EIGHTY-FIFTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1995, through December 31, 1995

Hugh A. Wells, Chairman

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

Jo Anne Sanford, 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.

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* Jo Anne Sanford, appointed Commissioner July 19, 1995, replacing William W. Redman, Jr.

LETTER OF TRANSMITTAL

December 31, 1995

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, 1995, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1995, and ending December 31, 1995.

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

Hugh A. Wells, Chairman

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

Jo Anne Sanford, Commissioner

Geneva S. Thigpen, Chief Clerk

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of the
North Carolina Utilities Commission

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DOCKET NO. M-100, SUB 124

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Incentive Programs Covered by G. S. 62-140(c)	)))	ORDER ADOPTING RULE R1-38

BEFORE: Commissioner Allyson K. Duncan, presiding; Commissioners Charles H. Hughes, Lawrence A. Cobb, and Ralph A. Hunt

APPEARANCES:

For Carolina Power & Light Company:

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and

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For Piedmont Natural Gas Company, Inc.:

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For Public Service Company of North Carolina, Inc.:

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BY THE COMMISSION: The Commission initiated this investigation by Order of February 24, 1994, following a motion by the Public Staff, to determine the types of electric and natural gas incentive programs that must be submitted for Commission approval under G.S. 62-140(c). The statute G.S. 62-140(c) provides as follows:

> No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and [approval] thereof by the Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service; provided, in considering the reasonableness of any such schedule filed by a public utility the Commission shall consider, among other things, evidence of consideration or compensation paid by any competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of such competitor's service. Provided, further, that nothing herein shall prohibit a public utility from carrying out any contractual commitment in existence at the time of the enactment hereof, so long as such program does not extend beyond December 31, 1963. For the purpose of this subsection, "public utility" shall include any electric membership corporation operating within this State, and the terms "utility service" and "public utility service" shall include the service rendered by any such electric membership corporation.

The Commission's Order noted uncertainty as to the scope of the statute, and the Commission provided for comments and reply comments on certain questions pertaining to interpretation of the statute.

The Commission ordered that the following be deemed parties to the investigation: Public Service Company of North Carolina, Inc. (Public Service), Piedmont Natural Gas Company, Inc. (Piedmont), North Carolina Natural Gas Corporation (NCNG), North Carolina Gas Service, Division of Pennsylvania and Southern Gas Company (Penn and Southern), Duke Power Company (Duke), Carolina Power & Light Company (CP&L), North Carolina Power (NC Power), Nantahala Power and Light Company (Nantahala), and North Carolina Electric Membership Corporation (NCEMC). The Public Staff participated on behalf of the using and consuming public. The Carolina Utility Customers Association, Inc. (CUCA), the Southern Environmental Law Center (SELC), and the Carolina Industrial Groups for Fair Utility Rates (CIGFUR) intervened and participated.

Following several extensions of time, initial comments were filed by the parties on or about October 28, 1994, and reply comments were filed on or about November 18, 1994. In its reply comments, the Public Staff attached its Proposed Rule R1-38. The Commission issued an Order on December 9, 1994, finding that the Public Staff's proposed rule provided a focus for further proceedings and calling for further comments directed primarily to the Public Staff's proposed rule. Further comments were filed by the parties on or about January 9, 1995.

On March 23, 1995, the Commission issued an Order noting that Duke, CP&L, NC Power, and Nantahala had submitted their own Proposed Rule R1-38 and calling for a second round of

further comments focusing on the proposed rule of the electric utilities. The second round of further comments was filed by the parties on or about April 3, 1995.

The successive rounds of comments brought much agreement among the parties. The focus of the investigation changed from the questions set out in the February 24, 1994 Order to the proposed rules submitted by various parties. The parties agreed that a rule should be adopted to clarify the scope of the statute, and they generally agreed that the statute should be interpreted broadly. The parties agreed on the basic format of the rule to be adopted: a statement of purpose, definitions, filing requirements, etc. The Commission therefore finds good cause to adopt Rule R1-38 for the purpose of clarifying and implementing G.S. 62-140(c) as to electric and natural gas utilities. Rule R1-38 is attached hereto as Appendix A. The Commission received hundreds of pages of comments in this investigation and cannot address all of them. However, in the remainder of this order, the Commission will discuss many of the differences among the parties relating to the proposed rules and explain our decisions on them.

Rule R1-38 begins with a statement of purpose in subsection (a). The Public Staff proposed that the purpose of the rule be stated as "to establish guidelines for the application of N.C.G.S. § 62-140(c) to competition between electric and gas utilities that are consistent..." The electric utilities and certain other parties proposed that the Public Staff's phrase "to competition between electric and gas utilities" be changed to "to electric and natural gas utilities." They wanted to make clear that all electric and gas incentive programs are subject to the rule. The Commission agrees with the change. The main purpose of the subsection is to make clear that telecommunications programs are excluded from the rule, but the Public Staff's phrase suggests that some electric and gas incentive programs (those dealing with competition) are subject to the rule while other electric and gas incentive programs are not.

Rule R1-38 defines terms in subsection (b). The definition of "consideration" was in dispute. This definition significantly impacts the scope of the statute and the rule. The Public Staff proposed the following definition:

> "Consideration" means anything of economic value paid, given or offered to any person by a Public Utility (regardless of the source of the "consideration") including, but not limited to: payments to manufacturers, builders, or appliance dealers; cash rebates or discounts on equipment/appliance sales, leases, or service installation; equipment/appliances sold below fair market value or below their cost to the Public Utility; studies on energy usage or model homes; low interest loans; or payment of trade show or advertising costs.

Several issues were raised as to this definition.

The electric and gas utilities and CUCA proposed expanding the Public Staff's phrase "payments to manufacturers, builders, or appliance dealers" to "payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments."

They argued that the Public Staff's phrase might allow loopholes and that all who make decisions that influence customer fuel choice should be included. The Commission agrees with the broader phrase.

The Public Staff's proposal included "studies on energy usage" in this definition. The electrics utilities' proposed rule did not. Some gas companies also argued that energy audits should not be regarded as consideration requiring Commission approval. CUCA commented that it depends on the purpose of the audit: many audits look for inefficiencies in the use of energy and these could affect energy decisions and should be subject to the statute; others are undertaken only to resolve billing disputes. As the Commission understands the Public Staff's proposal, the Public Staff would not regard checking a meter or an appliance malfunction as an audit. As we understand it, the Public Staff is concerned with lengthy studies of commercial or industrial energy usage with recommendations as to how customers can save money on utility bills. Such audits are of value and should be subject to the statute; otherwise, they could be administered in a discriminatory way. The Commission will regard such studies of energy usage as consideration subject to the rule.

