7, Sub 408 (8-17-92)

Duke Power Company - Order Approving Revisions to Its Residential Comfort Machine Loan Program and Notification of Interest Rate Change
E-7, Sub 456 (7-14-92)

Duke Power Company - Order Approving Revisions to Residential Credit Codes
E-7, Sub 482 (6-25-92)

Duke Power Company - Order Requiring Notice to Customers
E-7, Sub 500 (3-12-92)

North Carolina Power and Albemarle Electric Membership Corporation - Order Approving Reassignment of Service Areas in Pasquotank County
ES-105 (4-28-92)

North Carolina Partnership - Order Requiring Publication of Notice for Construction of an Electric Generating Facility to be Located in the Washington County Industrial Park on Highway 64 East of the City of Plymouth, Washington County
SP-96 (9-15-92)

Virginia Electric & Power Company - Order Approving Guarantee for Heat Pumps
E-22, Sub 339 (11-30-92)

Westmoreland Energy, Inc., Westmoreland-LG&E Partners, c/o - Order Requiring Publication of Notice
SP-77, Sub 2 (8-12-92)

EC-67, Sub 4 - Order Approving Demand Side Program Revisions (7-28-92) Errata Order (7-29-92)

FERRY BOATS

APPLICATIONS DENIED

Smith Fish Company, Inc. - Recommended Order Denying Application for Authority to Transport Passengers via Water in Ferryboat Operations
A-39 (8-7-92)

CANCELLATIONS

Mitch Parsons - Order Cancelling Certificate No. A-34
A-34, Sub 1 (6-5-92)

COMMON CARRIER

Sand Dollar Transportation, Henry C. Tunstall, d/b/a - Recommended Order Granting Application to Transport Passengers and their personal effects from Harkers Island to Cape Lookout and Shackleford Banks via Water and Return
A-38 (8-5-92)

GAS

COMPLAINTS

North Carolina Natural Gas Corporation - Order Keeping Docket Open for Six Months in Complaint of City of Albemarle
G-21, Sub 300 (8-21-92)

North Carolina Natural Gas Corporation - Order Dismissing Complaint and Closing Docket in Complaint of City of Albemarle
G-21, Sub 300 (12-8-92)

North Carolina Natural Gas - Final Order Dismissing Complaint of Homer D. Inman Companies, Homer D. Inman, d/b/a
G-21, Sub 303 (6-12-92) Commissioner Hughes dissents.

North Carolina Natural Gas - Order Closing Docket in Complaint of David D. Almond
G-21, Sub 304 (5-15-92)

Piedmont Natural Gas Company - Order Closing Docket in Complaint of Evelyn Louise Powell
G-9, Sub 319 (8-27-92)

Piedmont Natural Gas Company - Order Closing Docket Effective April 24, 1992, in Complaint of Larnise Marshall
G-9, Sub 323 (4-13-92)

Public Service Company of North Carolina - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Townsend, Inc.
G-5, Sub 252 (2-12-92)

Public Service Company of North Carolina - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Stow & Davis
G-5, Sub 257 (4-13-92)

Public Service Company of North Carolina - Order Serving Motion to Dismiss in Complaint of Selee Corporation
G-5, Sub 291 (2-26-92)

Public Service Company of North Carolina, Inc. - Order Closing Docket without Prejudice in Complaint of Lightfoot Investments
G-5, Sub 298 (8-6-92)

Public Service Company of North Carolina - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Keith Carpenter
G-5, Sub 301 (8-14-92)

EXPLORATION AND DEVELOPMENT - Order Approving E and D Refund Plan

Company	Docket Number	Date
North Carolina Natural Gas Corporation	G-21, Sub 301	4-22-92
Pennsylvania and Southern Gas Company	G-3, Sub 171	4-14-92
Piedmont Natural Gas Company, Inc.	G-9, Sub 322	3-21-92
Public Service Company of North Carolina, Inc.	G-5, Sub 294	3-31-92

RATES - PURCHASED GAS ADJUSTMENT (PGA)

North Carolina Natural Gas Corporation - Order Authorizing Rate Changes
G-21, Sub 302 (3-31-92)

Public Service Company of North Carolina, Inc. - Order Authorizing Rate Changes
G-5, Sub 289; G-5, Sub 295 (4-22-92)

RATES

North Carolina Natural Gas Corporation - Order Authorizing Decrease in Rates Effective February 1, 1992
G-21, Sub 298 (2-4-92)

North Carolina Natural Gas Corporation - Order Approving Refund Plan
G-21, Sub 302 (4-22-92)

North Carolina Natural Gas Corporation - Order Authorizing Change in Rates Effective June 1, 1992
G-21, Sub 305 (6-2-92)

North Carolina Natural Gas Corporation - Order Authorizing Change in Rates Effective September 1, 1992
G-21, Sub 309 (9-3-92)

North Carolina Natural Gas Corporation - Order Allowing Certain Rate Adjustments Effective November 1, 1992, Suspending other Rate Adjustments and Scheduling Hearing
G-21, Sub 310 (11-4-92)

North Carolina Natural Gas Corporation - Order Allowing Rate Adjustments Effective November 16, 1992
G-21, Sub 310 (11-13-92)

Pennsylvania & Southern Gas Company - Order Allowing Rate Adjustment Effective May 1, 1992
G-3, Sub 172 (4-28-92)

Pennsylvania & Southern Gas Company - Order Allowing Rate Adjustment Effective November 1, 1992
G-3, Sub 174 (11-3-92)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increase Effective September 1, 1992
G-9, Sub 330 (9-9-92)

Piedmont Natural Gas Company, Inc. - Order Approving Change in Decrement
G-9, Sub 321 (1-29-92)

Piedmont Natural Gas Company, Inc. - Order Approving Temporary Reduction in Rates to Track Changes in its Wholesale Costs of Gas
G-9, Sub 324 (4-3-92)

Piedmont Natural Gas Company - Order Authorizing Removal of Decrement from Rates
G-9, Sub 325 (6-2-92)

Public Service Company of N.C., Inc. - Order Denying Reconsideration for an Adjustment of Its Rates and Charges
G-5, Sub 280; G-5, Sub 288 (3-12-92)

Public Service Company of N.C., Inc. - Order Allowing Rate Changes Effective January 22, 1992
G-5, Sub 289 (1-22-92)

Public Service Company of N.C., Inc. - Order on Motion for Modification of Effective Date
G-5, Sub 289 (2-3-92)

Public Service Company of North Carolina, Inc. - Order Approving Refund Proposal
G-5, Sub 297 (4-28-92)

Public Service Company of North Carolina, Inc. - Order Approving Revisions to Rate Schedule No. 120
G-5, Sub 306 (10-6-92)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective November 1, 1992
G-5, Sub 307 (10-27-92)

SECURITIES

North Carolina Natural Gas Corporation - Order Granting Authority to Issue a Stock Dividend
G-21, Sub 311 (10-6-92)

Piedmont Natural Gas Company, Inc. - Order Approving Sale of $35,000,000 Principal Amount of Senior Notes
G-9, Sub 331 (9-15-92)

Pennsylvania & Southern Gas Company - Order Approving $7,000,000 Loan
G-3, Sub 175 (11-12-92)

Public Service Company of North Carolina, Incorporated - Order Approving Sale of Common Stock for Option Plan
G-5, Sub 292 (4-7-92)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell Senior Debentures
G-5, Sub 293 (4-30-92)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell Common Stock
G-5, Sub 303 (8-7-92)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Pay a 50% Stock Dividend and Issue Additional Shares of Common Stock for an Employee Stock Purchase Plan
G-5, Sub 309 (12-9-92)

MISCELLANEOUS

North Carolina Natural Gas Corporation - Order on Motions for Bifurcation and Continuance
G-21, Sub 306; G-21, Sub 307 (8-19-92)

North Carolina Natural Gas Corporation - Order Requiring Publication and Mailing of Notice
G-21, Sub 306 (9-25-92)

North Carolina Natural Gas Corporation - Order Inviting Amicus Curiae Briefs
G-21, Sub 306; G-21, Sub 307 (11-16-92)

Piedmont Natural Gas Company, Inc. - Order Approving General Service Gas Sales Contract for Rate Schedules 103 (large General Service) and 104 (Interruptible Service) customers
G-9, Sub 326 (6-23-92)

Piedmont Natural Gas Company, Inc. - Order on Motion of Public Staff
G-9, Sub 328 (9-2-92)

Piedmont Natural Gas Company, Inc. - Order on Scope of Proceeding
G-9, Sub 329 (10-28-92)

Piedmont Natural Gas Company - Order Granting Request of Special Accounting for Environmental Assessment and Cleanup Costs (Commissioner Duncan not voting.)
G-9, Sub 333 (12-23-92)

Public Service Company of North Carolina, Inc. - Order Approving Filing of Fixed Cost True-Up
G-5, Sub 272 (8-13-92)

Public Service Company of North Carolina, Inc. - Order Allowing Cross-over of Franchised Territory
G-5, Sub 296 (6-2-92)

Public Service Company of North Carolina, Inc. - Order Regarding Depreciation Study
G-5, Sub 299 (7-22-92)

Public Service Company of North Carolina, Inc. - Order Allowing Cross-Over of Franchised Territory
G-5, Sub 304 (8-5-92)

MOTOR BUSES

AUTHORITY GRANTED - COMMON CARRIER

Company	Charter Operations	Docket No.	Date
Nettles, Ernest & Claudia Tours, Ernest & Claudia Nettles, d/b/a	Statewide	B-580	11-6-92
Roanoke Tours and Bus Co., Inc.	Statewide	B-583	12-2-92
Scott's Transportation, Inc.	Statewide	B-569	2-10-92
Selective Charter & Tours, Allen Singletary, d/b/a	Statewide	B-572	6-5-92
Seniors Unlimited, Inc.	Statewide	B-577	9-14-92
Shiloh Travel Service, Phillip Hayes, d/b/a	Statewide	B-568	1-8-92
Sun Line Tours, Inc.	Statewide	B-574	6-19-92

AUTHORIZED SUSPENSION

Company	Certificate	Reason
Cherokee KOA, Sontag, Inc., d/b/a	B-532, Sub 2	Good Cause
Nettles, Ernest & Claudia Tours, Ernest & Claudia Nettles, d/b/a	B-580, Sub 1	Good Cause
UBAM Travel & Tours, Inc. B-559, Sub 1	B-559	Good Cause

BROKER'S LICENSE - (GRANTING AND CANCELLING)

Executive Guest Tours & Service, Inc. - Order Cancelling Broker's License
B-515, Sub 1 (12-14-92)

Five Star Tours, Robert J. Gulotta, t/a - Order Cancelling Broker's License
B-412, Sub 2 (10-19-92)

Freeman's Tour & Travel, Nancy G. Freeman, d/b/a - Recommended Order Granting Application for Broker's License
B-575 (7-24-92)

Going Places Tours and Travel, Lisa Renae Alexander, d/b/a - Order Cancelling Broker's License
B-522, Sub 1 (12-14-92)

Heritage Tours, Mrs. Vernon P. Crosby, d/b/a - Order Cancelling Broker's License
B-335, Sub 1 (10-19-92)

JA-DE Tours & Charter, Lois A. Jamison, d/b/a - Order Granting Broker's License No. B-573
B-573 (6-9-92)

Pamlico Travel Agency, Joseph McNeil Hoffman, d/b/a - Order Cancelling Broker's License
B-567, Sub 1 (10-21-92)

S-Mart & Assoc., Inc. - Order Granting Broker's License
B-563 (10-8-92)

Spirit of Columbus Explorations & Expeditions, Inc. - Order Granting Broker's License
B-582, Sub 1 (12-31-92)

Talks, Tours, & Things, Phyllis K. Sockwell & Laura Piver, d/b/a Order Cancelling Broker's License
B-432, Sub 1 (10-19-92)

Tours and Functions, Laura Lacy, d/b/a - Recommended Order Cancelling Broker's License No. B-498
B-498, Sub 1 (3-3-92)

Travel Associates, Lynn W. Johnson, d/b/a - Order Cancelling Broker's License
B-551, Sub 1 (12-14-92)

Williams, Roy B. - Order Cancelling Broker's License No. B-396
B-396, Sub 1 (2-11-92)

CERTIFICATES CANCELLED

B K Express, Inc. - Recommended Order Cancelling Operating Authority - Termination of Liability Insurance Coverage
B-554, Sub 3 (3-3-92)

B K Express, Inc. - Recommended Order Cancelling Operating Authority - Termination of Liability Insurance Coverage
B-554, Sub 4 (9-21-92)

Eagle Coach Company, Stacy S. Batson, d/b/a - Order Cancelling Certificate No. B-561 - Ceased Operations
B-561, Sub 1 (3-17-92)

RESCINDING CANCELLATIONS

Company	Docket No.	Date
B K Express, Inc.	B-554, Sub 3	3-20-92

SALE AND TRANSFER

American Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-1293 from David Graham Company
T-3722 (11-30-92)

MOTOR TRUCKS

APPLICATIONS AMENDED

A & A Brokers, Judy L. Williams, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3603 (2-19-92)

Amanday Express, Inc. - Order Amending Application, Allowing Withdrawal of Protests, and Cancelling Hearing
T-3666 (6-24-92)

B.D.W. Delivery Service, Bobby Daniel Williamson, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3594 (1-15-92)

Black Feather, Richard L. Crick, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3716 (10-14-92)

Braswell, Daniel Trucking, Daniel Braswell, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3734 (12-30-92)

Bulkmatic Transport Company - Order Amending Contract Carrier Authority
T-3615, Sub 1 (5-13-92)

Channel-Air, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3602 (3-4-92)

Chemical Cartage Company - Order Amending Contract Carrier Authority
T-3027, Sub 2 (9-25-92)

Coast Refrigerated Trucking Co., Inc. - Order Amending Contract Carrier Authority
T-1604, Sub 5 (3-30-92)

Cox Motor Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3641 (5-11-92)

Crete Carrier Corporation - Order Amending Common Carrier Authority
T-1900, Sub 3 (12-7-92)

Deep Water Transport Enterprises, Inc. - Order Amending Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3614 (4-9-92)

FWC, Incorporated - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3690 (8-27-92)

Forbes Delivery Service, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3664 (6-4-92)

Fredrickson Motor Express Corporation - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-645, Sub 20 (2-19-92)

G. B. Truck'n, Robert Glenn Brewer, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3642 (4-24-92)

G & S Towing, Walter Lee Starnes, Jr., d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3727 (12-7-92)

GWP, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3663 (6-24-92)

Gallman, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3606 (2-5-92)

Gophers Personal Delivery Service, Daniel D. Thomas, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3696 (10-2-92)

Grimsley, Billy Jewel - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3643 (4-28-92)

Harper Trucking Company, Inc. - Order Amending Contract Carrier Authority Certificate/Permit No. CP-38
T-521, Sub 34 (8-20-92)

Hutchinson Mobile Home Moving, Don Melvin Hutchinson, d/b/a - Recommended Order Granting Amended Application
T-3686 (11-30-92)

Johnny's Transfer Company, Inc. Order Amending Contract Carrier Authority
T-1966, Sub 6 (12-30-92)

Jones, Wayne, Belton Wayne Jones, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3625 (3-24-92)

Keen Transport, Inc. - Order Amending Application and Cancelling Hearing
T-3647 (5-20-92)

Kendall Trucking, John M. Kendall, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-1829, Sub 5 (2-4-92)

Leaseway Customized Transport, Inc. - Order Amending Contract Carrier Authority
T-2226, Sub 3 (11-12-92)

Mascia, Michael C. and Grant M. LeRoux, III - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3717 (11-4-92)

Merritt Trucking Company, Inc. - Order Amending Contract Carrier Authority
T-2143, Sub 21 (1-21-92)

Merritt Trucking Company, Inc. - Order Amending Contract Carrier Authority
T-2143, Sub 24 (6-25-92)

Morgan, R. L. Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3733 (12-30-92)

Overcash, Tammy Lee - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3616 (3-18-92)

Perkins, J. J. Trucking Co., Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3685 (8-27-92)

Propane Transport, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3605 (3-2-92)

Riverside Express, Gayle R. Cruthis, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3652 (5-28-92)

Roadrunner Leasing, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3693 (10-6-92)

Routh Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2568, Sub 2 (10-7-92)

Ryder Distribution Resources, Inc. - Order Amending Contract Carrier Authority
T-2302, Sub 9 (9-28-92)

SilverEagle Transport, Inc. - Order Amending Common Carrier Authority
T-2738, Sub 1 (6-25-92)

Simmons, Dwight Sr. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3670 (7-22-92)

Stevens Trucking, Charles F. Stevens, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3728 (12-21-92)

Taunton Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3673, Sub 1 (7-22-92)

Triangle Warehouse & Distribution Services, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3607 (2-6-92)

United Delivery Service, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3497, Sub 1 (3-26-92)

WP Trucking, William Peterson, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-3675 (7-22-92)

APPLICATIONS DENIED/DISMISSED

Bright Belt Motor Lines, Inc. - Order Denying Request to Reinstate Operating Authority in Certificate No. C-104
T-511, Sub 12 (8-27-92)

Bryant, Willie - Recommended Order Dismissing Application for Common Carrier Authority
T-3366 (8-28-92)

Ledford's Mobile Home Service, Jimmie Ledford, d/b/a - Recommended Order Dismissing Application for Common Carrier Authority
T-3314, Sub 1 (9-2-92)

Searcy Trucking, Claude David Searcy, d/b/a - Recommended Order Dismissing Application
T-3582 (1-10-92)

Van's Express Carrier Service, William Warren Van Buren, d/b/a - Recommended Order Dismissing Application
T-3612 (2-27-92)

APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

Company	Docket Number	Date
A-1 Local Moving Service, William Howard Wright, d/b/a	T-3720	12-21-92
AAA Mobile Home Movers, William L. Byrd, d/b/a	T-3455	5-19-92
Allen House Trucking, James Allen House, d/b/a	T-3624	3-24-92
Askins Moving & Storage, Incorporated	T-3658	6-1-92
Batch Auto Transport, Eric Batchelder, d/b/a	T-3563	2-6-92
Berry Mobile Homes, Vaughn E. Berry, d/b/a	T-3546, Sub 1	6-1-92
C. S. Transport, Inc.	T-2144, Sub 5	5-20-92
Crisp Petroleum, Inc.	T-3701	10-8-92
Danco Moving Service, Danny Thomas Meyers, d/b/a	T-3555	1-20-92
Danco Moving Service, Danny Thomas Meyers, d/b/a	T-3555	4-27-92
Dixie Trucking Company, Inc.	T-299, Sub 11	11-3-92

Gilbert Transfer Company	T-703, Sub 7	2-10-92
Hallmart Distributors, Inc.	T-3694	10-27-92
Metcalf Trucking, Jimmy Metcalf, d/b/a	T-3512	8-27-92
Noble Self-Service Storage Les M. Noble, d/b/a	T-3627	3-31-92
Observer Transportation Company	T-107, Sub 21	2-10-92
Refrigerated Transportation Systems	T-3510	8-20-92
Run*A*Round, Ltd.	T-3708	10-26-92
Searcy Trucking, Claude David Searcy, d/b/a	T-3582, Sub 2	8-3-92
Williamson Trucking Company, Williamson Produce, Inc., d/b/a	T-3597	10-8-92