The Public Staff's proposal included expenditures on builders' model homes. In Docket No. E-100, Sub 71, a related docket dealing with competition between electric and natural gas utilities, the electric utilities and Public Service agreed that expenditures on model homes "are advertising and not subject to filing requirements under N.C.Gen.Stat. §62-140(c). However, such expenditures should be reasonable under the circumstances, considering the size of the market to be reached by the promotion and the anticipated number of potential buyers..." The Commission cannot accept their agreement for purposes of our Rule R1-38. We believe that model home expenditures are the type of consideration that causes much of the controversy shown in this docket and that they should be subject to the approval requirements of G.S. 62-140(c). Even the agreement in the related docket would place limits of reasonableness on such expenditures, and the best way to enforce such a limit is to make the expenditures subject to the rule.

The Public Staff's proposal included trade show costs and advertising costs as consideration. The electric utilities' proposed rule left out such costs and specifically excluded "reasonable business entertainment, meals, seminars and sponsorship of entertainment [at] industry trade shows and conventions, and other items of nominal value." Piedmont's proposal also excluded "payments made in sponsorship of local, regional, or state realtor, ASHRAE, home builder and HVAC association dinners, seminars and entertainment functions," and Piedmont wanted a blanket exception for "meals, entertainment, favors and educational functions where the cost per person or favor is less than $100." CUCA argued that these are the very things that cause controversy and should give the Commission most concern. CUCA did not object to exempting items that cost less than $30 apiece. Penn and Southern believed that a de minimis exclusion should be made for promotional activities that involve "no direct effort at influencing fuel choices for specific applications or locations." The Commission agrees with the Public Staff and CUCA that these types of expenditures are consideration subject to the statute and our Rule R1-38. We believe that some sort of de minimis exception should be made, but we believe that the proposals of the electric utilities and Piedmont go too far. We have fashioned a de minimis exception, but we wish to make clear that this exception must not be used to circumvent the language of our rule including trade show and advertising costs as consideration requiring Commission approval. The exception is intended to apply only to favors and activities of nominal value not directed at specific fuel choice decisions.

The electric utilities proposed changing the Public Staff's reference to "low interest loans" to "interest rates on loans that are below the short term cost of debt to the Public Utility at the time of the loan." CUCA proposed "low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan or loans are made available." The Commission finds the Public Staff's phrase too vague. By focusing on the customer's alternatives, CUCA's phrase defines the type of loan that provides an incentive to the customer. The Commission finds it to be an improvement and we have adopted it. The utility, in the course of designing its offering, will no doubt research the alternatives available to customers and will be in a position to know if its interest rate is lower than that otherwise available.

Subsection (c)1 of the rule deals with the scope of the statute in terms of the programs that must be approved, who funds them, and who offers them. The Public Staff proposed the following language, which we have adopted with minor changes:

> Application of Rule. Prior to a Public Utility implementing any Program, the purpose or effect of which is to directly or indirectly alter or influence the decision to use the Public Utility's service for a particular end-use or to directly or indirectly encourage the installation of equipment that uses the Public Utility's service, the Public Utility shall file for and obtain Commission approval.
>
> Whether a Program is offered at the expense of the Public Utility's shareholders, ratepayers or a third party shall not affect the filing requirements under this rule.
>
> A Public Utility shall file for approval all Programs to Offer Consideration which are administered, promoted or funded by the Public Utility's subsidiaries, affiliates and/or unregulated divisions or businesses where the Public Utility has control over the entity offering or is involved in the Program and an intent or effect of the Program is to adopt, retain, or increase the use of the Public Utility's services.

This subsection makes clear that the source of funding for a particular program otherwise subject to the rule--whether shareholder or ratepayer, whether utility or non-regulated division--does not affect the Commission's jurisdiction. Public Service argued that there is no basis for Commission approval if incentive programs are funded with shareholder money. It argued that the statute is implicitly based on use of ratepayer money and that "promotional activities funded by shareholders are a part of the unregulated competitive market..." and should not be reviewed by the Commission. All other parties disagreed; they argued that there is no basis for such a distinction in the language of the statute, that incentives and promotional programs affect utility rates and ratepayers regardless of the source of funding, and that the harm from unfair discrimination is the same regardless of funding. For example, parties commented, "It would be too easy to circumvent the statute if it were interpreted to permit such distinctions" and "If PSNC's logic were correct, the very programs the statute was enacted to oversee would not require Commission approval." The Commission cannot agree with Public Service's interpretation. We find no justification in the statute for its position.

Piedmont and NCNG proposed two changes to the very last line of subsection (c)1 as quoted above, and the electric utilities agreed with their proposals. First, they objected to the word "retain" as contrary to the statute. The statute says "secure the installation or adoption of the use of such utility service" and they would change "retain" to "secure." Second, they proposed the phrase "use of the Public Utility's public utility service" to make clear that non-regulated activities do not require approval. The Commission has made these two changes.

Next, subsection (c)2 of the rule provides what an application for approval of a program must include. The filing requirements proposed by the Public Staff were:

(i) Cover Page. The Public Utility shall attach to the front of an application a cover sheet, generally describing the Program, the Consideration offered, anticipated total cost of the Program, the source and amount of funding proposed to be used, proposed classes of persons to whom it will be offered and duration of the Program.

(ii) Description. A detailed description of the Program, its duration, purpose, estimated number of participants, and impact on the Public Utility's general body of customers and the Public Utility.

(iii) Cost. The estimated total and per unit cost for the Program to the Public Utility, reported by type of expenditure (e.g., direct payment, rebate, advertising) and the planned accounting treatment for those costs. A statement of the effect, if any, that the Program is expected to have on customer use of the Public Utility's service. If the Public Utility proposes to place any costs to be incurred in a deferred account for possible future recovery from its customers, it shall disclose the same and provide an estimate of each cost to be deferred. The Public Utility shall describe, in detail, all other sources of monies to be used including the name of the source, the amount provided and the reasons the third party is providing the money.

(iv) Conditions of Program. The type and amount of Consideration and how and to whom it will be offered or paid including schedules listing the Consideration to be offered, a list of those who will use the Public Utility's service, and other information on the availability and limitations (who can and cannot participate) of the Consideration. The Public Utility shall describe any service limitations or conditions it imposes on customers who do not participate in the Program.

(v) Economic Justification. Economic Justification for the Program including the results of all cost-effectiveness tests.

(vi) Communications. Detailed cost information on the amount the Public Utility anticipates will be spent on communications materials related to the Program and such cost shall be included in the Commission's consideration of the total cost of the Program and whether the total cost of the Program is reasonable in light of the benefits. To the extent available the Public Utility shall include examples of all communication materials to be used in conjunction with the Program.

(vii) Other. Any other information the Public Utility believes is relevant to the application including information on competition faced by the Public Utility.

In subsection (c)2(iv), Piedmont proposed changing the phrases "whom it will be offered or paid" and "those who will use..." to "the class of customers..." in order to make it clear that the utility does not have to list individual customers by name. CUCA pointed out that this change would eliminate programs in which consideration is paid to third parties such as builders, which are a source of much controversy. The Commission finds that the original language should be kept, but we do not intend to require individual customers receiving consideration to be named in the application.

The electric utilities proposed changing the phrase "all cost-effectiveness tests" in subsection (c)2(v) to "appropriate cost effectiveness tests." NCNG wanted to add to this requirement "a description of any adverse impact on peak load of the Program in light of other anticipated growth." The Commission has adopted the first change, but not the second. Both decisions are made in an effort to achieve a rule of universal application. In a particular case, other matters not required in the application may be explored by discovery.

Subsection (c)2(vi) requires applications for approval of programs to include information on the advertising that will be used to promote the program, including copies of ads "to the extent available." This was the Public Staff's proposal. The electric utilities wanted to eliminate this requirement. The electrics argued that information on advertising costs is already required by subsection (c)2(iii), that ads are not developed far enough in advance to be filed with the application, and that ads often change during the course of a program. Piedmont and NCNG wanted to strengthen the requirement. They wanted ads to be filed with the Commission to "deter the use of false or misleading information in promotional materials." At one point, NCNG wanted the Commission to review ads before they could be used; in its latest filing, NCNG proposed that ads making an economic comparison between two utilities be filed "for informational purposes only," together with supporting workpapers. CUCA warned that the Commission should not put itself in the position of judging competing utility ads. The Commission concludes that the Public Staff's proposal strikes an appropriate balance and should be adopted.

Subsection (d) deals with the procedures for handling applications, and there was considerable disagreement here. The Public Staff and the electric utilities proposed very different procedures. The Public Staff's proposal was more detailed while the electric utilities' proposal was more general. Both tried to avoid undue delay, but they saw different ways to do it. For example, the electric utilities allowed competing utilities 30 days to intervene; the Public Staff said 14 days is enough but set up a two-step intervention process, a 14-day deadline for competing utilities and a later deadline for non-utilities. The Public Staff said that non-utilities may not have reason to intervene until they see a competing utility's comments. CUCA liked the two-step intervention process, but suggested that utilities be given 30 days to intervene rather than 14. Further, CUCA felt that the Public Staff's proposal did not give adequate guidance for non-utility intervenors and it proposed its own language (1) providing that non-utilities may intervene up to 10 days before the hearing if a program is scheduled for hearing, but (2) providing that non-utilities may intervene at any time before a program is approved if no hearing is scheduled, and (3) requiring the Commission to set a specific deadline for non-utility interventions when no competing utility intervenes. SELC agreed with CUCA. Piedmont

proposed automatic intervenor status for competing utilities and allowing 15 days for utility intervenors to comment and others to petition for intervention. As another example of their differences, the Public Staff's proposal required an intervening competing utility to show that a proposed program would have an "unfair and significantly detrimental impact" while the electric utilities suggested the traditional Rule R1-19 intervention standard. Piedmont opposed the Public Staff's requirement because it would impose a higher standard for intervention and require competing utilities to claim adverse impacts before they have time to investigate. CUCA did "not strenuously object" to the Public Staff's requirement, but did "not object" to deleting it either. Utilities expressed concern over the time it will take to get programs approved. They fear that interventions may delay programs for months and that they won't be able to match the promotions of non-utility competitors fast enough. The Public Staff conceded that approvals will take longer, but said "the process can work" and applications can still be considered at Monday Commission Staff Conferences if no interventions are filed. The electric utilities argued that their proposed procedures are better because they provide a shorter time frame.

The Commission has carefully studied the proposals and comments with respect to the appropriate procedures for processing applications. We appreciate the Public Staff's efforts, but we are trying to achieve a rule of universal application and we feel that the more general procedures suggested by the electric utilities will better serve that purpose. We have made one change in the electric utilities' proposal. They specifically provided in the rule that existing unapproved programs must be filed for approval within 60 days. The Public Staff agreed, but didn't put that in their proposed rule. At one point, NCNG proposed that all current programs be filed for Commission review and approval following adoption of a rule. The Commission believes that existing unapproved programs should be submitted for approval pursuant to the requirements of the rule. We find it more appropriate to impose this requirement by the present order, rather than include it in the rule itself. The Commission will require such filings within 60 days, unless an extension is requested and allowed within that time. The rule shall be effective for applications filed after its adoption; pending applications need not be refiled to comply with the requirements of the rule.

Finally, subsection (e) of the rule sets out four standards that will be considered in passing on applications. The Commission notes that these standards are not intended as comprehensive. The Commission has a similar matter under consideration in Docket No. E-100, Sub 71 and we will not attempt to incorporate the decisions in that docket into the present rule. That is not necessary. The purpose of this investigation and of this rule is to establish what incentive programs must be submitted for approval, rather than what programs will in fact be approved. The standards in the rule are intended as a departure, a statement of basic principles to be administered along with other policies of the Commission. We have amended this subsection to clarify that the standards apply to changes to an existing program as well as to new programs. Otherwise, we have adopted the standards proposed by the Public Staff.