AUTHORITY GRANTED - COMMON CARRIER

A & A Brokers, Judy L. Williams, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 5, Solid Refrigerated Products, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3603 (8-24-92)

Action Mobile Home Towing and Set-Up, Larry Elliott O'Neal, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Their Related Equipment, Between Points and Places in the Counties of Nash, Wake, Johnston, Franklin, Harnett, Chatham, and Wilson
T-3699 (11-30-92)

Alford's Mobile Home Moving Service, Jack R. Alford, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3592 (1-31-92)

Allen House Trucking, James Allen House, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Duplin and Sampson Counties to all points in North Carolina; Group 10, Building Materials, from Sampson County to all points in North Carolina; and Group 21, Liquid Fertilizer and Liquid Nitrogen, Statewide
T-3624 (4-9-92)

Amanday Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, and Group 20, Motion Picture Film and Special Service, is not Authorized.)
T-3666 (9-16-92)

American Trans-Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3611 (4-10-92)

Apache Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3610 (3-16-92)

Atlantic Coast Transport, Sandra S. Morgan, d/b/a - Order Granting Common Carrier Authority Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3396 (3-19-92)

B.D.W. Delivery Service, Bobby Daniel Williamson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Guilford and Randolph Counties to all Points in North Carolina (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3594 (2-14-92)

Bankair Courier, 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-3669 (7-7-92)

Brashier Mobile Home Transport, Frances C. Brashier, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Trailers, and Pre-fabricated Buildings, Statewide
T-3711 (12-14-92)

Brodie's Moving Service, Norris C. Brodie, d/b/a - Recommended Order Granting Application, In Part to Transport Group 18, Household Goods, from Wake County to Points in Franklin, Johnston, Durham, Orange, Chatham, Harnett, Lee, Granville, Wilson, Nash, and Wake Counties
T-3688 (12-4-92)

Butch's Mobile Home Service, Butch Howell, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Manufactured, (Mobile) Homes, Statewide
T-3589 (1-21-92)

C & R Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3657 (8-20-92)

C & T Durham Trucking Company - Order Granting Common Carrier Authority to Transport Group 4, Liquid Refrigerated Products in Bulk, and Group 5, Solid Refrigerated Products, Between the Cities of Charlotte, Hickory, Raleigh, and Greensboro
T-3687 (9-21-92) Errata Order (10-16-92)

Carr's Freight Agent, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3587 (1-27-92)

Cardinal Courier Service, Robert L. and Patsy L. Racine, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3632 (5-20-92)

Carvan, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3548 (1-6-92)

Cenco, Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3598 (2-11-92)

Classic Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk, classes A & B Explosives, and Unmanufactured Tobacco and Accessories), Statewide
T-3692 (11-6-92)

Conn Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Unmanufactured Tobacco and Accessories); and Group 10, Building Materials, Statewide
T-3561 (8-31-92)

Cornhusker Motor 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-3653 (8-3-92)

Cox Motor 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-3641 (11-12-92)

Crystal Coast Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 2, Heavy Commodities, Statewide
T-3230, Sub 1 (6-25-92)

Cutler Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk, in Tank Vehicles, and Unmanufactured Tobacco), and Group 7, Cotton in Bales, Statewide
T-3481, Sub 1 (1-21-92)

D & R Services, Donald Revels, 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-3482, Sub 1 (1-21-92)

Denton, Rodney A. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Within the Counties of Nash, Edgecombe, Halifax, Franklin, Wilson, Wake, Johnston, Greene, and Chatham
T-3731 (12-14-92)

Dependable 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-3631 (6-8-92)

Eastern Carolina Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3676 (8-20-92)

Ennis Heavy Equipment Rentals & Sales, Edwin I. Ennis, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 2, Heavy Commodities, Between Points on and East of Interstate 77
T-3553 (1-14-92)

Epes Hauling, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-3571 (1-14-92)

Evans, James W., Jr. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Halifax County to Points in Warren, Franklin, Nash, Edgecombe, Bertie, Hertford, Northampton, and Halifax Counties
T-3719 (12-2-92)

FOE Trucking, Inc. - Recommended Order Granting Application for Common Carrier Authority to Transport Group 21, Asphalt and Asphalt Products (Including Cutback), in Bulk, Statewide
T-3483, Sub 1 (6-12-92)

Flagship Express Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories; and Group 17, Textile Mill Goods and Supplies, Statewide
T-3709 (12-30-92)

Forbes Delivery Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Mecklenburg and Gaston Counties to Points in Mecklenburg, Gaston, Cabarrus, Union, Cleveland, Iredell, Lincoln, and Rowan Counties (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3664 (8-20-92)

Four Friends Mobile Home Moving Service, Dean L. Baker and Robert Keith Wilson, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3705 (10-30-92)

Gallman, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3606 (8-19-92)

Gibson, Phillip R. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3562 (1-21-92)

Gooden Moving, Clione S. Gooden, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3621 (4-9-92)

Graham, Lee Trucking Company, Clauzell Lemarr Graham, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories
T-3651 (6-10-92) Errata Order (6-16-92)

Grandpap Mobile Home Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-1600, Sub 4 (11-4-92)

Graphics Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-2873, Sub 2 (9-1-92)

Gray, Sam L. Trucking, Sam L. Gray, 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-3595 (2-5-92)

Hall's Mobile Home Movers, Carlton Ray Hall, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points and Places in the Counties of Onslow, Sampson, Wayne, Brunswick, Lenoir, Jones, Pender, Craven, and New Hanover
T-217, Sub 5 (5-11-92)

Horne Storage Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-1651, Sub 4 (11-30-92)

Hoss, Charles E. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Modular Homes, Statewide
T-3635 (4-29-92)

John's Mobile Home Service, John Jackson, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Home, Statewide
T-3436 (6-19-92)

Joy Vee Truck Service, Joyce Smith Perdue, d/b/a - Order Granting Common Carrier Authority to Transport Group 1 , General Commodities, Except Unmanufactured Tobacco and Accessories, and Group 5, Solid Refrigerated Products, Statewide
T-3564 (6-19-92)

Kaplan Trucking Company, The - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, and Group 2, Heavy Commodities, Statewide
T-3580 (2-3-92)

Keen Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 2, Heavy Commodities; Group 13, Motor Vehicles; and Group 21, Parts for Heavy Commodities Which do not Require Special Handling or Equipment, from Beaufort, Buncombe, Chowan, Cumberland, Guilford, Johnston, Mecklenburg, New Hanover, and Wake Counties to All Points in North Carolina, and From All Points in North Carolina to Beaufort, Buncombe, Chowan, Cumberland, Guilford, Johnston, Mecklenburg, New Hanover, and Wake Counties.
T-3647 (6-19-92)

Keystone Freight Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-2833, Sub 3 (5-15-92) Errata Order (6-11-92)

Lane, Robert Trucking Company, Robert P. Lane, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 19, Unmanufactured Tobacco and Accessories, Between all Points and Places in the Counties of Bladen, Columbus, Robeson, Lenoir, and Pitt Counties
T-3466 (2-3-92)

Langley, William Trucking, William A. Langley, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Pitt County to All Points in North Carolina (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3516 (5-14-92)

Leon's Enterprise, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Related Equipment, from Wayne County to Points in North Carolina, and from Points in North Carolina to Wayne County
T-3660 (7-7-92)

Lloyd, D. Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3622 (4-16-92)

Mascia, Michael C. and Grant M. LeRoux, III - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 15, Retail Store Delivery Service, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3717 (12-2-92)

McCollister's Moving & Storage, 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-3634 (6-19-92)

McGhee Transport, Anthony E. McGhee, Sr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Vance, Warren, and Granville Counties to Points in North Carolina, and from Points in North Carolina back to Vance, Warren, and Granville Counties
T-3667 (8-3-92)

McMillan Crane Service, Inc. - Order Granting Common Carrier Authority to Transport Group 2, Heavy Commodities, Statewide
T-2145, Sub 2 (10-13-92)

Merritt Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, Statewide
T-2143, Sub 18 (1-9-92)

Merritt Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 14, Dump Truck Operations, Statewide
T-2143, Sub 20 (4-10-92)

Miller, Eck Transportation Corporation - Order Granting Common Carrier Authority to Transport Group 2, Heavy Commodities, from Charlotte to Points in North Carolina
T-3629 (11-12-92)

Missouri-Nebraska Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3628 (5-6-92)

Moonlite Express Company, Darel E. Moon, 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-3630 (5-20-92)

Morgan Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk, Classes A & B Explosives, and Unmanufactured Tobacco Accessories), Statewide
T-2166, Sub 7 (3-20-92)

Movin' On Movers, Inc. - Recommended Order Granting Application, In Part to Transport Group 18, Household Goods, Between Points and Places within the Counties of Wake, Orange, and Durham
T-3620 (7-6-92)

Mullen, Henry Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, from Smithfield to Points in North Carolina
T-2478, Sub 5 (11-25-92)

Nelson's Delivery Service, John B. Nelson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide; Group 15, Retail Store Delivery Service, from Onslow County to Points in Onslow, Craven, Carteret, and New Hanover Counties; and Group 18, Household Goods, Between Points in Onslow County
T-3579 (2-11-92)

Neuse Transport, Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Group 2, Heavy Commodities; and Group 21, Cement in Bulk, Statewide
T-2171, Sub 4 (10-30-92)

New Dixie Transportation Corp. - Order Granting Common Carrier Authority to Transport Group 21, Chemicals in Bulk, (Except Gasoline, Kerosene, Fuel Oils, and Liquified Petroleum Gas), Between the Facilities of American Cyanamid in Washington County, on the One Hand and on the other, Points in the State
T-3573 (1-29-92)

Newton's Mobile Home Delivery & Service, Cecil Newton, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3447 (6-19-92)

Oliver Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories and Commodities in Bulk in Tank Vehicles, Statewide
T-1363, Sub 6 (4-24-92)

Paxton Freight Lines, Harold F. Paxton, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 5, Solid Refrigerated Products, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3524 (6-26-92)

Premier Transportation, J.H.O.C., Inc., 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-3668 (8-3-92)

Professional Express Contract Couriers, 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-3707 (11-12-92)

R & C Transport, Randall L. Padgett and Charlene Padgett, d/b/a - Recommended Order Granting Application, in Part to Transport Group 21, Mobile Homes, from Iredell County to all Points in North Carolina, and from all Points in North Carolina to Iredell County
T-3691 (10-1-92)

Raleigh Bonded Data Storage Center, Raleigh Bonded Warehouse, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Office and Business Records, Statewide
T-3678 (8-20-92)

Seagle Mobile Home Service, Nicholas Seagle, d/b/a - Interlocutory Order Granting Temporary Authority and Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3695 (11-20-92)

Searcy Trucking, Claude David Searcy, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Enka to all points in North Carolina
T-3582, Sub 1 (8-19-92)

Shaffer Trucking, 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-3684 (9-21-92)

Shavender, Guy 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-3689 (11-12-92)

She Express, Sandi Trucking, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, from Mecklenburg County to points in North Carolina
T-3618 (8-27-92)

Shull, Harold Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3569 (6-26-96)

Simmons, Dwight, Sr. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 21, Mobile Homes, Modulars, Office Units, and Storage Trailers, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3670 (12-14-92)

Sky Delivery Service, Timothy Hamilton, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3633 (9-9-92)

Southeastern Container, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3679 (9-1-92)

Spain's Pre-Owned Mobile Homes, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points within the Counties of Pitt and Wilson
T-3725 (12-3-92)

Spencer's Incorporated of Mount Airy - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3650 (6-19-92)

Superior Transport Co., Inc. - Recommended Order Granting the Application for Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide
T-3654 (10-9-92)

Taylor's Mobile Home Service, James D. Taylor, d/b/a - Recommended Order Granting Common Carrier Application in Part for Authority to Transport Group 21, Mobile Homes in Pender County and from Pender County to Points in North Carolina and from Points in North Carolina to Pender County
T-2992, Sub 2 (2-3-92)

TeeBerry Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 5, Solid Refrigerated Products; and Group 10, Building Materials; Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3552 (7-13-92)

Thompson, J. T. Mobile Home Movers, Jessie Thurman Thompson, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3604 (4-20-92)

Tobacco Contractors, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Liquid Nitrogen, Liquid Fertilizer, and Liquid Fertilizer Materials and Solutions, in Bulk, in Tank Vehicles, Statewide
T-3496, Sub 1 (2-11-92)

Triangle Warehouse & Distribution Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Guilford County to All Points in North Carolina, and from All Points in North Carolina to Guilford County (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-3607 (5-20-92)

Truck Service, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 21, Plastic Particles Used in the Manufacture of Plastic Products, in Bulk, Statewide
T-3334, Sub 1 (6-25-92)

United Delivery Service, 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-3497, Sub 1 (6-8-92)

Urgent Delivery Service, Lenwood Arnold, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Between Points in Wake and Durham Counties
T-3599 (8-21-92)

Virginia Carolina Freight 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-3645 (5-15-92)

Werner Enterprises, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3596 (3-11-92)

Wilcox Freight, James D. Wilcox, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Watauga, Avery, and Ashe Counties to Points in North Carolina, and from Points in North Carolina Back to Watauga, Avery and Ashe Counties
T-3550 (2-5-92)

Williamson Trucking Company, Williamson Produce, Inc., 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-3597, Sub 1 (9-28-92)

Young Express, Young Moving & Storage, Inc., 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-3583 (3-11-92)

Your Express Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3521, Sub 2 (11-18-92)

AUTHORITY GRANTED - CONTRACT CARRIER

Adkins Transfer, Inc. - Order Granting Contract Carrier Authority to Transport Group 15, Retail Store Delivery Service, Statewide, Under Continuing Contract with Montgomery Ward
T-3588 (2-14-92)

American Trans-Freight, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Liquid Asphalt, in Bulk, Statewide, Under Continuing Contract with Owens Corning, Trumbull Asphalt Division
T-3611, Sub 1 (10-21-92)

BPI Transport, Inc. - Order Granting Contract Carrier Authority to Transport of Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide, Under Contract with Boardman Petroleum, Inc.
T-3640 (5-15-92)

Chemical Cartage, Inc. - Recommended Order Granting Contract Carrier Application in Part for Authority to Transport Group 21, Commodities in Bulk, Statewide, Under Continuing Contracts with Astro Industries, Koch Chemical Company, South Chem, and Wright Chemicals
T-3027, Sub 1 (1-29-92) Errata Order (5-11-92)

Dahlonega Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco, and Group 21, Packaging Products, Statewide, Under Contract with Dahlonega Packaging Corporation
T-3586 (1-27-92)

Davies Trucking, Jonathan S. Davies, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Plastic Pellets, from Mecklenburg County to Points in North Carolina Under Continuing Contracts with Ashland Chemical, Inc.
T-3730 (12-21-92)

Electric Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Various Metals and Alloys, Including Stainless Steel, Aluminum, Nickel, Copper, and Brass in the Form of Sheets, Plates, Bars and Tubes, Statewide, Under Contract with A. M. Castle & Co.
T-2103, Sub 4 (1-27-92) Errata Order (1-29-92) Order Rescinding Errata Order (2-3-92)

Electric Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Baked Goods, from Jamestown to all Points in North Carolina, Under Contract with Flowers Baking Co. of Jamestown, Inc.
T-21-3, Sub 6 (1-28-92) Errata Order (1-29-92) Order Rescinding Errata Order (2-3-92)

Four Truckers, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, (Except Household Goods, Commodities in Bulk, Classes A & B Explosives, and Unmanufactured Tobacco and Accessories), Statewide, Under Continuing Contracts with Doran Textiles, Drexel Heritage Furnishings, Inc., and Food Lion, Inc.
T-3585 (2-11-92) Errata Order (6-1-92)

Fredrickson Motor Express Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with International Business Machines Corporation (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-645, Sub 20 (3-4-92)

Gilliam & Son Trucking, Terry Wintfred Gilliam, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Insulation in Bags, Statewide, Under Contract with Suncoast Manufacturing Co.
T-3665 (11-12-92)

Harris, Billy Trucking Co., Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Contract with Ball-Incon Glass Packaging Corp.
T-2048, Sub 5 (8-20-92)

Hilco Transport, Inc. - Recommended Order Granting Application in Part for Common Carrier Authority to Transport Group 21, Asphalt and Asphalt Cutback, in Bulk, Statewide, Under Contract with Barrus Construction Company, Highway Contractors, Inc., and Boggs Vaughn Contracting, Inc.
T-2876, Sub 2 (1-24-92)

Hilton Trucking, James Hilton David, d/b/a - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Statewide, Under Continuing Contract with N. C. Products Corporation
T-3509 (5-27-92)

James Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Liquid Feed and Liquid Fertilizer, Statewide, Under Continuing Contract with W. S. Clark and Sons
T-3435, Sub 1 (6-25-92) Order Amending Contract Carrier Authority (6-25-92)

Jones, Wayne Hauling, Belton Wayne Jones, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Under Contract with Corney Transportation Services, Inc. (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-3625 (5-15-92)

Keaton Trucking Company, George Everette Keaton, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 16, Furniture Factory Goods and Supplies, from Wilmington to All Points in North Carolina, Under Contract with East Carolina Bonded Warehouse. (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, Is Not Authorized)
T-3460 (6-26-92)

Keystone Freight Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide, Under Continuing Contract with K-Mart Corporation
T-2833, Sub 4 (4-24-92)

Lanier Express, Incorporated - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco and Accessories, Statewide, Under Contract with K-Mart, Inc.
T-3649 (8-3-92)

Lee Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Statewide, Under Continuing Contract with Wicker Oil Company, Inc.
T-3677 (8-3-92)

Long Transportation Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk and Unmanufactured Tobacco), and Group 21, Business and Office Machines and Electronic Systems Consisting of Data Processing Machines, Systems or Devices, Word Processing Machines, Personal Computers, Work Stations, Central Processing Units, Instruction Materials, and Parts thereof, Statewide, Under Continuing Contract with International Business Machines Corporation
T-2523, Sub 5 (3-27-92)

Long Transportation Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide, Under Continuing Contract with Gregory Poole Equipment Company
T-2523, Sub 6 (5-20-92)

Long Transportation Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide, Under Continuing Contract with Glaxo, Inc.
T-2523, Sub 7 (6-8-92)

MAKO Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk in Tank Vehicles, Statewide, Under Continuing Contract with Cargill, Inc.
T-3513, Sub 1 (5-20-92)

MAKO Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Vehicles, Statewide, Under Continuing Contracts with Jenkins Gas & Oil Company, Inc. and Carolane Propane Gas, Inc.
T-3513, Sub 2 (11-30-92)

Mullen, Henry Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Statewide, Under Continuing Contract with Adams Products Company
T-2478, Sub 4 (1-29-92)

Nichols Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, MEK, Toluene, Xylene, Hexane, Regular Mineral Spirits, Mineral Spirits 66/3, Super High Flash Naphtha, Lactol, Special Naphtholite, Heptane, Ddorless Mineral Spirit, Methyl Ketone, Naphthol, Methanol, and Thinner Blends, Between Points and Places within North Carolina, Under Continuing Contract with Georgia-Pacific Corporation
T-3554 (4-24-92)

Petroleum Carriers Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide, Under Continuing Contract with Commonwealth Petroleum Company
T-3703 (11-16-92)