Finally, NCNG proposed a subsection (f) with two additional provisions. One would have stated that the Commission will "not approve a Program which promotes wasteful expenditures on competition between Public Utilities at ratepayers' expense and is contrary to the public policy of this State..." We find such a provision unnecessary in light of subsection (e)3 just adopted. NCNG's other provision would have required advertisements for incentive programs to include statements of

whether ratepayer monies are being used to fund the programs. NC Power objected that such language might give a false impression and might discourage customers from participating in programs. The Commission will not adopt NCNG's proposal. We note the existing requirements of Commission Rule R12-13(b) as to political and promotional advertising defined in Rule R12-12 and other nonutility advertising.

Though not pointed out by any party, the Commission notes our existing Rule R8-33(d), which generally requires electric membership corporations "proposing to pay any compensation or consideration or to furnish any equipment to secure the installation or adoption of electric service" to file with the Commision pursuant to G.S. 62-140(c). We further note that the present Rule R1-38 applies to electric membership corporations, as provided by the definition in subsection (b)4, and that it therefore serves to compliment Rule R8-33(d) as to electric membership corporations.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R1-38, attached hereto as Appendix A, should be, and the same hereby is, adopted effective for applications filed after the date of this Order, and

2. That existing incentive programs which are within the scope of Commission Rule R1-38 but have not previously been filed and approved by the Commission shall be filed for Commission approval pursuant to the provisions of this rule and such filings shall be made within sixty (60) days from the date of this Order unless an extension of time is requested and approved within that time.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of October 1995.

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

APPENDIX A

R1-38. Incentive Programs for Electric and Natural Gas Utilities.

(a) Purpose. The purpose of this rule is to establish guidelines for the application of N.C.G.S. § 62-140(c) to electric and natural gas utilities that are consistent with the directives of that statute and consistent with the public policy of this state set forth in N.C.G.S. § 62-2.

(b) Definitions As used in this rule, the following definitions shall apply:

1. "Consideration" means anything of economic value paid, given or offered to any person by a Public Utility (regardless of the source of the "consideration") including, but not limited to: payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments; cash rebates or discounts on equipment/appliance sales, leases, or

service installation; equipment/appliances sold below fair market value or below their cost to the Public Utility; low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan are made available; studies on energy usage; model homes; and payment of trade show or advertising costs. Excepted from the definition of "consideration" are favors and promotional activities that are de minimis and nominal in value and that are not directed at influencing fuel choice decisions for specific applications or locations.

2. "Program" means any Public Utility action or planned action which involves offering Consideration.

3. "Person" means the same as defined in N.C.G.S. § 62-3(21).

4. "Public Utility" means for the purposes of this rule the same as defined in N.C.G.S. § 62-3 including N.C.G.S. § 62-3(23)(a)(1) and (c). Pursuant to N.C.G.S. § 62-140, the term Public Utility as used in this rule includes electric membership corporations.

(c) Filing for Approval.

1. Application of Rule. Prior to a Public Utility implementing any Program, the purpose or effect of which is to directly or indirectly alter or influence the decision to use the Public Utility's service for a particular end-use or to directly or indirectly encourage the installation of equipment that uses the Public Utility's service, the Public Utility shall file for and obtain Commission approval.

Whether a Program is offered at the expense of the Public Utility's shareholders, ratepayers or a third party shall not affect the filing requirements under this rule.

A Public Utility shall file for approval all Programs to offer Consideration which are administered, promoted or funded by the Public Utility's subsidiaries, affiliates and/or unregulated divisions or businesses where the Public Utility has control over the entity offering or is involved in the Program and an intent or effect of the Program is to adopt, secure, or increase the use of the Public Utility's public utility services.

2. Filing Requirements. Each application for the approval of a Program shall include the following:

(i) Cover Page. The Public Utility shall attach to the front of an application a cover sheet generally describing the Program, the Consideration to be offered, anticipated total cost of the Program, the source and amount of funding proposed to be used, proposed classes of persons to whom it will be offered, and the duration of the Program.

(ii) Description. A detailed description of the Program, its duration, purpose, estimated number of participants, and impact on the Public Utility's general body of customers and the Public Utility.

(iii) Cost. The estimated total and per unit cost for the Program to the Public Utility, reported by type of expenditure (e.g., direct payment, rebate, advertising) and the planned accounting treatment for those costs. A statement of the effect, if any, that the Program is expected to have on customer use of the Public Utility's service. If the Public Utility proposes to place any costs to be incurred in a deferred account for possible future recovery from its customers, it shall disclose the same and provide an estimate of each cost to be deferred. The Public Utility shall describe, in detail, all other sources of monies to be used including the name of the source, the amount provided, and the reasons the third party is providing the money.

(iv) Conditions of Program. The type and amount of Consideration and how and to whom it will be offered or paid including schedules listing the Consideration to be offered, a list of those who will use the Public Utility's service, and other information on the availability and limitations (who can and cannot participate) of the Consideration. The Public Utility shall describe any service limitations or conditions it imposes on customers who do not participate in the Program.

(v) Economic Justification. Economic justification for the Program including the results of appropriate cost-effectiveness tests.

(vi) Communications. Detailed cost information on the amount the Public Utility anticipates will be spent on communication materials related to the Program and such cost shall be included in the Commission's consideration of the total cost of the Program and whether the total cost of the Program is reasonable in light of the benefits. To the extent available, the Public Utility shall include examples of all communication materials to be used in conjunction with the Program.

(vii) Other. Any other information the Public Utility believes relevant to the application, including information on competition faced by the Public Utility.

(d) Procedure

1. Service and Response. The Public Utility filing for approval of a Program shall serve a copy of its filing on the electric or gas Public Utilities operating within the filing Public Utility's certificated territory, the Public Staff, the Attorney General and any other party that has notified the Public Utility in writing that it wishes to be served with copies of all

such filings that involve the provision of Consideration. Those served, and others learning of the application, shall have thirty (30) days from the date of filing in which to seek intervention pursuant to Commission Rule R1-19 or file a protest pursuant to Commission Rule R1-6. The filing Public Utility shall have the opportunity to respond to such petitions or protests within ten (10) days of their filing. If any party granted intervention requests a hearing or otherwise raises a material issue of fact, the Commission may, in its discretion, set the matter for hearing.

2. Notice and Schedule. If the application is set for hearing, the Commission shall require such notice as it deems appropriate and shall establish a procedural schedule for prefiled testimony and rebuttal testimony after a discovery period of at least 45 days. Where possible, the hearing shall be held within ninety (90) days from the application filing date.

(e) Scope of Review.

In considering whether to approve in whole or in part a Program or changes to an existing Program, the Commission may consider any other information it determines to be relevant, including, but not limited to, the following issues:

1. Whether the Program unreasonably discriminates among persons receiving or applying for the same kind and degree of service;

2. Evidence of consideration or compensation paid by any competitor, regulated or unregulated, of the Public Utility to secure the installation or adoption of the use of such competitor's services;

3. Whether the Program promotes unfair or destructive competition or is inconsistent with the public policy of this State as set forth in N.C.G.S. § 62-2; and

4. Whether the Program encourages energy efficiency and its impact on the peak loads and load factors of the filing Public Utility.

DOCKET NO. M-100, SUB 125

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of Rule R1-25 to Require Computer Diskette Filings of Proposed Findings of Fact, Conclusions of Law, and Briefs	)))	ORDER AMENDING RULE R1-25(c)

BY THE COMMISSION: Commission Rule R1-25 requires the parties of record in formal proceedings to file, upon request of the presiding Commissioner or Hearing Examiner, proposed findings of fact, conclusions of law, and briefs on all issues. The Commission finds good cause to

amend and revise Rule R1-25(c) to also require the parties to file a computer diskette containing a copy of their proposed findings of fact, conclusions of law, and briefs in addition to the required number of paper copies.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R1-25(c) be, and the same is hereby, amended effective the date of this Order to read as follows:

> (c) Copies Required. -- Rule R1-5, subsection (g) shall apply to the filing of briefs, proposed findings of fact, and conclusions of law. In addition, the parties shall also file a copy of their briefs, proposed findings of fact, and conclusions of law on a MS-DOS formatted 3.5 inch computer diskette containing noncompressed files created in WordPerfect, Word or an ASCII Text format. The Commission may waive the computer diskette filing requirement for good cause shown.

2. That the Chief Clerk shall serve a copy of this Order on the Public Staff, the Attorney General, the Carolina Utility Customers Association, Inc., the Carolina Industrial Groups for Fair Utility Rates I and II and all electric, natural gas, telephone, water and sewer utilities operating in North Carolina pursuant to certificates of public convenience and necessity issued by this Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of March 1995.

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

DOCKET NO. E-100, SUB 64A
DOCKET NO. E-100, SUB 71

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 64A In the Matter of Request by Duke Power Company for Approval of a Food Service Program	)	ORDER ADOPTING GUIDELINES
DOCKET NO. E-100, SUB 71 In the Matter of Investigation of the Effect of Electric IRP and DSM Programs on the Competition between Electric Utilities and Natural Gas Utilities	)	

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602 on December 6 - 8, 1994 and December 19 - 20, 1994

BEFORE: Commissioner Allyson K. Duncan, presiding; Commissioners William W. Redman, Jr., Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt and Judy Hunt

APPEARANCES:

For Carolina Power & Light Company:

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For Duke Power Company:

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and

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For Nantahala Power & Light Company:

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For North Carolina Power:

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For North Carolina Natural Gas Corporation:

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For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Attorney at Law, Amos and Jeffries, L.L.P., P. O. Box 787, Greensboro, NC 27402

For Public Service Company of North Carolina, Inc.:

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For the Using and Consuming Public:

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For Carolina Utility Customers Association, Inc.:

Sam J. Ervin IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon, and Ervin, P.A., P. O. Drawer 1269, Morganton, NC 28680-1269

For CIGFUR I & II:

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For Southern Environmental Law Center:

Oliver A. Pollard III and Jeffrey M. Gleason, Attorneys at Law, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, VA 22902-5065

BY THE COMMISSION: By letter filed with the Commission on December 20, 1993, Duke Power Company ("Duke") requested Commission approval of a proposed Food Service Program to encourage the installation of qualifying electric food preparation equipment in commercial kitchens. The program was designed to provide incentives in the form of payments or services to participants to effect the installation of the more efficient electric equipment. Duke asserted that the program was determined to be cost-effective within the current Integrated Resource Planning (IRP) cycle and that the program will result in improved customer food preparation efficiency and improved operation of Duke's generating system. Duke did not seek deferral of costs associated with the program.

On February 4, 1994, Piedmont Natural Gas Company, Inc. ("Piedmont") filed a Protest and a Request for Evidentiary Hearing. Piedmont asserted that Duke could not compete with natural gas on a level playing field and was, therefore, seeking to pay commercial establishments to use electricity. Piedmont asserted that no record existed to support approval of the program and, further, Piedmont asked the Commission to schedule an evidentiary hearing.

Also on February 4, 1994, Public Service Company of North Carolina, Inc. ("Public Service") filed a Petition to Intervene and Protest. Public Service stated that Duke's proposal is a "preference" under North Carolina General Statute § 62-140(a) and an "incentive" program under G.S. § 62-140(c), and that Duke's IRP process should not shield the proposal from the requirements of G.S. § 62-140.

The Commission scheduled an evidentiary hearing by Order dated February 24, 1994 in Docket No. E-100, Sub 64A for approval of its proposed Food Service Program. Piedmont and Public Service were allowed to intervene in Docket No. E-100, Sub 64A. By the same February 24, 1994, Order, the Commission initiated a broader investigation in the newly established Docket No. E-100, Sub 71 to consider the effect of electric IRP and Demand Side Management (DSM) programs on the competition between electric utilities and natural gas utilities. The Commission scheduled the matter for hearing and designated the following as parties: Public Staff, Duke, Carolina Power & Light Company ("CP&L"), North Carolina Power ("N.C. Power"), Piedmont, Public Service, North Carolina Natural Gas Corporation ("NCNG"), and North Carolina Gas Service (which is a division of Pennsylvania & Southern Gas Company). Southern Environmental Law Center ("SELC), Carolina Industrial Groups for Fair Utility Rates (CIGFUR I and II) and Carolina Utility Customers Association ("CUCA") intervened in Docket No. E-100, Sub 71.

The Commission's February 24, 1994 Order specified that, as to Duke's proposed Food Service Program, interested parties should file testimony as applicable addressing: (1) what standards (i.e., unfair competition standards, IRP standards, G.S. §62-140(a) standards, or G.S. § 62-140(c) standards) should be applied to Duke's proposal; and (2) what facts either support or oppose approval of the program. As to the broader investigation in Docket No. E-100, Sub 71, the parties were urged to file testimony as applicable on the following issues:

All parties - If an electric DSM program is found to promote energy efficiency, what additional criteria, if any, should the Commission consider in deciding whether to approve the program?