Ramsey Trucking Company, Kerry Brent Ramsey, d/b/a - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with N.C. Products Corporation, from Their Plant Facilities in Raleigh, Kinston, Fairmont, Fuquay-Varina, and Near Fayetteville to All Points in North Carolina
T-3375 (5-27-92)

Rogers Cartage Co. - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk, Including but not Limited to Paint, Paint Products, and resins, Statewide, Under Continuing Contract with BASF Corporation
T-3659 (12-14-92)

Routh Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid in Bulk in Tank Trucks, Between Points in Guilford, Randolph, and Chatham Counties, Under Continuing Contract with Routh Oil Company
T-2568, Sub 3 (12-30-92)

Ryder Distribution Resources, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Used Refrigerant and Cylinders, Statewide, Under Continuing Contract with Refrigerant Recovery Corporation of America
T-2302, Sub 10 (12-21-92)

Ryder Distribution Resources, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk, in Tank Vehicles, and Unmanufactured Tobacco), Statewide, Under Continuing Contract with Parrish Tire Company
T-2303, Sub 7 (3-4-92)

Ryder Distribution Resources, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide, Under Continuing Contract with Norther Telecom, Inc.
T-2302, Sub 8 (10-13-92)

Sanders, Ervin - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Bilateral Contract with Adams Products Company, from its Plants Located in Durham, Kinston, Fayetteville, and Morrisville, North Carolina, to Points and Places within the State of North Carolina and Return
T-2200, Sub 1 (11-2-92)

Schneider Specialized Carriers, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Float Glass, from the Facilities of Libby-Owens-Ford Co., Scotland County, North Carolina, to points in North Carolina
T-3266, Sub 1 (1-21-92)

Shackleford's Trucking Co., Wesley A. Shackleford, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide, Under Continuing Contract with NMC, Inc.
T-3581 (12-7-92)

TTWS, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Corrugated Cartons, Empty Pallets, and Packaging and Shipping Supplies, Between Points in Mecklenburg County, on the one hand, and on the other, Points in McDowell County, Under Continuing Contracts with Stone Container Corporation and Weyerhaeuser Paper Company
T-3570 (3-11-92)

Taylor's of Fayetteville, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, from Selma to Fayetteville, North Carolina, Under Continuing Contracts with Bobby Taylor Oil Co., Inc., and D. K. Taylor Oil Co., Inc.
T-3724 (12-7-92)

UPS Truck Leasing, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories; Group 5, Solid Refrigerated Products; and Group 6, Agricultural Commodities; Statewide, Under Continuing Contract with Carolina Food Processors, Inc.
T-3706 (10-6-92) Errata Order (10-9-92)

Williams, Melvin Douglas - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Bilateral Contract with Adams Products Company, from its Plants located in Durham, Kinston, Fayetteville, and Morrisville, North Carolina, to Points and Places within the State of North Carolina and Return
T-1908, Sub 2 (11-2-92)

Wilson, Vic Trucking, Victor F. Wilson, Jr., d/b/a - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Bilateral Contract with N.C. Products Corporation, from Its Plants Located in Raleigh, Kinston, near Fayetteville, Fairmont, and Fuquay-Varina, North Carolina, to Points and Places Within the State and Return
T-3323 (5-27-92)

AUTHORIZED SUSPENSION

Company	Certificate	Reason
Abernathy Transfer & Storage Company, Inc. T-744, Sub 2 (8-21-92)	C-547	Good Cause
Advantage Moving and Storage Services, Inc. T-3578, Sub 1 (2-4-92)	C-654	Good Cause
All American Moving & Storage Company, Inc. T-2023, Sub 3 (1-29-92)	C-1132	Good Cause
Another Day Trucking, Inc. T-2980, Sub 3 (5-1-92)	P-583	Good Cause
Atlantic Oil Service, Inc. T-1703, Sub 3 (5-6-92)	P-259	Good Cause

Atlantis Transporters, J. B. Curl, d/b/a T-2193, Sub 2 (3-9-92)	C-972	Good Cause
Blount Transit, Inc. T-2631, Sub 3 (3-11-92)	CP-94	Good Cause
Blue Ridge Trucking Company T-407, Sub 9 (11-2-92)	C-19	Good Cause
Brown Transport Corporation T-1777, Sub 4 (5-14-92)	C-127	Good Cause
Campbell's Transfer, Tommy Campbell, d/b/a T-2471, Sub 3 (1-6-92)	C-932	Good Cause
Chestnut Enterprises Trucking Wilmington Shipping Company, d/b/a T-2928, Sub 1 (1-31-92)	C-1601	Good Cause
Coast Refrigerated Trucking Co., Inc. T-1604, Sub 6 (3-30-92)	CP-35	Good Cause
Colonial Motor Freight, Inc. T-227, Sub 3 (3-5-92)	C-10	Good Cause
Columbus Motor Lines, Inc. T-304, Sub 17 (4-30-92)	C-282	Good Cause
Commercial Grading, Inc. T-3084, Sub 1 (11-12-92)	C-1695	Good Cause
Cummings Mobile Home Services, C. L. Cummings, d/b/a T-3253, Sub 1 (9-25-92)	C-1799	Good Cause
Ford, D. A., Inc. T-3361, Sub 1 (8-19-92)	C-1851	Good Cause
Glover, J. Harold Trucking Company, Inc. T-2457, Sub 2 (1-17-92)	C-34	Good Cause
Griffin Transfer & Storage Co., Inc. T-864, Sub 4 (2-13-92)	C-649	Good Cause
Hill Top Transport, Inc. T-1057, Sub 14 (1-9-92)	P-127	Good Cause
Honeycutt, J. B. Co., Inc. T-94, Sub 18 (9-29-92)	C-217	Good Cause

Insured Transportation Systems, Larry W. Sutphin, d/b/a T-2909, Sub 1 (8-20-92)	C-1782	Good Cause
J & M Mobile Transport Lawrence L. Justice, d/b/a T-3353, Sub 2 (10-30-92)	C-1833	Good Cause
Louisiana-Pacific Trucking Company T-2249, Sub 6 (12-15-92)	P-419	Good Cause
Mayberry Transport, American Petroleum Corporation, d/b/a T-3519, Sub 1 (9-14-92)	P-670	Good Cause
Mobile Home Movers and Service, Johnny Jolly, d/b/a (11-30-92)	C-1585	Good Cause
Morgan Trucking Co., Glenn Morgan, d/b/a T-3094, Sub 1 (5-29-92)	C-1702	Good Cause
North State Transport, Frank Dills, Dorothy Dills, and Matthew Dills, d/b/a T-2677, Sub 5 (3-19-92)	P-523	Good Cause
P. D. Enterprises, Patricia Cole, d/b/a T-3349, Sub 1 (3-25-92)	C-1560	Good Cause
Proctor, F. C., Inc. T-2670, Sub 1 (10-21-92)	C-1420	Good Cause
Quality Mobile Home Sales of Godwin, Turpin Associates, Inc., d/b/a T-2660, Sub 5 (3-11-92)	C-1416	Good Cause
Rush, Wilbur James T-3402, Sub 1 (10-21-92)	C-1857	Good Cause
Southern Container Corporation T-2981, Sub 1 (3-11-92)	C-1636	Good Cause
Spears, Rodney Trucking, Rodney Spears, d/b/a T-3227, Sub 3 (5-28-92)	P-541	Good Cause
Virginia Carolina Freight Lines, Inc. T-1385, Sub 4 (6-9-92)	C-1969	Good Cause
Wallace Cockerham Towing, Inc. T-1385, Sub 4 (6-9-92)	C-933	Good Cause

Welch Moving & Storage Company, Inc. T-950, Sub 7 (1-17-92)	C-697	Good Cause
Williamson Truck Lines, Inc. T-829, Sub 4 (10-16-92)	C-579	Good Cause

CERTIFICATES/PERMITS CANCELLED

Ceased Operations

Company and Certificate No.	Docket Number	Date
Airport Transportation Service, Inc. (P-293)	T-2209, Sub 3	3-13-92
Alford, Cliff Trucking, Inc. (P-442)	T-2372, Sub 1	7-9-92
American Parcel Service, Inc. (C-817)	T-1154, Sub 10	5-20-92
Arndt Trucking, Inc.	T-2152, Sub 2	2-17-92
B & W Grain & Feed Service, Inc. (C-1114)	T-1957, Sub 6	4-27-92
Bertis Carlson Trucking, Inc. (C-1724)	T-3140, Sub 1	2-19-92
Carolina Creditor Services, Michael W. Jarman & Michael G. Wiggins, d/b/a (C-1842)	T-3408, Sub 2	5-14-92
Custom Freight, Inc.	T-1671, Sub 1	2-13-92
Dixie Moving & Storage Company (C-1018)	T-1625, Sub 2	4-27-92
Dixie Trucking Company, Inc. (C-1285)	T-1733, Sub 6	7-15-92
Down East Delivery, F. Phillip Batchelor, d/b/a (C-1787)	T-3240, Sub 1	3-18-92
Erwin Oil Company, Inc. (P-72)	T-720, Sub 3	7-15-92
Fowler, Maylon H., Inc.	T-2797, Sub 3	1-30-92
Fredrickson Motor Express Corporation (CP-130)	T-645, Sub 21	12-14-92
Fuquay Tobacco Contractors, Kenneth Lessard, Richard Currin, and Kenneth Stephenson, d/b/a (P-422)	T-3179, Sub 3	5-26-92
GA Distribution-Storage, Inc. (P-645)	T-3440, Sub 1	11-3-92
HWT, Inc., Hazardous Waste Transport, Inc., d/b/a (C-1644)	T-3037, Sub 1	6-5-92
Harvey, L. & Son Company (C-1555)	T-2878, Sub 2	11-4-92
Hatchell Oil Company (P-549)	T-2858, Sub 1	3-16-92
Hendrix, T. C. (P-228)	T-1522, Sub 2	4-27-92
Hill Top Transport, Inc. (P-127)	T-1057, Sub 15	9-4-92
Holly Farms Foods, Incorporated (C-779)	T-1088, Sub 9	3-11-92
L & R Trucking, Randy Joe Rogers, d/b/a (CP-105)	T-2941, Sub 2	11-2-92
Liquid Transporters, Inc. (CP-53)	T-2229, Sub 4	8-20-92
Lovette Company (C-1296)	T-2415, Sub 2	12-17-92
Maness, Walter Clyde (C-1288)	T-2403, Sub 1	5-6-92
McElheney Homes, Inc. (C-676)	T-3409, Sub 1	3-16-92
Paramount Express, Inc. (C-1527)	T-2812, Sub 3	11-3-92
Patterson, Ralph K. (C-1029)	T-1660, Sub 3	6-24-92
Reynolda Transport Services, Inc. (C-1816)	T-3299, Sub 1	3-17-92
Rouse Trucking, Luther Edgar Rouse, d/b/a (C-1683)	T-3106	7-17-92
Signal Delivery Service, Inc. (P-207)	T-1403, Sub 2	10-21-92

Siler City Mobile Home Movers & Service, Suits Mobile Home, Inc., d/b/a (C-1711)	T-3154, Sub 2	5-13-92
SilverEagle Transport, Inc. (CP-78)	T-2738, Sub 3	7-29-92
Starnes, M. Bruce (P-663)	T-3508, Sub 1	3-11-92
Tobacco Growers Services, Inc. (C-28)	T-1494, Sub 1	4-27-92
Whiteford Transport Systems, Inc. (C-1939)	T-2960, Sub 5	3-18-92
Youngblood Transportation System, Inc. (CP-45)	T-324, Sub 24	11-4-92

ABC Moving & Storage, Inc. - Order Cancelling a Portion of Certificate No. C-676
T-968, Sub 4 (1-29-92)

All Points Mobile Home Transporting, James M. Petree, III, d/b/a - Recommended Order Cancelling Operating Authority - Termination of Cargo Insurance Coverage
T-3444, Sub 2 (9-28-92)

B & J Enterprises, Ben R. Cox and Jean H. Cox, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1726 - Termination of Liability Insurance Coverage
T-3138, Sub 1 (4-22-92)

Blue Ridge Transfer Company, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1093 - Termination of Cargo Insurance Coverage
T-1897, Sub 3 (10-12-92)

CFI Transport, Inc. - Recommended Order Cancelling Operating Authority Permit No. P-424 - Termination of Liability Insurance Coverage
T-2268, Sub 1 (1-22-92)

Foothills Delivery, Marshall Wilson Fox and Harold Wayne Burgess - Recommended Order Cancelling Operating Authority Certificate No. C-1894 - Termination of Cargo Insurance Coverage
T-3472, Sub 1 (6-8-92)

Gray, Sam L. Trucking, Sam L. Gray, d/b/a - Recommended Order Cancelling Operating Authority Certificate no. C-1952 - Termination of Liability Insurance Coverage
T-3595, Sub 1 (10-21-92)

Hawley Transport, Inc. Recommended Order Cancelling Operating Authority Certificate No. C-1564 - Termination of Liability and Cargo Insurance Coverage
T-2898, Sub 3 (8-20-92)

Hoss, Charles E. - Recommended Order Cancelling Operating Authority - Termination of Liability and Cargo Insurance Coverage
T-3635, Sub 1 (9-8-92)

Ivory, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1656 - Termination of Cargo Insurance Coverage
T-3048, Sub 2 (4-22-92)

MacField, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1663 - Termination of Cargo Insurance Coverage
T-3061, Sub 1 (1-22-92)

N. C. Transport, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-124 - Termination of Cargo Insurance Coverage
T-1831, Sub 2 (8-20-92)

Paradise Trucking, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1777 - Termination of Liability Insurance Coverage
T-3217, Sub 3 (2-3-92)

Peregrine Delivery Service, Mark Allen Peregrine, d/b/a - Recommended Order Cancelling Temporary Operating Authority Permit No. P-653 - Termination of Liability Insurance Coverage
T-3505, Sub 1 (3-31-92)

Ray-Mac Supply Company, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-895 - Termination of Cargo Insurance Coverage
T-1326, Sub 8 (10-21-92)

Sky/Land Courier, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority Certificate No. C-1330
T-2464, Sub 1 (5-29-92)

WestPoint Pepperell, Inc. - Order Cancelling Contract Carrier Authority Certificate/Permit No. CP-119
T-2176, Sub 3 (1-21-92)

Wilmington Oil & Moving Service, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-663 - Termination of Cargo Insurance Coverage
T-2183, Sub 4 (5-12-92)

Wise Transportation Company, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1913 - Termination of Cargo Insurance Coverage
T-3530, Sub 1 (5-19-92)

RESCINDING AUTHORIZED SUSPENSION AND CANCELLED AUTHORITY

Company	Docket Number	Date
All Points Mobile Home Transporting James M. Petree, III, d/b/a	T-3444, Sub 2	10-30-92
B & J Enterprises, Ben R. Cox and Jean H. Cox, d/b/a	T-3138, Sub 1	5-11-92
Blue Ridge Transfer Company, Inc.	T-1897, Sub 3	11-25-92
Glass Container Transport F.M.B. Transport, Inc., d/b/a	T-100, Sub 20 T-2429, Sub 4	10-30-92
Hoss, Charles E.	T-3635, Sub 1	9-28-92
Jordan Mobile Home Movers, Ronnie Long Jordan, d/b/a	T-2684, Sub 5	1-29-92
N. C. Transport, Inc.	T-1831, Sub 2	8-27-92

McGill, Albert	T-3222, Sub 2	2-18-92
Native American Trucking Company, Inc.	T-2803, Sub 4	4-1-92
Ray-Mac Supply Company, Inc.	T-1326, Sub 8	11-3-92
Wilmington Oil & Moving Service, Inc.	T-2183, Sub 4	8-27-92

COMPLAINTS

Wendell Transport Corporation - Order Allowing Discovery and Cancelling Hearing in Complaint of North Carolina Intrastate Petroleum Rate Committee of the North Carolina Trucking Association, Inc.
T-1039, Sub 19 (9-16-92)

Wendell Transport Corporation - Order on Discovery in Complaint of North Carolina Intrastate Petroleum Rate Committee of the North Carolina Trucking Association, Inc.
T-1039, Sub 19 (9-25-92)

Wendell Transport Corporation - Order Affirming Discovery Order and Denying Motion to Set Aside in Complaint of North Carolina Intrastate Petroleum Rate Committee of the North Carolina Trucking Association, Inc.
T-1039, Sub 19 (10-8-92)

MERGER

Bulkmatic Transport Company - Order Approving Merger with C. S. Transport, Inc., Holder of Permit No. P-388
T-3615 (3-25-92)

NAME CHANGE/TRADE NAME

Associated Specialties, McLawhorn, Inc., d/b/a - Order Approving Name Change from Charles M. McLawhorn Certificate No. C-1593
T-3619 (2-6-92)

B & J Enterprises, Jean H. Hicks, d/b/a - Order Approving Name Change from Ben R. Cox and Jean H. Cox, d/b/a B & J Enterprises, Certificate No. C-1726
T-3138, Sub 2 (10-16-92)

Baxter Transportation Services, Inc. - Order Approving Name Change from TTWS, Inc., Permit No. P-677
T-3655 (4-30-92)

Brookshire Express Services, Inc. - Order Approving Name Change from Ronald J. Dunn, d/b/a Brookshire Express Services, Certificate No. C-1315
T-2460, Sub 4 (10-13-92)

C & M Enterprise, Inc. - Order Approving Name Change from Charles S. and Marlene P. Jones, d/b/a C & M Enterprise Certificate No. C-1625
T-2966, Sub 1 (1-17-92)

Clark Transport, Osker Clark, d/b/a - Order Approving Name Change from Oscar Clark
T-2323, Sub 2 (7-29-92)

D & N Motors, Carleen Soles Duncan, d/b/a - Order Approving Name Change from Norman Duncan, t/a D & N Motors Certificate No. C-1051
T-1732, Sub 5 (11-9-92)

Economy Transport of Florida, Inc. - Order Approving Name Change from Economy Transport, Inc., Certificate No. C-1394
T-3199, Sub 1 (10-8-92)

General Transport Systems, Inc. - Order Approving Name Change from GTS Acquisition Company
T-2875, Sub 4 (12-31-92)

Hyde, Blake Trucking, Inc., d/b/a - Order Approving Name Change to Blake Hyde Trucking, Inc., d/b/a Voyager Transportation
T-3656 (5-6-92)

Powell, S. E. Trucking, Inc. - Order Approving Name Change from Spencer Evander Power, Jr., d/b/a S. W. Powell, Jr. Certificate No. C-1465
T-2763, Sub 1 (12-7-92)

R & R Transportation, Inc. - Order Approving Name Change from Richard O. Robinson and Karl H. Robinson, d/b/a R. & R. Transportation Certificate No. C-1855
T-3380, Sub 2 (1-29-92)

Rols Dedicated Transportation, Inc. Order Approving Name Change from Carvan, Inc., Certificate No. C-1942
T-3710 (9-11-92)

Shumate's Mobile Home Moving Service, Gary Shumate, d/b/a - Order Approving Name Change from Gary Shumate and Dale Shumate, d/b/a Shumate's Mobile Home Moving Service Certificate No. C-910
T-3313, Sub 1 (2-5-92)

Sundance Transport, Inc. - Order Approving Name Change from Sundance Enterprise, Inc., Certificate No. C-1738
T-3112, Sub 2 (4-29-92)