Natural gas utilities - What specific DSM program(s) and/or what specific feature(s) of a DSM program constitute unfair competition between electric utilities and natural gas utilities, and why?

Electric utilities - How does offering incentives to developers to build all-electric homes advance the goals of energy efficiency?

Describe the nature and list the amount of advertising, including comparative advertising, which has been deferred pursuant to a DSM cost deferral stipulation with the Public Staff, or which a company is booking as a DSM expense.

Explain why this advertising is reasonable in light of the anticipated economic benefits of the DSM programs being promoted.

On July 13, 1994, the Commission issued an order in Docket No. E-100, Sub 71, expanding the scope of the investigation to include a commensurate investigation of the effect of gas sales, promotional programs and efficiency measures programs on the competition between electric utilities and natural gas utilities. The July 13, 1994, order directed the testimony of the parties to address the additional issues, as applicable, incorporated into the investigation. (I.e., both gas and electric utilities were to file testimony regarding DSM programs that constitute unfair competition, and both were to address the issue of how offering incentives to developers of all-electric or all-gas programs advance the goals of energy efficiency.)

The schedule of the proceedings was deferred several times at the request of various parties before the evidentiary hearing began on December 6, 1994.

At the hearing, Duke Power Company presented the direct and rebuttal testimony and exhibits of H. Ed Ernst, Jr., Manager, Energy Products Planning, Duke Power Company; Ronald L. Gibson, Vice President, Marketing and Customer Planning, Duke Power Company, and Dr. Robert M. Spann, Vice President of Charles River Associates (also testifying on behalf of CP&L).

In addition to the testimony of Dr. Robert M. Spann, CP&L presented the direct and rebuttal testimony and exhibits of B. Mitchell Williams, Manager of Demand-Side Management and Retail Pricing, CP&L.

Southern Environmental Law Center presented the direct and rebuttal testimony and exhibits of John J. Plunkett, Senior Vice President, Resource Insight, Inc.

N.C. Power presented the direct and rebuttal testimony and exhibits of Mary C. Doswell, Manager, Energy Efficiency Planning, Virginia Electric and Power Company (operating in North Carolina as N.C. Power).

Piedmont Natural Gas Company presented the direct and rebuttal testimony and exhibits of Ranelle Q. Warfield, Director, Marketing, Piedmont Natural Gas Company.

Public Service Company of North Carolina, Inc. presented the direct and rebuttal testimony and exhibits of Franklin H. Yoho, Senior Vice President - Marketing and Gas Supply, Public Service Company of North Carolina, Inc.

North Carolina Natural Gas Corporation presented the direct testimony and exhibits of Gerald A. Teele, Senior Vice President and Chief Financial Officer, North Carolina Natural Gas Corporation.

Pennsylvania & Southern Gas Company ("P&S") presented the direct testimony and exhibits of Michael P. Noone, Coordinator of Marketing and Public Relations, Pennsylvania & Southern Gas Company.

Nantahala Power & Light Company ("Nantahala"), a wholly owned subsidiary of Duke, appeared at the hearings but did not offer any witnesses.

The five days of hearings in December, 1994, were followed by filing of briefs and proposed orders in March 1995. On March 14, 1995, CP&L, Duke, N.C. Power, Nantahala, and Public Service filed a joint Memorandum of Understanding, which they characterized as a framework for the Commission to resolve the issues presented in Docket Nos. E-100, Subs 71 and 64A. Reply comments were filed by the parties on or before March 30, 1995, addressing the Memorandum of Understanding or the proposed orders or briefs of other parties.

Based on the testimony and exhibits offered at the hearing, the comments and reply comments filed by the parties, and the entire record in this matter, the Commission now makes the following:

FINDINGS OF FACT AND CONCLUSIONS

1. CP&L, Duke, Nantahala, N.C. Power, NCNG, P&S, Piedmont, and Public Service are public utilities subject to the jurisdiction of the North Carolina Utilities Commission.

2. The general statutes of North Carolina require in G.S. § 62-140(c) that Commission approval must be obtained if a public utility shall offer or pay any "compensation" or "consideration" or furnish any equipment to secure the installation or adoption of the use of such utility's service.

3. The procedural issues before the Commission herein relate to the types of incentives that qualify as "compensation" or "consideration" pursuant to G.S. § 62-140(c) and that cannot be offered by a utility without first obtaining approval by the Commission. The procedural issues are to be resolved in Docket No. M-100, Sub 124, by the adoption of a rule interpreting G.S. § 62-140(c).

4. The substantive issues before the Commission herein relate to what a utility must demonstrate in order to obtain Commission approval of a program involving incentives subject to G.S. § 62-140(c) and whether the program should be paid for by the utility's ratepayers or by its shareholders. The substantive issues are to be resolved herein.

5. In this proceeding, the gas utilities generally objected to electric utility programs that: (1) give incentives to customers to influence the customers' choice of fuel; (2) give incentives to third

parties who are not end users but who still influence the customers' choice of fuel; (3) exclude gas from structures as a condition for receiving incentives; and (4) build electric load at the expense of natural gas load.

6. The matter of the relative efficiency of electricity versus natural gas under various scenarios (space heating alone, space heating plus A/C, etc.) cannot now be resolved herein. A better approach at this time would be to determine the acceptability of incentive programs herein based on the energy efficiency of electricity alone or of natural gas alone, as applicable.

7. The criteria for determining whether or not to approve an electric DSM program pursuant to G.S. § 62-140(c) should not include consideration of the impact of an electric DSM program on the sales of natural gas, or vice versa.

8. Electric or gas DSM programs that do not involve incentives but are to be paid for by ratepayers should be evaluated in general rate cases or similar proceedings, as appropriate, in accordance with criteria typically used by the Commission in such cases.

9. The Commission should not seek to regulate the details of advertising content (other than whether or not such advertising is promotional in character). A better approach would be for the parties to seek relief in advertising disputes either from the courts or in formal proceedings before the Commission that deal with specific issues on a case-by-case basis.