Tuck's Mobile Home Movers, Robert F. Tuck, d/b/a - Order Approving Name Change from Franklin Earl Tuck, Frank's Mobile Home Movers Certificate No. C-1108
T-3623 (2-13-92)

Wade Transportation Company, Inc. - Order Approving Name Change from Bobby R. Wade, d/b/a ECT Rentals Permit No. P-626
T-3608 (2-11-92)

RESCINDING NAME CHANGE

Company	Docket Number	Date
Hyde, Blake Trucking, Inc.	T-3656	6-22-92
Sundance Enterprises, Inc.	T-3112, Sub 2	5-26-92

RATES - MOTOR COMMON CARRIERS

Infinger Transportation Company, Inc. - Recommended Order Allowing Rate Increase
T-698, Sub 11 (1-23-92) Order Adopting Recommended Order (1-23-92)

Morgan Drive Away, Inc. - Recommended Order Allowing Rate Increase to Become Effective August 20, 1992
T-1069, Sub 13 (9-22-92) Order Adopting Recommended Order (9-22-92)

Motor Common Carriers - Recommended Order Approving General Increase in Rates and Charges
T-825, Sub 320 (4-29-92) Order Adopting Recommended Order (4-29-92)

Roadway Package System, Inc. - Recommended Order Allowing Rate Increase
T-3003, Sub 3 (3-12-92) Order Adopting Recommended Order (3-13-92)

SALES AND TRANSFER/CHANGE OF CONTROL

AAA Mobile Home Movers, William Lynwood Byrd, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1767 from Kenneth L. Coats, d/b/a Kenneth L. Coats Mobile Home Moving Company
T-3455, Sub 1 (6-17-92)

Askins Moving & Storage, Incorporated - Order Approving Sale and Transfer of a Portion of Certificate No. C-83 from Denham Moving and Storage, Inc.
T-3658 (6-17-92)

BFG, Inc. - Order Approving Transfer of Permit No. P-523 from Frank Dills, Dorothy Dills, and Matthew Dills, d/b/a North State Transport
T-3617 (3-25-92)

Blue Ridge Produce & Plant Company - Order Approving Sale and Transfer of Certificate No. C-772 from Century Movers, Inc.
T-3128, Sub 1 (5-15-92)

Collins Trucking Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-1324 from Walter A. Collins, d/b/a Collins Trucking Company
T-2458, Sub 2 (12-17-92)

Deep Water Transport Enterprises, Inc. - Order Approving Sale and Transfer of Certificate No. C-1143 from Bunch Trucking Company, Inc.
T-3614 (4-13-92)

Denver Mobile Home Moving, Denver Mobile Home Moving, Inc., d/b/a - Order Approving Transfer of Certificate No. C-1268 from CDL Realty & Construction, Inc., d/b/a Denver Mobile Home Moving Service
T-2590, Sub 1 (3-25-92)

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 Nason, Darrell Power, and Hoy Allman
T-299, Sub 10 (4-16-92)

Ford, R V Trucking, Ronnal Vante Ford, d/b/a - Order Approving Sale and Transfer of Certificate/Permit No. CP-121 from William C. Ford, t/a Ford's Contracting Service
T-3682 (7-17-92)

Highway Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-543 from Central Transport, Inc.
T-3559, Sub 1 (3-16-92) Order Rescinding Order Approving Sale and Transfer (5-13-92)

Hood Moving & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-697 from Welch Moving & Storage Company, Inc.
T-2452, Sub 3 (6-17-92)

Insured Transportation Systems, Phillip Wayne Marshall, d/ba/ - Order Approving Sale and Transfer of Certificate No. C-1782 from Larry W. Sutphin, d/b/a Insured Transportation Systems
T-2902, Sub 2 (10-16-92)

Keever Moving Service, Larry Edward Hoyle and Kenneth Carroll Hoyle, d/b/a - Order Approving Sale and Transfer of Certificate No. C-665 from Keever Moving Service, Inc.
T-2046, Sub 6 (4-16-92)

Ladd, J. E. & Son Transfer, James Edgar Ladd, IV, d/b/a - Order Approving Transfer of Certificate No. C-628 from J. E. Ladd, III, d/b/a J. E. Ladd & Sons
T-867, Sub 2 (2-17-92)

Martin Transfer & Storage Co., A-1 Professional Moving & Storage Company, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-629 from Martin Transfer & Storage Co.
T-903, Sub 6 (5-15-92)

Parker, Jimmy T., Inc. - Order Approving Sale and Transfer of Certificate No. C-34 from J. Harold Glover Trucking Company, Inc.
T-3626 (3-25-92)

Powell Trucking, Charles Mitchell Powell, d/b/a - Recommended Order Denying Application for Transfer of Certificate No. C-10 from Colonial Motor Freight Line, Inc.
T-3584 (4-29-92)

Powell Trucking, Charles Mitchell Powell, d/b/a - Recommended Order on Remand Approving Transfer of Certificate No. C-10 from Colonial Motor Freight Line, Inc.
T-3584 (6-30-92) Final Order Overruling Exceptions and Affirming Recommended Order on Remand
T-3584 (8-21-92)

Puryear, Harold A. Trucking Co. - Order Approving Sale and Transfer of a Portion of Certificate No. C-296 from Eagle Transport Corporation
T-3680 (7-17-92)

Rush Petroleum Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-1066 from A. T. Williams Oil Company, Inc.
T-3593 (1-10-92)

Shiloh Transports, Ker-Mac, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1560 from Patricia Cole, d/b/a P. D. Enterprises
T-3637 (4-16-92)

SilverEagle Transport, Inc. - Order Approving Transfer, Holder of Certificate No. C-1991, by Stock Transfer to Arnold Industries, Inc.
T-2738, Sub 2 (8-31-92)

Triangle Services Corporation - Order Approving Sale and Transfer of a Portion of Certificate No. C-417 from W. Everette Company, Inc.
T-3520, Sub 1 (1-20-92)

Voyager Transportation, Blake Hyde Trucking, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1721 from Blake Hyde Trucking, Inc.
T-3656, Sub 1 (8-18-92)

SECURITIES

L. B. Transport, Inc. - Order Approving Transfer Control of L. B. Transport, Inc., Holder of Certificate No. C-1337, by Stock Transfer from Larry H. Burns to Paul Grady Hildebran
T-2499, Sub 2 (7-17-92)

Merritt Trucking Company - Order Approving Transfer of Stock to an Officer of the Corporation
T-2143, Sub 22 (4-2-92)

TARIFFS

American Messenger Service, Inc. - Recommended Order Approving Tariff Filing
T-3148, Sub 1 (1-16-92) Order Allowing Recommended Order to Become Effective January 20, 1992 (1-17-92)

American Messenger Services, Inc. - Recommended Order Approving Tariff Filing
T-3148, Sub 2 (7-10-92) Order Allowing Recommended Order to Become Effective July 13, 1992 (7-10-92)

Matlack, Inc. Recommended Order Approving Tariff Filing
T-2281, Sub 4 (9-10-92) Order Allowing Recommended Order to be Effective (9-10-92)

McCollister's Moving & Storage, Inc. - Order Suspending Tariff Filing
T-3634, Sub 1 (10-28-92)

Morgan Drive Away, Inc. - Order Approving Tariff Filings Nunc Pro Tunc and Accepting Payment of Penalty
T-1069, Sub 12 (5-7-92)

Motor Common Carriers - Recommended Order Approving Tariff Filing for Increases in Rates and Charges Applicable on Shipments of Household Goods
T-825, Sub 323 (12-3-92) Order Allowing Recommended Order to Become Effective (12-3-92)

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 321 (6-22-92) Order Allowing Recommended Order to Be Effective July 1, 1992 (6-22-92)

Tidewater Transit Company, Inc. - Recommended Order Approving Tariff Filings for Proposed General Increase in Rates and Charges Applicable to Shipments of Bulk Commodities
T-380, Sub 23 (4-24-92) Order Allowing Recommended Order to Be Effective April 27, 1992 (4-24-92)

United Parcel Service, Inc. - Recommended Order Approving Supplement No. 3 to Tariff North Carolina Utilities Commission No. 6
T-1317, Sub 29 (2-19-92) Order Allowing Recommended Order to be Effective February 24, 1992 (2-19-92)

Wendell Transport Corporation - Recommended Order Approving Tariff Filing
T-1039, Sub 18 (2-14-92) Order Adopting Recommended Order (2-14-92)

MISCELLANEOUS

G & S Mobile Home Towing, Walter Lee Starnes, Jr., d/b/a - Order Approving Lease of Certificate No. C-1945 from Butch Howell, d/b/a Butch's Mobile Home Service
T-3671 (7-17-92) Order Rescinding Order Approving Lease of Authority (8-18-92)

KW Transport, Kevin T. White, d/b/a - Order Approving Lease of Authority of Certificate No. C-1726 from Jean H. Hicks, d/b/a B & J Enterprises
T-3721 (11-25-92)

Missouri-Nebraska Express, Inc. - Order Granting Request to Self-Insure
T-3628, Sub 1 (7-15-92)

Montgomery Tank Lines, Inc. - Order Approving Lease of Authority for Permit No. P-574 from Chemical Cartage Company
T-3697 (9-17-92)

Shaffer Trucking, Inc. - Order Granting Request to Self-Insure
T-3684, Sub 1 (10-21-92)

Taylor's Mobile Home Service, James D. Taylor, d/b/a - Recommended Order Suspending Certificate for Period of Ninety Days
T-2992, Sub 2 (9-18-92)

RAILROADS

APPLICATIONS AMENDED OR WITHDRAWN

CSX Transportation, Inc. - Order Allowing Withdrawal of Application
R-71, Sub 200 (8-20-92)

COMPLAINTS

Aberdeen, Carolina and Western Railroad - Order Closing Docket in Complaint with the Town of Robbins
R-74 (6-11-92)

MOBILE AGENCY AND NONAGENCY STATIONS

CSX Transportation, Inc. - Recommended Order Granting Application to Establish Consolidated Agency Service Provided by Its Customer Service Center at Jacksonville, Florida, and by a Local Mobile Agent Based at Hamlet, in Lieu of Its Existing Agency and Mobile Agencies at Hamlet on a Six-Month Trial Basis
R-71, Sub 189 (1-3-92)

CSX Transportation, Inc. - Order Granting Application to Establish Consolidated Agency Service Provided by Its Customer Service Center at Jacksonville, Florida and Local Personnel Based at Monroe, North Carolina in Lieu of Its Existing Agency at Monroe, North Carolina
R-71, Sub 199 (9-1-92)

CSX Transportation, Inc. - Recommended Order Granting Application to Establish Consolidated Agency Service Provided by Its Customer Service Center at Jacksonville, Florida, and by a Local Mobile Agent Based on Hamlet, North Carolina, in Lieu of Its Existing Agency and Mobile Agencies at Hamlet, North Carolina, and Closing Docket
R-71, Sub 189 (9-3-92)

CSX Transportation, Inc. - Order Granting Application to Establish Consolidated Agency Service Provided by Its Customer Service Center at Jacksonville, Florida in Lieu of Its Existing Agency at Greenville
R-71, Sub 205 (12-31-92)

Norfolk Southern Railway Company - Order Granting Application to Discontinue Agency Operations at Shelby, and Place Shelby and Its Non-Agency Stations Under the Jurisdiction of the Agency at Spartanburg, South Carolina
R-4, Sub 156 (3-11-92)

Norfolk Southern Railway Company - Order Granting Application to Discontinue Agency Operations at Morehead City, and Place Morehead City and Its Non-Agency Stations Under the Jurisdiction of the Agency at New Bern
R-4, Sub 161 (3-11-92)

Norfolk Southern Railway Company - Order Granting Application to Discontinue Agency Operations at Varina, and Place Varina and Its Non-Agency Stations Under the Jurisdiction of the Agency at Raleigh
R-4, Sub 162 (3-16-92)

Southern Railway Company - Order Granting Application to Discontinue Agency Operations at Eden, and Place Eden and Its Non-Agency Stations Under the Jurisdiction of the Agency at Danville, Virginia
R-4, Sub 159 (1-31-92)

Southern Railway Company - Recommended Order Approving Application to Relocate to Winston-Salem, Its Agency and Mobile Agency Operations at Rural Hall, and Closing Docket
R-29, Sub 889 (2-7-92)

SIDE TRACKS AND TEAM TRACKS - Order Granting Petition/Authority to Retire and Remove Track

CSX TRANSPORTATION, INC.

Docket Number	Date	Track	Town
R-71, Sub 193	3-11-92	Team Track No. 1	Weldon
R-71, Sub 194	1-22-92	Team Track No. 2	Ayden
R-71, Sub 198	6-26-92	Team Track SV-7	Merry Oaks
R-71, Sub 207	12-31-92	Team Tracks No. 1, 2, and 4	Hope Mills

NORFOLK SOUTHERN RAILWAY COMPANY

Docket Number	Date	Track	Town
R-4, Sub 160	4-14-92	343-2, 344-2	China Grove
R-4, Sub 163	4-30-92	NS-264.1	Corinth
R-4, Sub 164	4-30-92	NS-279.6	Cumnock

SECURITIES

Laurinburg and Southern Railroad Company - Order Granting Authority to Issue Promissory Note and Pledge Assets
R-2, Sub 4 (5-29-92)

TELEPHONE

APPLICATIONS CANCELLED, TERMINATED, WITHDRAWN OR DENIED

ALLTEL Cellular Associates of the Carolinas - Order Terminating Docket
P-149, Sub 6 (8-31-92)

American Teletronics Long Distance, Inc. - Order Denying Application Due to Deficiencies
P-315 (9-2-92)

Asheville Metronet, Inc. - Order Cancelling Certificate to Cancel Its Resale Certificate
P-186, Sub 9 (2-25-92)

Carolina Telephone and Telegraph Company - Order Denying Motion for Further Reconsideration - Columbus County-Seat Extended Area Service
P-7, Sub 764 (8-19-92)

Communications Gateway Network, Inc. - Order Denying Application to Provide Intrastate Interexchange Long Distance Telecommunications Service
P-317 (9-22-92)

ConQuest Long Distance Corporation - Order Denying Application Due to Deficiencies
P-324 (12-11-92)

Ellerbe Telephone Company - Order Denying Petition for Reconsideration for an Adjustment of Its Rates and Charges
P-21, Sub 54 (10-20-92)

GTE Mobilnet Sales Corporation - Order to Terminate Docket to Transfer the Customer Base of GTE to Carolina Metronet, Inc.; Raleigh/Durham MSA ltd. Partnership - Centel; Triad Metronet, Inc.; Fayetteville Cellular Telephone Company; Jacksonville Cellular Communications, Inc.; Wilmington Cellular Communications, Inc.; Alltel Cellular Associates of the Carolinas; and Centel Cellular Company of Hickory
P-202, Sub 8 and Sub 9; P-153, Sub 25; P-148, Sub 15; P-142, Sub 20; P-181, Sub 15; P-196, Sub 11; P-197, Sub 12; P-149, Sub 14; P-190, Sub 5 (7-1-92)

Holiday Inn of Williamston - Order Denying Motion to Cease and Desist
P-298 (10-27-92)

Network Services, Inc. - Order Dismissing Application and Closing Docket
P-222 (9-2-92)

One Call Communications, Inc. - Order Denying Motion to Withdraw Application to Provide Intrastate Interexchange Telecommunications Services
P-264 (7-7-92)

One Call Communications, Inc. - Recommended Order Denying Application of One Call
P-264 (11-23-92)

Spectratel, Inc. - Order Dismissing Application and Closing Docket
P-177 (8-28-92)

Telcom One - Order Closing Docket
P-273 (8-28-92)

US FiberCom Network, Inc. - Order Denying Application Due to Deficiencies
P-320 (10-27-92)

Western Union - Order Withdrawing Certificate to Relinquish Its Certificate of Public Convenience and Necessity
P-174, Sub 3 (7-14-92)

CERTIFICATES

Affinity Network Incorporated - Recommended Order Granting Certificate to Operate as a Reseller of Interexchange Long Distance Services in North Carolina
P-281 (1-8-92)

AmeriConnect, Amerifax, Inc., d/b/a - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services Within the State of North Carolina
P-321 (12-8-92)

Amerishare Communications, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Interexchange Long Distance Services in North Carolina
P-307 (6-8-92) Order Allowing Recommended Order to Become Effective and Final (6-10-92)

BSN Telecom Company - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Service
P-269 (2-7-92)

Caretele, Inc., Telecare, Inc., d/b/a - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resell Basis
P-302 (12-21-92)

Communications Specialists Company, S. Frank McNeill, d/b/a - Order Modifying Service Areas to Include All of Columbus County
P-97, Sub 1 (10-13-92)

Concord Telephone Long Distance Co. - Order Granting Certificate to Provide InterLATA Long Distance Services within the State of North Carolina
P-295 (7-10-92)

Hogan Company, The - Recommended Order Granting Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within the State of North Carolina
P-293 (6-30-92)

ITC Cellular, Inc. - Recommended Order Granting Certificate to Provide Wholesale and Retail Cellular Mobile Telecommunications Service in North Carolina RSA No. 11, and Approving Initial Tariff
P-284 (1-31-92) Order Allowing Recommended Order to be Effective February 3, 1992 (2-4-92)

LiTel Telecommunications Corporation - Recommended Order Granting Certificate to Provide Interexchange Telecommunications Services within the State of North Carolina
P-288 (7-15-92) Drder Allowing Recommended Order to Become Effective (7-22-92)

Members' Long Distance Advantage, TransNational Communications, Inc., d/b/a - Order Approving Refund Plan
P-291 (5-6-92)

Mid-Com Communications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resell Basis
P-308 (6-5-92) Order Amending and Finalizing Recommended Order Granting Certificate of Public Convenience and Necessity (10-14-92)

National Communications Association, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within the State of North Carolina
P-305 (6-25-92)

Network Plus, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services within the State of North Carolina
P-314 (10-7-92)

NOS Communications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Service
P-265 (1-8-92)

Norstan Network Services, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-306 (7-9-92)

North American Communications Group, Inc. - Recommended Order Regarding Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services
P-309 (8-21-92)

North American Communications Group, Inc. - Recommended Order Granting Certificate and Allowing Resale of IntraLata Traffic
P-309 (10-5-92)

North Carolina RSA #11, Inc. - Recommended Order Granting Certificate to Provide Cellular Mobile Radio Telephone Service to the Public in the Counties of Hoke, Robeson, Bladen and Columbus, and Approving Rates
P-279 (1-3-92) Order Allowing Recommended Order to Become Final (1-8-92)

Paragon Communications, Inc., SCG Financial Corporation, d/b/a - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resell Basis
P-262 (4-27-92) Order Allowing Recommended Order to be Effective May 4, 1992 (5-4-92)

Princeton Telecommunications Corp. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resale Telecommunications Services
P-313 (9-18-92)

Randolph Cellular Telephone Company - Recommended Order Granting Certificate to Provide Wholesale and Retail Cellular Mobile Telecommunications Service in Portions of North Carolina RSA No. 5, and Approving Initial Tariff
P-290 (2-13-92) Order Allowing Recommended Order to Be Effective February 25, 1992 (2-24-92)

Savannah Telco, Inc., d/b/a Long Distance America - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resell Basis
P-268, Sub 1 (4-15-92) Order Allowing Recommended Order to Become Effective April 21, 1992 (4-20-92)

Tel-Save, Inc. - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Service
P-303 (9-4-92)

Telegroup, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services Within the State of North Carolina
P-292 (3-27-92)

Telenational Communications Limited Partnership - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Service
P-250 (5-5-92)

Trans National Communications, Inc., d/b/a Members' Long Distance Advantage Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Service
P-291 (4-15-92)

USCOC of North Carolina RSA #7, Inc. - Recommended Order Granting Certificate to Provide Cellular Mobile Radio Telephone Service to the Public in the Counties of Rockingham, Caswell, Person, Granville, Vance, Warren and Franklin, and Approving Rates
P-272 (1-3-92) Order Allowing Recommended Order to Become Final (1-8-92)

VNI Communications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Service
P-267 (2-12-92)

Virginia Cellular Limited Partnership - Recommended Order Granting Certificate to Provide Cellular Mobile Radio Telephone Service to the Public in Currituck County, and Approving Rates
P-253 (1-14-92) Order Allowing Recommended Order to Become Final (1-22-92)

WilTel, Inc. - Recommended Order Granting Certificate to Provide Interexchange Telecommunications Services Within the State of North Carolina
P-286 (3-24-92)

Working Assets Long Distance, Working Assets Funding Service Inc., d/b/a - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-299 (10-23-92)

CERTIFICATES AMENDED

Cellular One, G.M.D. Limited Partnership d/b/a - Order Granting Motion to Amend Certificate of Public Convenience and Necessity
P-241, Sub 1 (1-22-92)

Corporate Telemanagement Group, Inc. - Order Granting Amended Certificate
P-252, Sub 2 (10-27-92)

COMPLAINTS

CTG Telecommunications, Inc. - Order Allowing Parties Leave to Dismiss Actions and Closing Docket in Complaint of Corporate Telemanagement Group
P-271, Sub 1 (8-12-92)

Carolina Telephone and Telegraph Company - Order Dismissing Complaint of Keith Idema, d/b/a Idema Combat Systems, and Closing Docket
P-7, Sub 738 (3-10-92)

Carolina Telephone and Telegraph Company - Order Dismissing Complaint of Alan Copeland, d/b/a Copeland Communications & Electronics, Inc.
P-7, Sub 764 (6-16-92)

Carolina Telephone and Telegraph Company - Recommended Order Denying Complaint of Coleen Dayhoff
P-7, Sub 769 (8-31-92)

Carolina Telephone and Telegraph Company - Final Order Affirming Recommended Order of August 31, 1992, and Overruling Exceptions in Complaint of Colleen Dayhoff
P-7, Sub 769 (11-17-92)

Carolina Telephone and Telegraph Company - Order of Clarification in Complaint of Colleen Dayhoff
P-7, Sub 769 (12-1-92)

Concord Telephone Company - Recommended Order Dismissing Complaint with Prejudice in Complaint of Harold Thornton, d/b/a Xerographic Copy Center and Quick Print Group
P-16, Sub 169 (9-4-92)

GTE North Carolina - Final Order Dismissing Complaint of O. E. Young
P-128, Sub 29 (6-2-92)

GTE South - Order Dismissing Complaint of Carolina Voice Mail, Inc., and Closing Docket
P-19, Sub 246 (1-30-92)

MCI Telecommunications Corporation - Order Closing Docket in Complaint of Annette Van Dyke
P-141, Sub 18 (3-10-92)

MCI Telecommunications Corporation - Order Accepting Settlement, Closing Docket, and Canceling Hearing in Complaint of Sylvia M. Jordan
P-141, Sub 22 (7-2-92)

MaxTel Telecommunications Systems - Order Approving Settlement of Complaint Docket and Canceling Hearing in Complaint of The Public Staff - North Carolina Utilities Commission
SC-525, Sub 2 (7-8-92)

North State Telephone Company - Order Keeping Docket Open for Six Months in Complaint of Peggy Bodenhamer
P-42, Sub 110 (11-25-92)

Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint as to Bapco in Complaint of Joan G. Potter
P-89, Sub 42 (4-9-92)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Carmen L. Lane
P-55, Sub 929 (6-15-92)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Alan T. Lang III
P-55, Sub 948 (6-11-92)

Southern Bell Telephone and Telegraph Company - Recommended Order Denying Complaint of Sylvia Alford
P-55, Sub 960 (6-3-92)

Southern Bell Telephone and Telegraph Company - Order Requiring Response in Complaint of Ms. Leslie Ranson, President, Dispatch Center/Radar Security Alarms
P-55, Sub 970 (10-13-92)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Leslie Ranson, President, Dispatch Center/Radar Security Alarms
P-55, Sub 970 (11-17-92)

Southern Bell Telephone and Telegraph Company Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Nicholas L. Kottyan, President, Teledial America
P-55, Sub 977 (12-1-92)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation - Order Closing Docket in Complaint of Southeastern Podiatry Associates
P-89, sub 38 (12-14-92)

Southern Bell Telephone and Telegraph Company - Order Allowing Withdrawal of Complaint of Joan G. Potter, M.D., and Closing Docket
P-89, Sub 42 (11-25-92)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Company - Order Holding Proceeding in Abeyance in Complaint of Thomas Miller, d/b/a American Appliance Service
P-89, Sub 43 (11-3-92)

Sprint Communications Company LP - Order Keeping Docket Open for Six Months in Complaint of Steve Winter
P-294, Sub 1 (11-13-92)

Teledial America - Order of Dismissal Without Prejudice and Closing Docket in Complaint of LDDS of Carolina, Inc.
P-266, Sub 2 (8-28-92)

Teledial America - Order Accepting Response for Filing in Complaint of LDDS of Carolina, Inc.
P-266, Sub 2 (10-13-92)

EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company; North State Telephone Company and Southern Bell Telephone and Telegraph Company - Order Denying Extended Area Service and Requiring Discount Calling Plan
P-7, Sub 762; P-55, Sub 942 (1-21-92)

Carolina Telephone and Telegraph Company; North State Telephone Company and Southern Bell Telephone and Telegraph Company - Order Reconsidering Previous Order Denying Extended Area Service and Requiring Discount Calling Plan and Approving EAS
P-7, Sub 762; P-55, Sub 942 (3-20-92)

Carolina Telephone and Telegraph Company - Order Authorizing Poll - Robersonville to Greenville Extended Area Service
P-7, Sub 763 (4-8-92)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service - Robersonville to Greenville Extended Area Service
P-7, Sub 763 (7-1-92)

Carolina Telephone and Telegraph Company - Order Authorizing Poll for County-Seat Calling
P-7, Sub 765 (3-3-92)

Carolina Telephone and Telegraph Company - Order Denying Motion for Reconsideration Columbus County-Seat Extended Area Calling
P-7, Sub 765 (5-15-92)

Carolina Telephone and Telegraph Company - Order Authorizing Poll - Angier to Dunn and Lillington Extended Area Service
P-7, Sub 766 (1-7-92)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service - Angier to Dunn and Lillington Extended Area Service
P-7, Sub 766 (4-8-92)

Carolina Telephone and Telegraph Company - Order Authorizing Repolling - Havelock, Morehead City and Newport Extended Area Service
P-7, Sub 767 (3-18-92)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service - Havelock, Morehead City, and Newport Extended Area Service
P-7, Sub 767 (7-1-92)

Carolina Telephone and Telegraph Company - Order Authorizing Polling - Conway to Murfreesboro Extended Area Service
P-7, Sub 777 (4-22-92)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service - Conway to Murfreesboro
P-7, Sub 777 (7-21-92)

Carolina Telephone and Telegraph Company - Order Denying Polling and Requesting Investigation of Alternative Solutions - Edenton to Windsor Extended Area Service
P-7, Sub 778 (9-3-92)

Carolina Telephone and Telegraph Company - Order Denying Motion for Reconsideration and Authorizing County-Seat Calling Plan
P-7, Sub 778 (12-9-92)

Carolina Telephone and Telegraph Company - Order Authorizing Polling in Part - Lillington, Fayetteville, and Olivia Extended Area Service
P-7, Sub 781 (12-14-92)

Central Telephone and Telegraph Company - Order Authorizing Poll - Milton to Roxboro and Yanceyville Extended Area Service
P-10, Sub 439 (9-4-92)

Central Telephone and Telegraph Company - Order Approving Extended Area Service in Part - Milton and Yanceyville to Roxboro Extended Area Service
P-10, Sub 439 (12-11-92)

Central Telephone Company - Order Approving Extended Area Service - Sherrills Ford to Denver Extended Area Service
P-10, Sub 450 (2-19-92)

Central Telephone Company - Order Authorizing Polling - Elkin to Clingman, Courtney, Dobson, East Bend, Forbush, Hays, North Wilkesboro, and Yadkinville Extended Area Service
P-10, Sub 453 (7-1-92)

Central Telephone Company Order Approving Extended Area Service - Elkin to Clingman, Courtney, Dobson, East Bend, Forbush, Hays, North Wilkesboro, and Yadkinville Extended Area Service (Commissioners Tate and Cobb dissent.)
P-10, Sub 453 (10-26-92)

Central Telephone Company - Order Authorizing Polling - Prospect Hill to Hillsborough Extended Area Service (Commissioner Cobb dissents.)
P-10, Sub 456 (10-13-92)

Central Telephone Company - Order Approving Implementation of Extended Area Service - Prospect Hill to Hillsborough Extended Area Service
P-10, Sub 456 (12-17-92)

Southern Bell Telephone and Telegraph Company - Order on Reconsideration Allowing Poll (Commissioners Sarah Lindsay Tate, Laurence A. Cobb, and Allyson K. Duncan dissent.)
P-55, Sub 953; P-55, Sub 952 (2-26-92)

Southern Bell Telephone and Telegraph Company - Order Authorizing Extended Area Service - Orange County
P-55, Sub 953; P-55, Sub 952 (6-4-92)

Southern Bell Telephone and Telegraph Company - Order Denying Polling - Wake County Extended Area Service
P-55, Sub 961 (1-24-92)

Southern Bell Telephone and Telegraph Company - Order Approving Extended Area Service - Wake County Extended Area Service (Commissioners Tate, Cobb and Duncan dissent.)
P-55, Sub 961 (10-20-92)

Southern Bell Telephone and Telegraph Company - Order Authorizing Poll - Stanley to Charlotte Extended Area Service
P-55, Sub 968 (6-3-92)

Southern Bell Telephone and Telegraph Company - Order Approving Extended Area Service Stanley to Charlotte
P-55, Sub 968 (8-11-92)

Southern Bell Telephone and Telegraph Company - Order Denying Polling - Denver to Mount Holly Extended Area Service
P-55, Sub 972 (7-15-92)

Southern Bell Telephone and Telegraph Company - Order Authorizing Polling - Extended Area Service
P-55, Sub 974 (9-1-92)

Southern Bell Telephone and Telegraph Company - Order Authorizing Extended Area Service - Huntersville to Mooresville Extended Area Service
P-55, Sub 974 (12-11-92)

INTERIM CONSTRUCTION AUTHORITY

American WATS, Inc. - Order Denying Request for Interim Authority and Denying Application Due to Deficiencies
P-301 (4-28-92)

Sunrise Trust - Order Granting Interim Construction Authority for a Certificate of Public Convenience and Necessity and Approval of Initial Rates, Charges, and Regulations
P-304 (3-24-92)

NAME CHANGE

US Sprint Communications Company Limited Partnership Order Approving Name Change to Sprint Communications Company L.P.
P-294 (2-7-92)

RATES

ATC Long Distance - Order Approving Refund Plan
P-235, Sub 5 (10-13-92)

BSN Telecom Company - Order Approving Refund Plan
P-269 (3-25-92)

Telegroup, Inc. - Order Approving Refund Plan
P-292 (3-30-92)

SALES AND TRANSFER

Buck Creek Corporation - Order Transferring Certificate from Saranac Energy Corporation for a Hydroelectric Generating Facility Located at Lake Tahoma Dam, McDowell County
SP-97 (10-13-92)

Burlington Cellular, Inc., General Cellular Corporation and Hellman & Friedman Capital Partners II, L.P. - Order Approving Transfer of Control of Burlington Cellular, Inc.
P-212, Sub 3 (2-4-92)

Dial Page, Limited Partnership - Order Approving the Sale and Transfer of the Radio Common Carrier Assets and Authority for the Raleigh, Durham, Charlotte, Winston-Salem, Greensboro, Hickory and Asheville, North Carolina Areas to Dial Page, Inc., and the Issuance of Additional Capital Stock
P-172, Sub 14 (2-10-92)

ITC Cellular Inc. and Centel Cellular Company of Florida - Order Approving Transfer of Cellular Operating Authority for N.C. RSA No. 11 from ITC Cellular Inc. to Centel Cellular Company of Florida
P-284, Sub 1; P-296 (2-13-92)

Randolph Cellular Telephone Company; Centel Cellular Company of Florida - Order Approving Transfer of Certificate for N.C. RSA No. 5 from Randolph Cellular Telephone Company to Centel Cellular Company of Florida
P-290, Sub 1; P-296, Sub 1 (2-26-92)

SECURITIES

ALLTEL Carolina, Inc. - Order Approving Loan from the Rural Telephone Bank
P-118, Sub 65 (4-30-92)

Carolina Telephone and Telegraph Company - Order Granting Authority to Issue and Sell up to $100,000,000 Principal Amount Debentures with Maturities not to Exceed Thirty (30) Years
P-7, Sub 782 (12-15-92)

Central Telephone Company - Order Granting Authority to Issue and Sell First Mortgage Bonds
P-10, Sub 454 (8-14-92)

Citizens Telephone Company - Order Approving Common Stock Split
P-12, Sub 90 (2-12-92)

Concord Telephone Company - Order Granting Authority To Declare and Make A Common Stock Distribution
P-16, Sub 170 (5-21-92)

GTE South Incorporated - Order Granting Authority to Issue and Sell First Mortgage Bonds and/or Debentures
P-19, Sub 249 (8-10-92)

LDDS Communications, Inc. - Order Granting Authority for LDDS to Acquire Control of ATC
P-235, Sub 4 (9-8-92)

Saluda Mountain Telephone Company - Order Approving Loan from the Rural Electrification Administration
P-76, Sub 31 (3-3-92)

SPECIAL CERTIFICATES

Docket Number	Date	Company
SC-500, Sub 2	5-26-92	Cecil B. Hatcher
SC-527, Sub 2	12-30-92	West Henderson High School
SC-610, Sub 1	5-11-92	Robert Cefail & Associations American Inmate Communications, Inc.
SC-726	1-9-92	Larry G. Baber
SC-727	1-9-92	Atlantic Diversified Technologies, Inc.
SC-728	1-15-92	Davie High School
SC-729	1-29-92	Samir Nakhle
SC-730	1-29-92	William H. Clementi, d/b/a Pay-Com
SC-731	1-29-92	Twin City Laundry & Dry Cleaners, Inc.
SC-732	1-29-92	Evans Foods, Inc.
SC-733	1-29-92	Luby E. Wood
SC-734	2-4-92	Charlie McLean Lohr
SC-735	2-20-92	Baptist Retirement Homes of N.C., Inc.
SC-736	3-5-92	Cirtek of North Carolina, Inc.
SC-737	3-10-92	Carolina Coastal Telecom, Inc.
SC-738	3-26-92	Tommy D. Patterson
SC-739	3-26-92	Cynthia K. Edgerton
SC-740	3-26-92	Art Eichner
SC-741	3-31-92	Vernon Shanks
SC-742	3-31-92	Wilson Pharmacy and Medical Supplies, Inc.
SC-743	3-31-92	Alan T. Withrow
SC-744	4-14-92	Roanoke Bible College
SC-745	4-22-92	Quality Payphone Services, Inc.
SC-747	5-14-92	Bruce Ellis
SC-748	5-14-92	Cherry Communications
SC-749	5-26-92	Bill Gallis
SC-750	5-26-92	Gus Poulos
SC-751	5-26-92	Michael Goode
SC-752	5-26-92	Sandhill Properties, Inc., d/b/a Huddle House
SC-753	5-29-92	B & M Lee Oil Company, Inc.
SC-754	5-29-92	Taylor Maid Payphone Service, Inc.
SC-755	6-24-92	Michael A. Sullivan
SC-756	6-24-92	Gateway Technologies, Inc.
SC-757	6-24-92	Charles N. Bennett
SC-758	7-6-92	Arleen P. Oldham
SC-759	7-6-92	Richard D. Havas
SC-760	7-6-92	Glenwood P. Roane, Jr.
SC-761	7-14-92	Stokes Suiter
SC-762	7-14-92	J. R. Pierce
SC-763	7-14-92	Procomm, Inc.
SC-764	7-14-92	Smokey Mountain Cafe, Inc.
SC-765	8-7-92	Scott Goforth
SC-766	8-7-92	C.E. Mullins
SC-767	8-7-92	Paul Fisher
SC-768	8-7-92	United Tele Systems of Virginia, Inc.
SC-769	8-24-92	T. Rick Smith

SC-771	8-24-92	Global Communications
SC-772	8-24-92	Quarter Phones of North Carolina, Inc.
SC-773	8-24-92	GTA Enterprises, Inc.
SC-774	8-24-92	Industrial Contract Service Corporation
SC-775	9-3-92	Michelle D. Petty, d/b/a Coastal Telecom
SC-776	9-4-92	Chester Maritz
SC-777	9-4-92	Fiore Bergamasco, d/b/a Talkline
SC-779	9-4-92	Martha Drummond
SC-780	9-4-92	Fisher Communications, Inc.
SC-781	9-23-92	H. J. Henderson
SC-782	9-23-92	Bud P. Goodman
SC-783	9-23-92	Anthony W. Eason
SC-784	9-23-92	Global Hospitality, Inc.
SC-785	10-8-92	Auditory Management Corporation
SC-786	10-8-92	Barbara Soloman
SC-787	10-8-92	Cameron Communications, Inc.
SC-788	10-28-92	World Communications, Inc.
SC-789	10-28-92	Lupie Duran
SC-790	10-28-92	McGuires Pub, Ltd.
SC-791	10-28-92	John A. Swaby, Jr.
SC-792	10-28-92	Max Meeks
SC-793	11-16-92	Global Telcoin, Inc.
SC-794	11-16-92	John Thomas Smithwick
SC-795	11-16-92	Henry N. Banks
SC-796	11-16-92	Edward P. Rawls
SC-797	11-19-92	Pat O. Sanchez
SC-798	11-30-92	Southern Metals Company, Inc.
SC-799	11-30-92	William D. Rubel, d/b/a Simplex Payphones
SC-800	11-30-92	Arnold Ashe
SC-801	12-8-92	Dorothy Pigott
SC-802	12-22-92	Inmate Phone Systems Corporation
SC-803	12-22-92	Paul Daniel Bradford
SC-804	12-22-92	Value-Added Communications, Inc.
SC-805	12-22-92	Allen Griffin
SC-806	12-22-92	Frederick L. White
STS-7	2-20-92	Guilford College
STS-8	12-21-92	Apparel Markets of Charlotte, Inc.
STS-10	7-7-92	Appalachian State University
STS-11	6-1-92	University of North Carolina - Greensboro
STS-12	8-7-92	University of North Carolina at Wilmington
STS-14	7-15-92	Pembroke State University
STS-15	7-10-92	The University of North Carolina at Chapel Hill
STS-16	8-7-92	Winston-Salem State University
STS-17	7-27-92	The University of North Carolina at Asheville
STS-18	7-15-92	East Carolina University
STS-20	7-31-92	High Point University
STS-22	8-20-92	North Carolina Central University
STS-24	9-25-92	Elizabeth City State University
STS-25	12-7-92	Western Carolina University