10. The Commission should not seek to re-visit in this proceeding the issue of deferred accounts for electric DSM programs, or the issue of promotional advertising addressed in the last Public Service rate case.

11. Incentives to developers to build all-electric homes or to promote the use of natural gas advance the goals of energy efficiency and help reduce peak demand by promoting efficient utilization of energy through the use of end user equipment which exceeds federal and state efficiency standards and through the more efficient, year-round use of utility equipment.

12. The Commission should adopt the guidelines proposed in the Memorandum of Understanding filed herein, with some modifications as described herein, to govern certain aspects of the disputes between the electric utilities and the natural gas utilities in this proceeding.

13. To obtain Commission approval of a new or existing residential or commercial program involving incentives per Rule R1-38, the sponsoring utility must demonstrate that the program is cost-effective for its ratepayers.

14. If a program involves an incentive paid to a "third party" that affects the decision to install electric or natural gas service, the Commission may generally find such a program is not promotional if the sponsoring utility demonstrates that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes or appliance standards, and that the program is cost effective.

15. Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission. However, such programs may not require a builder to agree to: (a) build a minimum number or percentage of all-gas or all-electric structures in a given subdivision development or in total; or (b) build any type of structure (gas or electric) in a given subdivision development; or (c) advertise that the builder is exclusively an all-gas or all-electric builder either for a particular subdivision or in general.

16. Promotional literature offering energy-efficient mortgage discounts shall explain that the structures financed under the program need not be all-electric or all-gas.

17. Duke's proposed Food Service Program should be modified to include a definition of qualifying equipment and of conventional equipment, and is subject to approval in accordance with the guidelines adopted herein.

DISCUSSION OF FINDINGS OF FACT AND CONCLUSIONS NOS. 1 THROUGH 10

CP&L, Duke, Nantahala, N.C. Power, NCNG, P&S, Public Service, and Piedmont are duly organized public utilities operating under the laws of the State of North Carolina and subject to the jurisdiction of the North Carolina Utilities Commission.

The North Carolina General Statutes give the Commission the general power and authority to supervise and control the public utilities of the state, as may be necessary to carry out the laws providing for their regulation, and they give the Commission such other powers and duties as may be necessary or incident to the proper discharge of its duties. Additionally, the North Carolina General Statutes enable the Commission to exercise "full power and authority to administer and enforce the provisions of this Chapter, and to make and enforce reasonable and necessary rules and regulations to that end."

The general statutes of North Carolina require in G.S. § 62-140(c) that no utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility's service, except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approval thereof by the Commission.

In these dockets, the Commission conducted hearings to consider the effect of electric integrated resource planning (IRP) and demand side management (DSM) programs on the competition between electric and natural gas utilities. The Commission also conducted hearings to consider what standards should be applied to Duke's proposed Food Service Program.

Decisions Required

Some of the issues before the Commission in the above captioned dockets are those set forth in the Order of February 24, 1994, and expanded in the Order of July 13, 1994. They can be re-stated as follows:

(1) What specific DSM programs and what specific features of a given DSM program constitute unfair competition between electric utilities and natural gas utilities, and why?

(2) Do incentive payments to developers to build all-electric or all-gas homes advance the goals of energy efficiency, and why?

(3) If a DSM program is found to promote energy efficiency, what additional criteria (if any) should the Commission consider in deciding whether to approve the program?

(4) Are advertising costs for promoting DSM programs reasonable in light of the anticipated economic benefits of the respective DSM programs, and why?

In addition, the Order of February 24, 1994, required specific information as a supplement to issue (4) above, as follows:

> Describe the nature and list the amount of advertising, including comparative advertising, which has been deferred pursuant to a DSM cost deferral stipulation with the Public Staff, or which a company is booking as a DSM expense.

Furthermore, the Memorandum of Understanding (MOU) filed in the above captioned dockets and in Docket No. M-100, Sub 124, on March 14, 1995, describes procedural and substantive aspects of the dispute between electric and gas utilities.

As stated in the MOU, the procedural aspects of the dispute center upon the types of incentives that qualify as "compensation" or "consideration" pursuant to G.S. § 62-140(c) and that cannot be offered by a utility without first obtaining approval by the Commission. These procedural aspects are to be resolved in Docket No. M-100, Sub 124, by the adoption of a rule interpreting G.S. § 62-140(c).

As stated in the MOU, the substantive aspects of the dispute relate to what a utility must demonstrate in order to obtain Commission approval of a program involving incentives subject to G.S. § 62-140(c) and whether the program should be paid for by the utility's ratepayers or by its shareholders. These substantive aspects are to be resolved herein.

Discussion

The Commission's Orders of February 24 and July 13, 1994, herein requested the parties to discuss: **(1) WHAT SPECIFIC DSM PROGRAMS AND/OR WHAT SPECIFIC FEATURES OF A GIVEN DSM PROGRAM CONSTITUTE UNFAIR COMPETITION BETWEEN ELECTRIC UTILITIES AND NATURAL GAS UTILITIES AND WHY?**

In general, comments by various gas utilities in this proceeding specified the following electric DSM programs to constitute unfair competition:

(a) Duke's Max Value Home Builder program provides incentive "products and services" to builders or developers who construct either 10 Max Value houses in any one phase of construction or a total of 30 Max Value houses on the Duke system. Max Value houses are energy efficient and are generally not permitted to contain any gas appliances.

- Piedmont contends the tariff contains no limit on the amount of "products and services" that can be offered by Duke, nor does it specify what "products and services" will be offered to a particular builder.

(b) Duke's Residential/Commercial High Efficiency Heat Pump and Air Conditioning program provides incentive payments to builders or HVAC contractors who install energy efficient electric heat pumps and air conditioning.

(c) Duke's Commercial/Industrial High Efficiency Chiller program provides for incentive payments to builders or owners who install energy efficient electric chillers for large air conditioning systems.

(d) Duke's Commercial/Industrial High Efficiency Heat Pump program provides for incentive "services and payments" to commercial builders who agree to install at least 10 new energy efficient heat pumps per structure or group of structures.

- Piedmont contends that the form and amount of "services and payments" available to any builder is not specified, and that the total limit of incentives is based on "an amount determined to be cost effective in Duke's IRP process."

(e) Duke's Nonresidential Cool Storage Pilot Project provides for incentive payments to owners in the amount of $200 per kW demand shifted to off-peak by installation of a cool storage system.