SPECIAL CERTIFICATES AMENDED, REVOKED, CANCELLED OR CLOSED

Docket No.	Date	Company
SC-5, Sub 1	4-14-92	Winston Salem Smart Phone Vending, Inc.
SC-68, Sub 1	10-28-92	Eastern Petroleum Corporation
SC-74, Sub 1	6-30-92	Charles R. Blake
SC-91	6-30-92	Jack Andrews
SC-147, Sub 1	7-1-92	Emro Marketing Company
SC-189, Sub 1	2-7-92	Laney Oil Company, Inc.
SC-195, Sub 1	6-30-92	Elaine Jones McLeod
SC-200, Sub 1	5-22-92	U-Fill'er-Up, Inc./Lube World/Business Fuels
SC-203, Sub 1	6-30-92	Telecom, Inc.
SC-216, Sub 1	6-30-92	North Star Entertainment, Inc.
SC-220, Sub 1	6-30-92	L. H. Cannon, Jr.
SC-270, Sub 1	4-22-92	D B C, Inc.
SC-289, Sub 3	7-21-92	Network Communications
SC-320, Sub 1	11-12-92	Harry Bea Coates
SC-322, Sub 1	6-30-92	Richard H. Raybon
SC-348, Sub 1	10-19-92	Earl Baldwin/Earl's Sav-Mor
SC-357, Sub 1	4-2-92	David E. McCracken, Jr.
SC-372, Sub 2	4-13-92	W. M. Williamson
SC-374, Sub 3	2-25-92	Glenn D. Hart
SC-375, Sub 1	4-13-92	Baptist Retirement Homes of N.C., Inc.
SC-392, Sub 1	11-5-92	G.H.S. Corporation
SC-406, Sub 1	5-5-92	Stantonsburg Quick Mart
SC-440, Sub 1	8-20-92	W. B. Massey, Jr.
SC-444, Sub 1	7-14-92	East Rutherford High School
SC-464, Sub 1	8-12-92	R. E. Brown Grocery
SC-480, Sub 1	6-25-92	George D. Olsen
SC-483, Sub 1	7-21-92	Butler, Terry L.
SC-505, Sub 1	4-14-92	Atkinson Texaco
SC-517, Sub 1	11-19-92	Burns Junion High School
SC-526, Sub 1	6-22-92	Flying J Network Systems, Inc.
SC-528, Sub 1	4-14-92	South Robeson High School
SC-535, Sub 1	8-24-92	People's Kwik Mart
SC-537, Sub 1	3-3-92	Par-Mail, Inc.
SC-542, Sub 1	8-6-92	Cedar Forest Christian School
SC-552, Sub 1	6-30-92	Alan Gilbert
SC-555, Sub 1	10-6-92	Chuck Gilbert
SC-570, Sub 1	6-30-92	John Patrick Baldwin, d/b/a The Cable Connection
SC-579, Sub 1	1-23-92	Goodwine-Bailey & Associates, d/b/a The Corner Pocket
SC-589, Sub 1	2-28-92	J C Management Corporation
SC-591, Sub 1	3-27-92	Diane C. Beasely
SC-593, Sub 1	3-27-92	Thomas R. Morgan
SC-596, Sub 1	6-30-92	Michael D. Crutchfield
SC-609, Sub 1	1-16-92	Ronnie Pannell
SC-615, Sub 1	2-28-92	Anthony G. Bowling
SC-618, Sub 1	12-7-92	Central Carolina Trading Company
SC-630, Sub 1	7-27-92	Craig Lunsford

SC-639, Sub 1	11-12-92	Lewis Summers
SC-641, Sub 1	8-12-92	Brintle Enterprises, Inc.
SC-650, Sub 1	2-20-92	Bonnie Schley
SC-651, Sub 1	8-20-92	Mario A. Marsico
SC-655, Sub 1	3-3-92	Dennis A. Robison
SC-665, Sub 1	12-10-92	Carolyn Tedder
SC-671, Sub 1	6-30-92	C. Eugene Montgomery
SC-674, Sub 1	3-16-92	L. Craig Jones and Terry A. Jones
SC-680, Sub 1	1-31-92	Toy J. Lathan
SC-682, Sub 1	6-30-92	Pay Phones Incorporated
SC-683, Sub 1	1-30-92	Harvey Brown
SC-684, Sub 1	5-21-92	Gokulesh Corporation
SC-685, Sub 1	6-30-92	Arnold and Shirley Brown
SC-690, Sub 1	3-27-92	Warren County High School
SC-691, Sub 1	8-12-92	Northwood High School
SC-694, Sub 1	11-19-92	Northwest High School/Halifax County
SC-709, Sub 1	6-30-92	Donald E. Axberg
SC-711, Sub 1	3-3-92	Persepolis, Inc., Jalal Montazeri, d/b/a
SC-716, Sub 1	7-27-92	Ronald Molloy and James Scales, Jr.
SC-717, Sub 1	11-9-92	JTR Enterprises, Inc.
SC-718, Sub 1	6-30-92	Richard Clayton
SC-719, Sub 1	1-30-92	Gene Lewis
SC-722, Sub 1	10-19-92	Le Star Pharmacy Corporation
SC-729, Sub 1	6-24-92	Samir Nakhle
SC-739, Sub 1	4-13-92	Cynthia K. Edgerton
SC-740, Sub 1	7-10-92	Art Eichner
SC-743, Sub 1	4-27-92	Alan T. Withrow
SC-744, Sub 1	8-24-92	Roanoke Bible College
SC-752, Sub 1	7-21-92	Huddle House, Sandhill Properties, d/b/a
SC-761, Sub 1	11-13-92	Stokes Suiter
SC-777, Sub 1	11-24-92	Fiore Bergamasco, d/b/a Talkline
SC-783, Sub 1	11-19-92	Anthony W. Eason

SPECIAL CERTIFICATES REINSTATED

Docket No.	Date	Company
SC-709, Sub 1	7-8-92	Donald E. Axberg
SC-760	8-24-92	Glenwood P. Roane, Jr.
SC-770	9-4-92	Bruce Ellis, d/b/a Venture Communication
SC-778	9-4-92	Ascom Communications, Inc.
SC-1000	7-27-92	Paul Ensco Houser

TARIFFS

ATC Long Distance - Order Allowing Tariffs to Add Introductory Offer to Online Card Service and to Offer 800 Free Month and 90-Day Trial Customer Incentives P-235, Sub 3 (2-11-92)

ATC Long Distance - Order Denying Online Card Service Introductory Offer P-235, Sub 3 (3-11-92)

AT&T Communications of the Southern States, Inc. - Order Dismissing Tariff Filing to Eliminate Day Save Rate (Commissioners Wells, Wright, and Cobb dissent.)
P-140, Sub 34 (12-11-92)

Concord Telephone Company - Order Continuing Plan as Experiment to Offer a County Seat Calling Plan
P-16, Sub 165 (6-3-92)

Ellerbe Telephone Company - Order Approving Tariff Filing
P-21, Sub 54 (9-18-92)

GTE North Carolina, Contel of North Carolina, Inc., d/b/a - Order Requiring E911 Tariff Filing for Graham County and Deferring Ruling on Statewide E911 Proposal and Guidelines
P-128, Sub 33 (12-23-92)

LDDS of Carolina, Inc. - Order Suspending Proposed Tariffs to Offer Operator Services to Large Volume Customers
P-283, Sub 2 (8-4-92)

LDDS of Carolina, Inc. - Order Disapproving Tariffs to Offer Operator Services to Large Volume Customers
P-283, Sub 2 (8-11-92)

Southern Bell Telephone and Telegraph Company - Order Denying Motion to Offer Touch Star Services: Call Tracing
P-55, Sub 914C (5-12-92)

Southern Bell Telephone and Telegraph Company; Central Telephone Company - Order Expanding Availability of Blocking
P-55, Sub 925; P-10, Sub 447 (6-8-92)

Southern Bell Telephone and Telegraph Company - Order Denying Grandfathering or Extension of Metroconnection or Optional Local Measured Service and Setting TJRCP Effective Date
P-55, Sub 952; P-55, Sub 888; P-55, Sub 942; P-55, Sub 806 (1-28-92)

Southern Bell Telephone and Telegraph Company - Order of Clarification
P-55, Sub 952; P-55, Sub 888; P-55, Sub 942; P-55, Sub 806 (2-19-92)

Southern Bell Telephone and Telegraph Company - Order Requesting Tariff Filings for Implementing the Triad Calling Plan
P-55, Sub 952; P-55, Sub 942 (5-13-92)

Southern Bell Telephone and Telegraph Company - Order Granting Motion and Allowing Certain Tariff Revisions to Become Effective
P-55, Sub 952; P-55, Sub 942 (6-22-92)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariffs for Reclassification of Two-Party Subscribers
P-55, Sub 965 (2-19-92)

Southern Bell Telephone and Telegraph Company - Order Suspending Proposed Tariff to Revise Provisions on Delivery of Calling Party Number with ESSX SMDI
P-55, Sub 969 (4-28-92)

Southern Bell Telephone and Telegraph Company - Order Allowing SMDI Services Subject to Conditions
P-55, Sub 969 (7-22-92)

United Telephone Technologies, Inc. - Order Denying Request for Immediate Authority
P-261 (1-15-92)

MISCELLANEOUS

Alltel Carolina Telephone Company; Concord Telephone Company - Order Approving Rowan County-Seat Calling Plan
P-118, Sub 68; P-16, Sub 171 (10-28-92)

ATC Long Distance - Order Requiring Refunds for Overcharge of OnLine Card Service Rates
P-235, Sub 5 (8-12-92)

AT&T Communications of the Southern States, Inc. - Order Granting Waiver of Commission Rule R13-8(c)
SC-40, Sub 1 (8-31-92)

Caretele, Inc., Telecare, Inc., d/b/a - Order to Cease and Desist
P-302 (9-2-92)

Cellcom of Hickory, Inc. - Order Granting Authority for the Resale of Toll Services
P-228, Sub 8 (3-31-92)

Cellular One, Blue Ridge Cellular Telephone Company d/b/a - Order Granting Authority for the Resale of Toll Services
P-236, Sub 3 (1-22-92)

Central Telephone Company of North Carolina - Order Holding Approval of Contracts in Abeyance
P-10, Subs 437, 438, and 446 (11-30-92)

Central Telephone Company - Order Requiring Filing of Cost Allocation Procedures
P-10, Sub 448 (3-3-92)

Eastern Telecom Corporation - Order to Cease and Desist and Provide Accounting and Refunds
P-318 (10-14-92)

EXECUTONE Information Systems, Inc. - Order Approving Refund Plan
P-280 (1-7-92)

EXECUTONE Information Systems, Inc. - Order Approving Revised Refund Plan
P-280 (1-29-92)

Executone Information Systems, Inc. - Order to Cease and Desist
SC-712, Sub 1 (10-22-92)

GTE North Carolina, Contel of North Carolina, d/b/a - Order Approving Contract Seeking Consent to and Approval of a Contract with GTE Data Services Incorporated
P-128, Sub 31 (4-29-92)

GTE South, Inc. - Order Allowing Public Staff Motion
P-19, Sub 243 (11-25-92)

GTE South, Inc. - Order Approving Contract with AG Communication Systems
P-19, Sub 248 (9-15-92)

GTE South, Inc. - Order Allowing Trial and Approving Contract
P-19, Sub 250 (7-29-92)

GTE South, Inc. - Order Approving Contract with AG Communication Systems
P-19, Sub 251 (11-24-92)

Ma Bell Associates, Inc. - Order to Cease and Desist
P-319 (10-27-92)

MCI Telecommunications Corporation - Order Deferring Scheduling of Hearing on Facilities-Based Intralata Competition and Approving Interim 10XXX-0 Unblocking
P-141, Sub 19; P-100, Sub 65; P-100, Sub 72 (9-8-92)

Metro Mobile CTS of Charlotte, Inc. - Order Granting WACR Authority
P-155, Sub 13 (1-31-92)

North Carolina RSA #5 Limited Partnership and North Carolina RSA #4, Inc. - Order Terminating Docket
P-234, Sub 3; P-227, Sub 2 (5-15-92)

North Carolina RSA 15 Cellular Partnership - Order Allowing Service on Limited Basis
P-225, Sub 4 (4-1-92)

North Carolina RSA 15 Cellular Partnership - Order Allowing Withdrawal of Rate Plan No. 4
P-225, Sub 5; P-227, Sub 4 (4-1-92)

North State Telephone Company and Southern Bell Telephone and Telegraph Company - Order Requiring Reports and Clarifying Termination Date
P-55, Sub 952; P-55, Sub 942 (1-30-92)

North State Telephone Company and Southern Bell Telephone and Telegraph Company - Order Continuing Metroconnection and Reaffirming OLMS Termination
P-55, Sub 952; P-55, Sub 888; P-55, Sub 942; P-55, Sub 806 (2-14-92) Errata Order (1-30-92)

One Call Communications, Inc. - Order Requiring Proposed Recommended Orders
P-264 (10-13-92) Errata Order Concerning Due Date for Proposed Recommended Orders (10-16-92)

Saluda Mountain Telephone Company - Order Granting Request to Waive Certain Filing Requirements
P-76, Sub 33 (11-25-92)

Southern Bell Telephone and Telegraph Company; Central Telephone Company - Order Modifying Caller ID with Per-Call and Per-Line Blocking
P-55, Sub 925; P-10, Sub 447 (5-12-92)

Southern Bell Telephone and Telegraph Company - Order to Provide Calling Studies
P-55, Sub 961 (5-8-92)

Southern Bell Telephone and Telegraph Company - Order Allowing Optional Calling Plan
P-55, Sub 967 (3-17-92)

Southern Bell Telephone and Telegraph Company - Order Allowing Amendment to Negotiated Service Agreement
P-55, Sub 971 (11-4-92)

Sunrise Trust - Order Terminating Docket
P-304 (5-15-92)

Telelogic, Inc. - Order to Cease and Desist and to Require Refunds
P-331 (12-8-92)

TELNET Communications, Inc. - Order Terminating Docket
P-242, Sub 2 (11-2-92)

Tel-Save, Inc. - Order Suspending Consideration of Application to Provide Interexchange Resale Telecommunications Services
P-303 (4-27-92)

USCOC of North Carolina RSA#2, Inc., and Centel Cellular Company of Hickory - Order Terminating Docket
P-287, Sub 1; P-240, Sub 5 (5-15-92)

WATER AND SEWER

APPLICATIONS AMENDED

4 Seasons Mohovilla Utilities, G.P. McConiga, d/b/a - Order Requiring Public Notice of Amended Application to Furnish Water ;utility Service in 4 Seasons Mohovilla Mobile Home Park, Lenoir County
W-1002 (12-11-92)

Hillview and Oakview Trailer Courts, Raymond Everhardt, d/b/a - Order Requiring Amended Notice to Furnish Water Utility Service in Hillview and Oakview Trailer Courts, Rowan County, and for Approval of Rates
W-1008 (2-4-92)

HydroLogic, Inc. - Order Amending Franchise Area to Provide Sewer Utility Service to 58 Lots in Mountain Valley Subdivision, Henderson County
W-988, sub 2 (12-23-92)

Rockingham Realty Company - Order Requiring Amended Public Notice to Transfer the Ownership of the Water Utility System Serving Whispering Pines Subdivision, Rockingham County, to Dan River Water, Inc. (Owner Exempt from Regulation)
W-704, Sub 1 (1-8-92) Errata Order (1-13-92)

Wilson, Mitchell B. - Order Requiring Amended Public Notice to Transfer the Ownership of the Water Utility System Serving Westfield Acres Subdivision, Rockingham County, to Dan River Water, Inc. (Owner Exempt from Regulation)
W-602, Sub 2 (1-8-92) Errata Order (1-13-92)

Wilson, Mitchell B. - Order Requiring Amended Public Notice to Transfer the Ownership of the Water Utility System Serving Windemere Subdivision, Rockingham County, to Dan River Water, Inc. (Owner Exempt from Regulation)
W-602, Sub 3 (1-8-92) Errata Order (1-13-92)

APPLICATIONS WITHDRAWN, DENIED, OR DISMISSED

Alpha Utilities, Inc. - Order Allowing Withdrawal of Application and Requiring Public Notice to Provide Water Utility Service in Olde Mills Lake Subdivision, Wake County, from Owens-Grantham Ventures
W-862, Sub 13 (11-18-92)

Beau Rivage Plantation, Inc. - Order Dismissing Show Cause Proceeding to Furnish Water Utility Service in Beau Rivage Plantation, New Hanover County, and Closing Docket
W-971 (1-30-92)

Bingham Woods Water and Sewer Company, W. C. Ford, d/b/a - Recommended Order Allowing Withdrawal of Application to Furnish Water and Sewer Service in Bingham Woods Subdivision, Orange County
W-1007 (10-21-92) Order Amending Recommended Order (10-30-92)

Carolina Water Service, Inc., of North Carolina - Recommended Order Denying Petition to Abandon the Water Utility System Serving Trexler Park Subdivision, Mecklenburg County
W-354, Sub 103 (8-17-92)

Carolina Water Service, Inc., of North Carolina - Order Denying Motion for Continuance in Complaint of Harvey R. Nickerson, Fred R. Van Sant, Alex Sabo, Louis J. Corte, Martin Allen, Raymond Minten, James Webb, and Gary Welsh
W-354, Sub 108 (1-22-92)

Chimney Rock Water Works - Recommended Order Denying Complaint of Carrier Flynn and Others Concerning Water Service
W-102, Sub 10 (2-6-92) Errata Order (2-12-92)

Cross-State Development Company - Order Withdrawing Application for Authority to Increase Rates for Providing Water Utility Service in All Its Services in Ashe County, and Closing Docket
W-408, Sub 4 (7-10-92)

East Rutherford Water System, Inc. - Order Allowing Withdrawal of Application, Canceling Hearing, and Closing Docket
W-527, Sub 3 (4-20-92)

Forest Hills Water System, James W. Partin and Worth Wineberger, d/b/a - Order Withdrawing Application for Order Declaring the Water System Serving Forest Hills Subdivision, Surry County, Exempt from Regulation, and Closing Docket
W-935, Sub 1 (7-7-92)

Hillview and Oakview Trailer, Raymond Everhardt, d/b/a - Recommended Order Allowing Withdrawal of Application for a Certificate of Public Convenience and Necessity and Closing Docket
W-1008 (3-24-92)

M-I Utility Corporation - Order Dismissing Show Cause Proceeding to Furnish Sewer Utility Service in Claremont Plaza Shopping Center, Brunswick County, and Closing Docket
W-952 (1-30-92)

McMahan, Harold - Order Allowing Withdrawal of Application and Requiring Public Notice
W-791, Sub 1 (5-12-92)

Meyer, C. Cliff, Inc. - Order Allowing Withdrawal of Application, Canceling Hearing, and Closing Docket
W-919; W-919, Sub 2 (9-23-92)

Mid South Water Systems, Inc. - Order Denying Petition for Declaration of Contiguous Territory for Country Woods Subdivision, Union County
W-720, Sub 55 (8-18-92)

Mid South Water Systems, Inc. - Order Denying Motion for Reconsideration to Provide Water and Sewer Utility Service in Bradfield Farms and Britley Subdivisions, Cabarrus and Mecklenburg Counties
W-720, Sub 96; W-720, Sub 108 (9-11-92)

North State Utilities, Inc. - Order Dismissing Show Cause Proceeding for Commission Order to Revoke the Certificate Held by Precision Utilities Limited for Providing Sewer Utility Service in Adams Mountain Subdivision, Wake County, and Application by North State Utilities, Inc., for a Certificate to Provide Sewer Utility Service in Adams Mountain Subdivision, Wake County, and Closing Docket
W-848, Sub 11 (2-12-92)

R.O.E. Water Company, Jack B. Jenkins, d/b/a - Order Allowing Withdrawal of Application and Closing Docket for Tariff Revision to Increase Rates to Pass Through Increase Cost of Purchased Water
W-820, Sub 10 (11-10-92)

Scotsdale Water and Sewer Company, Inc. - Order Allowing Withdrawal of Application, Canceling Hearings, Requiring Public Notice, and Closing Docket
W-883, Sub 15 (11-20-92)

Surry Water Company, Inc. - Order Denying Franchise to Furnish Water utility Service in Bishops Ridge Subdivision, Forsyth County
W-314, Sub 26 (11-16-92)

CANCELLED OR REVOKED

China Grove Community Utility Services Company, Inc. - Order Canceling Franchise to Transfer the Water and Sewer Utility Systems Serving China Grove Mill Village, Rowan County, to the Town of China Grove, Exempt from Regulation
W-976, Sub 1 (6-30-92)

Heater Utilities, Inc. - Order Canceling Franchise to Provide Water Utility Service in Ossipee Service Area in Alamance County
W-274, Sub 70 (6-26-92)

Heater Utilities, Inc. - Order Cancelling Franchise for Authority to Discontinue Water Utility Service to Pinewood Subdivision, Wayne County
W-274, Sub 72 (8-13-92)

North State Utilities, Inc. - Order Canceling Franchise to Provide Sewer Utility Service in Adams Mountain Subdivision, Wake County
W-848, Sub 11 (2-10-92)

Pinnacle, Inc. - Order Canceling Franchise to Provide Water Utility Service in Knotty Pines Subdivision, Harnett County, and Closing Docket
W-922, Sub 1 (5-26-92)

Trexler Water System, Hazelene F. Trexler, d/b/a - Order Canceling Franchise of Water Utility System Serving Fisherman's Cove Subdivision, Rowan County
W-505, Sub 2 (5-6-92)

Wagner, W. Charles - Order Cancelling Franchise of Water Utility Service in Windsor Park Subdivision, Caldwell County
W-889, Sub 1 (8-4-92)

CERTIFICATES

Baywood Water, Inc. - Recommended Order Granting Franchise to Furnish Water Utility Service in Baywood Subdivision, Cumberland County, and Approving Rates
W-1018 (8-31-92)

Britthaven Utilities, Inc. - Recommended Order Granting Franchise to Furnish Sewer Utility Service in Britthaven of Madison Nursing Home, Rockingham County, and Approving Rates
W-1015 (8-6-92) Order Adopting Recommended Order as Final Order (8-12-92)

China Grove Community Utility Services Company, Inc. - Recommended Order Granting Certificate to Furnish Water and Sewer Utility Services in the Village of China Grove Textiles, Inc., Rowan County, and Approving Rates
W-976 (1-8-92) Order Modifying Recommended Order (1-23-92)

Crosby Utilities, Inc. - Recommended Order Granting Certificate to Furnish Water and Sewer Utility Service in Baywood Forest Subdivision and Sewer Utility Service in Cottonwood Subdivision, Wake County, and Setting Rates
W-992 (3-24-92) Errata Order (3-3-92)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Southfort Subdivision, Johnston County, and Approving Rates
W-274, Sub 73 (8-11-92)

Hydraulics, Ltd. - Order Granting Certificate to Provide Water Utility Service in Country Crossing Subdivision, Lincoln County, Requiring Bond and Approving Rates
W-218, Sub 84 (5-12-92)

Jefferson Water and Sewer, Jefferson Landing, Inc., d/b/a - Recommended Order Granting Franchise to Provide Water and Sewer Utility Service in Jefferson Landing Subdivision, Ashe County, and Approving Rates
W-1019 (9-16-92) Errata Order (10-8-92)

Mid South Water Systems, Inc. - Order Granting Extension of Time to May 1, 1992, to Comply with Order of January 29, 1992, to Provide Water and Sewer Utility Service in Bradfield Farms and Britley Subdivisions, Cabarrus and Mecklenburg Counties, and Approval of Rates
W-720, Sub 96; W-720, Sub 108 (2-28-92)

Mid South Water Systems, Inc. - Order Authorizing Water and Sewer Service in Phase II of Britley Subdivision
W-720, Sub 96; W-720, Sub 108 (3-2-92)

Ocean Side Corporation - Recommended Order Granting Franchise to Furnish Water and Sewer Utility Service in Ocean Gate Subdivision, Brunswick County, and Approving Rates
W-636, Sub 2 (11-18-92)

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Stonington Subdivision, Forsyth County, and Approving Rates
W-314, Sub 25 (2-26-92)

COMPLAINTS

Cape Fear Utilities, Inc. - Order Closing Docket in Complaint of Charles Lewis
W-279, Sub 23 (12-16-92)

Carolina Water Service, Inc., of North Carolina - Recommended Order Granting Complaint of Ed Meyerhoeffer and Requiring Partial Refund on Tap Fee
W-354, Sub 98 (12-18-92)

Carolina Water Service, Inc., of North Carolina - Order Approving Settlement Agreement and Dismissing Complaint of Roland Pridgen
W-354, Sub 110 (11-24-92)

Carolina Water Service, Inc., of North Carolina - Recommended Order Requiring Payment in Complaint of John R. and Margaret Hanway
W-354, Sub 112 (7-21-92)

Carolina Water Service, Inc., of North Carolina - Order Remanding Complaint Case for Further Hearing in Complaint of John R. and Margaret Hanway
W-354, Sub 112 (11-10-92)

Carolina Water Service of North Carolina, Inc. - Order Keeping Docket Open for Six Months in Complaint of Thomas Barnes
W-354, Sub 120 (12-9-92)

Commercial Credit Corporation - Order Requiring Continuation of Water Service Pending Decision in Complaint of Scotsdale Water & Sewer, Inc.
W-883, Sub 16 (10-28-92)

Commercial Credit Corporation - Recommended Order Dismissing Complaint of Scotsdale Water & Sewer, Inc.
W-883, Sub 16 (12-8-92)

Falls, Ralph L. Waterworks - Order Closing Docket in Complaint of Estelle Earnhardt and Other Residents of Oakley Park
W-268, Sub 6 (4-15-92)

Falls Utility Company and David M. Smoot - Order Dismissing Notice of Appeal and Exceptions in Complaint of A. K. Parrish
W-950, Sub 1 (10-29-92)

Fisher Utilities, Inc. - Recommended Order Approving Stipulations in Complaint of Steve Davidson
W-365, Sub 30 (3-5-92)

Heater Utilities, Inc. - Order Reopening Docket in Complaint of Saddle Run Homeowners Association, c/o Eric S. Rozier, and Keeping Docket Open for Six Months
W-274, Sub 67 (1-9-92)

Heater Utilities, Inc. - Order Closing Docket in Complaint of Saddle Run Homeowners Association
W-274, Sub 67 (8-6-92)

Holiday Island Property Owners Association - Notice of Decision Declaring Water, Sewer, and Electricity Public Utilities in Complaint of Holiday Island Water System
W-386, Sub 7; EC-66, Sub 27 (3-5-92)

Hudson-Cole Development Corporation Order on Discovery in Complaint of Cole Park Plaza Associates Limited Partnership
W-875, Sub 3 (4-23-92)

Hydraulics, Ltd. - Order Closing Docket in Complaint of Interlaken Corporation
W-218, Sub 79 (8-28-92)

Hydraulics, Ltd. - Recommended Order Granting Complaint of Lester Development Corp.
W-218, Sub 82 (8-12-92)

Love Point, Inc. - Order Dismissing Complaint and Closing Docket in Complaint of David and Erlene Geddes
W-993, Sub 1 (10-9-92)

Mercer Environmental Corporation - Interlocutory Order Requiring Installation of Lift Station by Respondent and Filing of Additional Information by Complainant Mr. and Mrs. Archie G. Bobo, and Mrs. Hazel W. Green
W-198, Sub 25; W-198, Sub 26 (2-20-92)

Mercer Environmental Corporation - Order Denying Motion for Reconsideration in Complaint of Mr. and Mrs. Archie G. Bobo and Mrs. Hazel W. Green
W-198, Sub 25; W-198, Sub 26 (4-2-92)

Mercer Environmental Corporation - Recommended Order Requiring Reimbursement of Repairs and Installation of Lift Station in Complaint of Mr. and Mrs. Archie G. Bobo and Mrs. Hazel W. Green
W-198, Sub 25; W-198, Sub 26 (5-28-92)

Mercer Environmental Corporation - Order Closing Dockets in Complaint of Mr. and Mrs. Archie G. Bobo and Mrs. Hazel Green
W-198, Sub 25; W-198, Sub 26 (8-19-92)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Mr. and Mrs. Steve Karastamatis
W-720, Sub 116 (8-17-92)

Nickerson, Harvey R., Raymond Minten, James Webb, and Gary Welsh - Recommended Order Affirming Authority to Disconnect Water Service in Complaint of Carolina Water Service, Inc., of North Carolina
W-354, Sub 108 (4-22-92)

North State Utilities - Order Granting Complaint of Pioneer Savings Bank
W-848, Sub 12 (2-13-92)

North Topsail Water & Sewer, Inc. - Recommended Order Denying Complaint of J. D. Davis
W-754, Sub 8 (6-15-92)

Ruff, J. D. Water Company - Order Requiring Refund of $40.00 in Complaint of Ken Batchler
W-435, Sub 12 (11-23-92)

Ruff, J. D. Water Company - Order Denying Motion for Reconsideration in Complaint of Ken Batchler
W-435, Sub 12 (12-16-92)

Scotland Water Company - Recommended Order Granting Complaint of Mrs. Rose Lawson
W-426, Sub 3 (10-19-92)

Sentry Utilities, Inc. - Order Giving Notice of Closing of Docket on May 6, 1992, in Complaint of Onslow County Board of Education
W-811, Sub 4 (4-15-92)

Sentry Utilities, Inc. - Order Closing Docket Effective January 8, 1993, in Complaint of Onslow County Board of Education, c/o E. Alex Erwin, III
W-811, Sub 4 (12-15-92)

Surry Water Company - Order Closing Docket in Complaint of Josephine Plummer and Residents of Snowhill Subdivision
W-314, Sub 24 (4-1-92)

DISCONTINUANCE OF SERVICE

Carolina Water Service, Inc., of North Carolina - Order Authorizing Discontinuation of Service for Water Utility System Serving McClure Circle Subdivision, Mecklenburg County, and Requiring Public Notice
W-354, Sub 102 (12-9-92)

Hydraulics, Ltd. - Order Authorizing Discontinuance of Service for Water utility Systems Serving Wilshire Estates Subdivision, Forsyth County, Tar Landing Subdivision, Carteret County, and Oak Hill Subdivision, Stokes County
W-218, Sub 86 (7-15-92)

Inlet Bay Utilities, Inc. - Order Authorizing Discontinuance of Service for Sewer Utility System Serving Eastwood Business Park, New Hanover County
W-828, Sub 8 (11-18-92)

McNeill, Harold L. and the Raker Corporation - Recommended Order Granting Application to Discontinue Water Utility Service in Holly Hills Subdivision, Lee County
W-990, Sub 1 (1-24-92)

Piedmont Construction and Water Company, Inc. - Order Authorizing Discontinuance of Service for Water Utility System Serving Monte Vista Subdivision, Catawba County, and Closing Docket
W-262, Sub 44 (12-9-92)

Tulbert, Stephen E. - Order Allowing Discontinuing Water Utility Service for Water Utility Service in Knollwood Subdivision, Iredell County
W-1016 (11-10-92)

EMERGENCY OPERATOR

Bradfield Farms Utility Company - Order on Application and Motion for Emergency Authority to Provide Water and Sewer Utility Service in Bradfield Farms and Silverton Subdivisions, Mecklenburg and Cabarrus Counties
W-1026 (12-23-92)

Combs, The Robert F. Water System - Order Fully Discharging Mid South as Emergency Operator
W-328, Sub 4 (12-23-92)

Hidden Valley Campground Estates, Water System - Notice and Warning to Customers, Water System, Henderson County
W-915, Sub 1 (7-21-92)

Johnson and Perry Company - Order Appointing Emergency Operator to Furnish Water and Sewer Utility Service in Creekside Townhomes, Brunswick County
W-998 (4-10-92)

Mid South Water Systems, Inc. - Order Extending Appointment of Mid South as Emergency Operator for Water and Sewer Utility Service in Bradfield Farms and Britley Subdivisions, Cabarrus and Mecklenburg Counties
W-720, Sub 96; W-720, Sub 108 (11-10-92)

Mid South Water Systems, Inc. - Order Extending Appointment of Emergency Operator Pending Further Order to Provide Water and Sewer Utility Service in Bradfield Farms and Britley Subdivisions, Cabarrus and Mecklenburg Counties
W-720, Sub 96; W-720, Sub 108 (12-11-92)

Santeetlah Shores, Inc. - Order By Consent Appointing Emergency Operator and Approving Interim Rates
W-577, Sub 1 (9-4-92)

Sherwood Forest Community Water System - Order Discharging Emergency Operator and Closing Docket
W-646, Sub 1 (6-15-92)

NAME CHANGE

Bogue Banks Water Corporation - Order Approving 1992-1993 Budget and Name Change from Bogue Banks Water and Sewer Corporation to Bogue Banks Water Corporation
W-371, Sub 2 (6-30-92)

Trent Utilities, Inc. - Order Approving Corporate Name Change from Crayton Utilities, Inc.
W-1020 (10-28-92)

RATES

Blue Farm Water System - Recommended Order Granting Partial Increase in Rates for Water Utility Service in Blue Farm Subdivision, Moore County
W-926, Sub 1 (11-10-92)

Brookside Water Company - Order Approving Rate Increase for Water Utility Service in Brookside Subdivision, Haywood County
W-330, Sub 6 (1-8-92)

Brookwood Water Corporation - Recommended Order Approving Partial Increase in Rates for Providing Water Utility Service in All Its Service Areas
W-177, Sub 34 (5-29-92) Order Allowing Recommended Order to Become Effective (5-29-92)

Brown, E. S. - Recommended Order Granting Rate Increase for Water Utility Service in Butler Mountain Estates Subdivision, Buncombe County
W-732, Sub 2 (1-27-92)

Carolina Trace-Utilities, Inc. - Order Correcting Schedule of Rates to Acquire the Franchise and Assets of the Water and Sewer System Serving Carolina Trace Development, Lee County, from Utilities, Inc.
W-1013 (7-15-92)

Carolina Water Service, Inc., of North Carolina - Order Denying Motion for Interim Rates for Providing Water and Sewer Utility Service in all Its Service Areas in North Carolina
W-354, Sub 111 (5-1-92)

Carolina Water Service, Inc., of North Carolina - Order on Discovery and Rebuttal Testimony for Authority to Increase Its Rates and Charges for Providing Water and Sewer Utility Service in All Its Service Areas in North Carolina
W-354, Sub 111 (5-5-92)

Carolina Water Service, Inc., of North Carolina - Order Approving Change in Billing
W-354, Sub 113 (1-24-92)

Cowan Valley Water System Order Approving Increase in Service Charge for Cowan Valley Homeowners' Association
W-829, Sub 3 (4-15-92)

Crayton Utilities, Inc. - Recommended Order Approving Rate Increase for Providing Sewer Utility Service in Country Club Hills Subdivision, Craven County, and Requiring Public Notice
W-969, Sub 1 (5-4-92)

Duke Power Company - Order Granting Rate Increase for Water Utility Service in Rutherfordton, North Carolina, Canceling Hearing, and Requiring Public Notice
W-94, Sub 15 (6-24-92)

Fleetwood Falls, Inc. - Recommended Order Granting Increase for Water Utility Service in Fleetwood Falls Subdivision, Ashe County and Ordering Refunds
W-380, Sub 3; W-380, Sub 5 (2-14-92)

Grandfather Golf and Country Club Utility, Inc. - Order Granting Partial Rate Increase for Water Utility Service in all Its Service Areas, Avery County
W-755, Sub 2 (7-21-92)

Hart Water Systems, Inc. - Order Granting Partial Rate Increase, Canceling Hearing, and Requiring Public Notice to Increase Rates for Water Utility Service in Its Service Areas in Catawba County
W-739, Sub 2 (9-17-92)

Hidden Valley Campground Estates, Inc. - Recommended Order Granting Rate Increase for Water Service in Hidden Valley Campground Estates Subdivision, Henderson County
W-915, Sub 1 (6-12-92)

Holiday Island Property Owners Association - Order Authorizing Emergency Assessment
W-386, Sub 8 (6-12-92)

Holiday Island Property Owners Association - Recommended Order Granting Rate Increase for Water and Sewer Utility Service in Holiday Island, Perquimans County
W-386, Sub 8 (12-8-92)

Honey Hill Water Company - Recommended Order Granting Partial Rate Increase for Water Utility Service in Deerfield Estates Subdivision, Columbus County
W-420, Sub 1 (1-16-92)

HydroLogic, Inc. - Recommended Order Granting Rate Increase for Providing Water and Sewer Utility Service in Buffalo Meadows Subdivision, Henderson County, and Requiring Reports
W-988, Sub 4 (3-5-92)

HydroLogic, Inc. - Order on Exceptions for Authority to Increase Its Rates for Providing Water and Sewer Utility Service in Buffalo Meadows Subdivision, Ashe County
W-988, Sub 4 (5-27-92)

HydroLogic, Inc. - Further Order Allowing Increase in Sewer Rates in Buffalo Meadows Subdivision, Ashe County
W-988, Sub 4 (8-28-92)

Independence Water System - Order Granting Partial Rate Increase, Canceling Hearing, and Requiring Public Notice for Water Utility Service in Independence Village Subdivision, Union County
W-858, Sub 1 (12-16-92)

Kent & Kent Partnership - Order Allowing Rate to Become Effective for Sewer Utility Service in the Town of Seven Devils, Watauga County
W-1009; W-1009, Sub 1 (8-31-92)

Kent & Kent Partnership - Recommended Order Granting Transfer of the Franchise for Providing Sewer Utility Service in the Town of Seven Devils, Watauga County, from The Mountain Group, d/b/a Mountain Lifestyles Development Company and Approving Rate Increase for Providing Sewer Utility Service in Part of the Town of Seven Devils, Watauga County
W-1009; W-1009, Sub 1 (10-23-92)

Kings Grant Water Company - Order Granting Rate Increase for Providing Water Utility Service in All Its Service Areas, New Hanover County, Canceling Hearing, and Requiring Public Notice
W-250, Sub 8 (4-27-92)

Laurel Hill Water Company - Order Granting Partial Rate Increase for Water Utility Service in Laurel Hill Subdivision, Scotland County, Canceling Hearing, and Requiring Public Notice
W-67, Sub 9 (8-11-92)

Maxwell Water Company - Recommended Order Approving Rate Increase for Providing Water Utility Service to Blawell Subdivision, Cumberland County
W-339, Sub 2 (7-7-92)

North Wilmington Service Company - Recommended Order Granting Increase for Providing Water and Sewer Utility Service in Northchase Subdivision in New Hanover County
W-963, Sub 1 (9-24-92) Order Adopting Recommended Order (9-25-92)

R. O. E. Water Company, Jack B. Jenkins, d/b/a - Recommended Order Granting Partial Increase in Rates for Water Utility Service in Rolling Estates Subdivision, Buncombe County
W-820, Sub 9 (4-21-92)

Rayco Utilities, Inc. - Interlocutory Order Granting Interim Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina
W-899, Sub 10 (4-2-92)

Rayco Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Providing Water and Sewer Utility Service in All Service Areas in North Carolina
W-899, Sub 10 (6-17-92)

Rayco Utilities, Inc. - Order on Remand to Increase Rates for Water and Sewer Utility Service in All of Its Service Areas in North Carolina
W-899, Sub 10 (10-19-92)

Rose Hill Associates Water Company - Recommended Order Granting Rate Increase for Water and Sewer Utility Service in Colonial Park Subdivision, Pitt County
W-677, Sub 2 (7-14-92)

S & H Corporation of Wake County - Order Granting Rate Increase for Providing Water Utility Service in Springhaven Subdivision, Wake County, Canceling Hearing, and Requiring Public Notice
W-806, Sub 2 (5-5-92)

South Mountain Water Works - Order Granting Rate Increase for Water Utility Service in Rollins Park Subdivision, Burke County, Requiring Customer Notice and Requiring Improvements
W-866, Sub 2 (10-14-92) Errata Order (11-10-92)

Transylvania Utility Company - Final Order Granting Authority to Increase Its Rates for Providing Water and Sewer Service in Connestee Falls Subdivision, Transylvania County
W-378, Sub 7 (6-26-92)

West Wilson Water Corporation - Recommended Order Granting Partial Increase in Rates for Providing Water Utility Service in All Its Service Areas in North Carolina
W-781, Sub 14 (7-24-92)

West Wilson Water Corporation - Order Suspending Rate Increase and Scheduling Additional Hearing for Providing Water Utility Service in All Its Service Areas in North Carolina
W-781, Sub 14 (9-2-92)

West Wilson Water Corporation - Recommended Order Granting Partial Increase in Rates for Water Utility Service in All Its Service Areas in North Carolina (Excluding White Oak Subdivision)
W-781, Sub 14 (11-10-92)

West Wilson Water Corporation - Interlocutory Order Granting Interim Rates and Requiring Public Notice for Water Utility Service in All Its Service Areas in North Carolina
W-781, Sub 14 (12-18-92)

SALES AND TRANSFERS

Cape Fear Utilities, Inc. - Order Approving Transfer of All Its Sewer Utility Systems to New Hanover County (Owner Exempt from Regulation)
W-279, Sub 22; W-279, Sub 24 (11-17-92)

Cinnamon Woods Utility Company - Recommended Order Granting Transfer of Franchise to Provide Water Utility Service in Cinnamon Woods Subdivision, Henderson County, from BRTR, Inc., and Approving Rates
W-991 (8-12-92)

General Utilities Associates - Order Approving Transfer of Water Utility Systems Serving Rocky River Subdivision, Cabarrus County, and Wiltshire Manor Subdivision, Mecklenburg County from Burnett Utilities, Inc.
W-1022 (12-1-92) Errata Order (12-10-92)

Gresham's Lake Utility Company, Inc. - Order Granting Transfer of the Sewer System in Gresham's Lake Industrial Park, Wake County, to the City of Raleigh, (Exempt from Regulation), Cancelling Franchise, and Closing Previous Docket
W-633, Sub 6 (3-18-92)

Heater Utilities, Inc. - Order Approving Transfer of Water Utility System Serving Pinewood Subdivision, Wayne County, to the City of Goldsboro (owner exempt from regulation), and Requiring Public Notice
W-274, Sub 71 (8-13-92)

Hoopers Valley Water Company, Herschel Yarber, d/b/a - Recommended Order Granting Authority to Transfer the Water Utility Franchise Serving Hoopers Valley Estates Subdivision, Henderson County, from Hoopers Valley Estates Water Company, Inc., and Granting Partial Rate Increase
W-794, Sub 2 (4-16-92) Final Order (7-7-92)

Hydraulics, Ltd. - Recommended Order Approving Transfers of Franchise to Provide Water Utility Service in Hunters Ridge Subdivision, Vance County, from Vance Rural Water Company, and of Franchise to Provide Water Utility Service in Mountain Creek Subdivision in Granville County, from Wilson Water Service, Inc., and Requiring Public Notice
W-218, Sub 76; W-218, Sub 78 (5-15-92)

Hydraulics, Ltd. - Order Granting Authority to Transfer the Franchise to Provide Water Utility Service in Love Point Subdivision, Catawba County, from Love Point, Inc., Approving Rates, and Canceling Hearing
W-218, Sub 83 (7-8-92)

Hydraulics, Ltd. - Order Granting Transfer of Franchise to Provide Water utility Service in Piedmont Estates Subdivision, Randolph County, from Piedmont Estates Water System, Approving Rates, and Canceling Hearing
W-218, Sub 85 (9-1-92)

HydroLogic, Inc. - Order Allowing Transfer of Franchise to Provide Water Utility Service in Rolling Acres Subdivision, Buncombe County, from Wade Huey, and Approving Rates
W-988 (2-10-92)

HydroLogic, Inc. - Order Granting Transfer of Franchise to Provide Water Utility Service in Kirk Glen Subdivision, Buncombe County, from Kirk Glen, Inc., and Approval of Rates
W-988, Sub 5 (9-16-92)

Jackson, James R. - Order Closing Docket for Authority to Transfer the Franchise to Provide Water Utility Service in Butler Mountain Estates Subdivision, Buncombe County, from E. S. Brown
W-980 (1-24-92)

Mid South Water Systems, Inc. - Order Cancelling Public Hearing, Granting Transfer of the Franchise to Provide Water Utility Service in Edgewood and Lakewood Subdivisions, Gaston County, from Brindle Well Drilling, Approving Rates, and Requiring Public Notice
W-720, Sub 114 (2-28-92)

Mid South Water Systems, Inc. - Order Granting Transfer of Water Utility Systems in Landen Glen and Landen Tom Short Subdivisions, Mecklenburg County to Union County Public Works Department (Exempt from Regulation)
W-720, Sub 118 (6-10-92)

Piedmont Construction and Water Company, Inc. - Order Allowing Transfer of Franchise to Provide Water Utility Service in Timberbrook Subdivision, Iredell County, from Triangle Construction Company, Inc., and Approving Rates
W-262, Sub 41 (1-15-92)

Piedmont Construction and Water Company, Inc. - Interlocutory Order Granting Transfer of Franchise to Provide Water Utility Service in Duan Acres Subdivision, Catawba County, from Duan Waterworks, Inc., and Rate Increase Subject to Undertaking
W-262, Sub 42 (3-16-92)

Piedmont Construction and Water Company, Inc. - Order Granting Transfer of Franchise to Provide Water Utility Service in Spring Valley Estates Subdivision, Catawba County, from Spring Valley Water Systems and Approving Rates
W-262, Sub 43 (6-23-92)

Rockingham Realty Company, Inc. - Order Approving Transfer of Ownership of the Water Utility System Serving Whispering Pines Subdivision, Rockingham County, to Dan River Water, Inc., (Owner Exempt from Regulation), and Canceling Franchise
W-704, Sub 1 (3-18-92)

SRME Water System, Harry W. Meredith, d/b/a - Order Approving Transfer of Water Utility System Serving Spring Road Mobile Estates, Beaufort County, to the City of Washington (Owner Exempt from Regulation)
W-733, Sub 5 (8-26-92)

South Mountain Water Works - Order Approving Transfer of Franchise of Water Utility Service in Rollins Park Subdivision to Powell Hildebran & Kevin O'Mara, d/b/a South Mountain Water Works
W-866, Sub 2 (11-18-92)

Utilities, Inc. - Recommended Order Approving Transfer to Acquire the Franchise and Assets of the Water and Sewer System Serving the Connestee Falls Subdivision Located, Transylvania County, from Transylvania Utility Company, and to Acquire the Franchise and Assets of the Water and Sewer System Serving the Connestee Falls Subdivision Located, Transylvania County
W-1000, Sub 2; W-1012 (3-19-92)

Wastewater Services, Inc. - Order Closing Dockets to Transfer the Franchise for Providing Water Utility Service in Butler Mountain Estates Subdivision, Buncombe County, from E. S. Brown, and Request by E. S. Brown for an Increase in Rates in the Butler Mountain Estates Water System, Buncombe County
W-869, Sub 2; W-732, Sub 1 (1-24-92)

Wilson, Mitchell B. - Order Approving Transfer of Ownership of the Water Utility System Serving Westfield Acres Subdivision, Rockingham County, to Dan River Water, Inc., (Owner Exempt From Regulation), and Canceling Franchise
W-602, Sub 2 (3-18-92)

Wilson, Mitchell B. - Order Approving Transfer of Ownership of the Water Utility System Serving Windemere Subdivision, Rockingham County, to Dan River Water, Inc., (Owner Exempt From Regulation), and Canceling Franchise
W-602, Sub 3 (3-18-92)

Yadkin Water Corporation, Sylvia M. Crofton, Max Martin, Jr., and Bruce Martin, d/b/a - Recommended Order Allowing Transfer of Ownership of the Water Utility Franchise Serving Country View Subdivision, Yadkin County, to Jay Brendle, Lana Brendle, Billy Vestal, and Dorothy Vestal, d/b/a Yadkin Water Corporation
W-585, Sub 4 (8-13-92)

SECURITIES

Associated Utilities, Inc.; C & L Utilities, Inc. - Recommended Order Approving Sale of All of the Outstanding Capital Stock from Charlie M. Skipper and Larry W. Skipper to Graham B. Barefoot, Jr.
W-303, Sub 10; W-535, Sub 11 (5-19-92)

Butler Water, Inc. - Final Order to Transfer 100% of the Stock of Butler Water, Inc., and the Franchise to Provide Water Utility Service in Butler Mountain Estates Subdivision, Buncombe County, to Robin E. Dunn, and Approving Rates
W-1006, Sub 2 (1-2-92) Errata Order (1-14-92)

CWS Systems, Inc.; Clearwater Utilities, Inc. - Order Authorizing Release on Security Deposit
W-778, Sub 8; W-846, Sub 7 (6-8-92)

Carolina Trace-Utilities, Inc. - Order Approving Transfer to Acquire the Franchise and Assets of the Water and System Serving Carolina Trace Development, Lee County, from Utilities, Inc.
W-1013 (5-19-92)

Fairways Utilities, Inc. - Order Approving Stock Transfer
W-787 Sub 1 (10-5-92)

Fairways Utilities, Inc. - Order Approving Stock Transfer
W-787, Sub 2 (10-5-92)

Inlet Bay Utilities, Inc. - Order Approving Stock Transfer
W-828, Sub 9 (11-14-92)

TARIFFS

Coastal Carolina Utilities, Inc. - Order Approving Tariff Revision to Establish Base Charges and Connection Fees for Non-residential Meters
W-917, Sub 3 (8-5-92)

Goss Utility Company - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to TTHM Testing Expense and DEHNR Operating Permit Fee Expense
W-457, Sub 10 (7-15-92)

Mercer Environmental Corporation - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to TTHM Testing Expense and DEHNR Operating Permit Fee Expense
W-198, Sub 27 (9-1-92)

Mobile Hill Estates Water System - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to TTHM Testing Expense and DEHNR Operating Permit Fee Expense
W-224, Sub 7 (6-23-92)

North Topsail Water & Sewer, Inc. - Recommended Order Amending Tariff Provisions to Increase Rates for Sewer Utility Service in Its Service Area in Onslow County
W-754, Sub 12 (4-16-92)

Owens-Granthem Ventures - Order Allowing Tariff Revision to Change Billing Frequency from Quarterly to Monthly, and Requiring Public Notice
W-978, Sub 1 (7-28-92)

Ruff Water Company, Inc. - Order Approving Tariff Amendment
W-435, Sub 11 (11-5-92) Errata Order (12-9-92)

Scotland Water and Sewer Company, Inc. - Order Approving Tariff Revision for Water Utility Service Due to TTHM Testing Expense and DEHNR Operating Permit Fee Expense
W-883, Sub 14 (6-17-92)

West Wilson Water Corporation - Order Approving Tariff Amendment to Pass Through Increased Cost of Purchased Water
W-781, Sub 17 (12-9-92)

Whitewood Properties, Inc. - Order Approving Tariff Amendment
W-1004, Sub 1 (7-8-92)

TEMPORARY OPERATING AUTHORITY

Bingham Woods Water and Sewer Company, W. C. Ford, d/b/a - Recommended Order Granting Temporary Operating Authority to Furnish Water and Sewer Services in Bingham Woods Subdivision, Orange County, and Requiring Improvements
W-1007 (2-24-92)

Mid South Water Systems, Inc. - Order Granting Temporary Operating Authority to Furnish Water and Sewer Utility Service in Diamond Head and Malibu Pointe Subdivisions, Iredell County, and Approving Rates
W-720, Sub 110 (2-12-92)

Sehorn Water Supply, Inc. - Order Canceling Temporary Operating Authority to Provide Water Utility Service in Old Farm Subdivision, Cabarrus County
W-733, Sub 6 (3-4-92) Errata Order (3-6-92)

Thompson, Don - Order Granting Temporary Operating Authority, Approving Interim Rates Establishing General Rate Case, Suspending Proposed Rates, Scheduling Hearing, and Requiring Public Notice
W-1024 (12-22-92)

Watercrest Estates - Order Granting Temporary Operating Authority to Provide Water and Sewer Utility Service in Watercrest Estates Mobile Home Park, Iredell County, and Interim Rates
W-1021 (10-9-92) Errata Order (10-13-92)

Wellington Mobile Home Park, Inc. - Interlocutory Order Granting Temporary Operating Authority and Interim Rates for Water and Sewer Utility Service in Wellington Mobile Home Park Subdivision, Buncombe County
W-1011 (11-30-92)

West Johnston Water Company, West Johnston Mobile Acres, d/b/a - Order Extending Temporary Operating Authority to Furnish Water Utility Service in West Johnston Mobile Acres, Johnston County
W-1003 (8-5-92)

White Springs Water System, Inc. - Order Granting Temporary Operating Authority, Approving Interim Rates, Setting Hearing, and Requiring Public Notice to Furnish Water Utility Service in White Plains Subdivision, Cleveland County
W-1023 (11-18-92)

MISCELLANEOUS

Ballough Hills Service Association, Inc. - Recommended Order Closing Docket
W-1014 (9-17-92)

Britthaven Utilities, Inc. - Order Requiring Posting of Bond
W-1015 (8-28-92)

Brookwood Water Corporation - Recommended Order Approving Stipulation for Authority to Acquire the Franchise for Providing Water Utility Service in Tunbridge Subdivision, Cumberland County, from Cumberland Water Company, Inc.
W-177, Sub 32 (4-7-92)

Butler Water, Inc. - Order Requiring Installation of Water Meters not Later than December 1, 1992, and Approving Metered Water Rate
W-1006, Sub 2 (11-17-92)

Butler Water, Inc. - Order Requiring Billing by Metered Rates Effective January 1, 1993
W-1006, Sub 2 (12-23-92)

CWS Systems, Inc. - Order Accepting Stipulation on Contract Rates
W-778, Sub 13 (2-14-92)

Carolina Water Service, Inc., of North Carolina - Order Closing Docket Without Prejudice for Authority to Transfer the Franchise to Provide Water Utility Service in Grandview Subdivision, Forsyth County, from T-Square Water Company, Inc., and for Approval of Rates
W-354, Sub 106 (12-17-92)

Carolina Water Service, Inc. of North Carolina - Order Ruling on Motion In Limine for Authority to Increase Rates for Water and Sewer Utility Service in All Service Areas in North Carolina
W-354, Sub 111 (5-15-92)

Carolina Water Service, Inc., of North Carolina - Order Approving Undertaking and Notice to Customers to Increase Its Rates and Charges for Providing Water and Sewer Utility Service in All of Its Service Areas in North Carolina
W-354, Sub 111 (8-5-92)

Carolina Water Service, Inc., of North Carolina Order Regarding Petition for Authority to Incur Costs Necessary to Implement System-Specific Data
W-354, Sub 119 (9-29-92)

Chimney Rocks Water Works - Order Declaring Complaint Proceeding Moot and Closing Docket in Complaint of Carrie Flynn
W-102, Sub 10 (9-22-92)

Corolla North Utilities, Inc. - Order Accepting Agreement of the Parties and Reducing Amount of Bond
W-953 (4-1-92)

Falls Utility Company - Order Requiring Compliance with Order of January 31, 1989 for Authority to Transfer the Franchise to Provide Water and Sewer Utility Service in Falls of the Neuse Village Subdivision, Wake County, from Martha H. Mackie and for Approval of Rates
W-950 (12-11-92)

Hidden Valley Campground Estates - Order Authorizing Disconnection of Service for Nonpayment of Bills
W-915, Sub 1 (7-16-92)

LaGrange Waterworks Corporation - Order Closing Docket for Authority to Modify Its Rates for Water Service in All Its Service Areas in North Carolina
W-200, Sub 22 (12-21-92)

Love Point, Inc. - Order Authorizing Release of Bond to Furnish Water Utility Service in Love Point Subdivision, Catawba County
W-993 (7-27-92)

Mid South Water Systems, Inc. - Order Requiring Revised Annual Reports and Compliance with Commission Accounting Requirements
W-720, Sub 96; W-720, Sub 108 (1-30-92)

Ruff Water Company, Inc. - Order Correcting Schedule of Rates to Furnish Water Utility Service in Beacon Hills Subdivision, Gaston County
W-435, Sub 10 (10-1-92)

Sass, C. C. Company - Recommended Order of Exemption from Regulation from Chapter 62 of the General Statutes of North Carolina
W-1001 (3-24-92)

Simco, Inc. - Order Closing Docket
W-356, Sub 1 (8-28-92)

United Systems Company, Inc.,.and Northeast Plaza, Ltd. - Order Closing Docket
W-886, Sub 3 (8-28-92)

Utilities, Inc. - Order Approving Contracts with Its Affiliates, CWS Systems, Inc., Transylvania Utilities, Inc., and Carolina Trace-Utilities, Inc.
W-1000, Sub 3 (7-15-92)

Waverly Mills, Inc. - Order Granting Suspension of Franchise for the Term of One Year
W-734, Sub 2 (9-24-92)

West Wilson Water Corporation - Order Approving Contract
W-781, Sub 15 (6-23-92)

Woodlake Utilities, Inc. - Order Restricting Nonessential Water Use in Woodlake Development, Moore County, and Requiring Public Notice
W-789, Sub 1 (7-22-92)