(f) Duke's Food Service program provides for incentive "services and payments" to contractors or owners who install energy efficient electric food preparation equipment in commercial kitchens.

- Piedmont contends that the form and amount of "services and payments" available under the program is not specified, and that the total limit of incentives is based on "an amount determined to be cost effective in Duke's IRP process."

(g) CP&L's Common Sense Home program provides for incentives in much the same way as Duke's Max Value Home Builder program.

- NCNG contends that incentives are paid for efficient heat pumps only if electricity is also used for unrelated appliances, such as water heaters, regardless of the efficiency of the water heater or of the impact of the program on CP&L's peak load.

(h) General. The gas utilities' objections to the programs listed above are based on: (1) giving incentives to customers to influence the customers' choice of fuel; (2) giving incentives to third parties who are not end users of the fuel but who still influence the customers' choice of fuel; (3) excluding gas from structures as a condition for receiving incentives; and (4) building electric load at the expense of natural gas load.

- Some gas utilities cite three of Duke's programs (the Max Value program, the C/I Heat Pump program and the Food Service program) as strategic sales programs designed solely to build electric load at the expense of natural gas.

- Some gas utilities object to characterizing those strategic sales programs as DSM programs because, they contend, the programs do not promote conservation of energy.

- Some gas utilities point out that all of the programs listed above promote equipment that will be operating during the summer peak months and will increase the sponsoring utility's peak load.

Since it appears that each program listed above involves an incentive per G.S. § 62-140(c), the Commission is of the opinion that the dispute regarding each program is resolved by establishing the guidelines adopted by the Commission elsewhere herein.

Piedmont also objected to Duke's "misleading" advertising related to the Energy Efficient Mortgage program, Duke's showcase/model home incentive practices, and Duke's "past behavior" related to excluding gas from structures as a condition for waiving underground wiring charges. The advertising expenses involved in the Energy Efficient Mortgage program and the expenses involved in the showcase/model homes programs are addressed in the discussion of the guidelines adopted herein and in Docket No. M-100, Sub 124. Any "past behavior" regarding underground wiring charges is not addressed herein, and will not be considered absent a specific complaint filed by Piedmont.

The Commission's Orders of February 24 and July 13, 1994, herein requested the parties to discuss: **(2) DO INCENTIVE PAYMENTS TO DEVELOPERS TO BUILD ALL-ELECTRIC OR ALL-GAS HOMES ADVANCE THE GOALS OF ENERGY EFFICIENCY?**

In general, the Commission is of the opinion that incentives to developers to build all-electric or all-gas homes should be evaluated in accordance with the guidelines adopted by the Commission herein for programs that are subject to G.S. § 62-140(c). Energy Efficiency will be a part of the guidelines adopted herein for evaluating programs subject to G.S. § 62-140(c). However, any discussion of issue (2) above must include a discussion of the meaning of "energy efficiency", or more precisely, energy efficiency for whom?

The gas utilities generally contend that electric utility programs designed to add "strategic load" and "gain market share" (such as the all-electric homes programs) are not justified by energy efficiency even if they reduce the average price per kWh paid by electric ratepayers, because they increase the average price per therm paid by gas ratepayers. Electric utilities contend that such

programs result in additional kWh sales over which to spread the fixed costs of electricity production, thereby reducing the unit cost per kWh to electric ratepayers. Nevertheless, the gas utilities contend that such programs also result in reduced decatherm sales over which to spread the fixed costs of gas service, thereby increasing the unit cost per therm to gas ratepayers.

The gas utilities generally contend that the Commission should look at the energy efficiency of electric and natural gas fuels, and determine which fuel type can most efficiently serve a prospective customer's new load or end use. Some gas utilities contend that the purpose of the IRP process by electric utilities is to provide least cost energy to customers. They contend that the role of DSM programs in the IRP process should be to promote efficient usage and conservation of energy. The electric utilities respond that the purpose of the IRP process by electric utilities is to provide least cost electricity to customers, and that the role of DSM programs is to promote efficient usage (not necessarily conservation) of electricity.

The gas utilities generally argue that gas energy is more efficient than electric energy for space heating and for water heating; so programs that encourage electricity sales at the expense of gas sales for those purposes are not energy efficient.

The electric utilities cite combinations of space heating and air conditioning which they contend can be served more efficiently by electric heat pumps than by separate gas furnaces and electric air conditioners. They cite the cost of electric water heaters plus electric time-of-use rates which they contend are comparable to the cost of natural gas water heaters plus natural gas rates. They also point out that all-electric homes programs encourage greater use of insulation and other conservation measures by builders and homeowners that would not occur in the absence of the programs, and contend that such conservation measures should be taken into account in looking at the energy efficiency of electric and gas fuels.

The electric utilities contend that energy efficiency should be looked at from the standpoint of electric energy efficiency alone and/or gas energy efficiency alone; and that the choice of fuel should be left to the marketplace where efficiency, price, convenience, safety, and all other factors can play their part. The gas utilities respond that such an approach will result in destructive competition, with electric utilities able to gain market dominance thru their "deeper pockets" (i.e., ability to offer incentives).

The Commission concludes that it should not attempt to resolve the matter of the relative efficiency of electricity versus natural gas herein. The Commission does not have the necessary information in the record of these dockets (or in any other dockets at this time) to determine whether or not electricity or gas is the most efficient fuel to use under various scenarios (space heating alone, space heating plus A/C, space heating plus A/C plus water heating, etc.). It is not clear that the Commission should even attempt to resolve such issue, absent a mandate from the General Assembly.

The Commission concludes that a better approach at this time would be to determine the acceptability of incentive programs herein based on the energy efficiency of electricity alone or of natural gas alone, as applicable.

The Commission's Orders of February 24 and July 13, 1994, herein requested the parties to discuss: **(3) IF A DSM PROGRAM IS FOUND TO PROMOTE ENERGY EFFICIENCY, WHAT ADDITIONAL CRITERIA (IF ANY) SHOULD THE COMMISSION CONSIDER IN DECIDING WHETHER TO APPROVE THE PROGRAM?**

(a) Energy Efficiency. Consistent with the discussion of issue (2) herein, a major consideration in dealing with issue (3) above centers on the meaning of "energy efficiency", and more specifically, energy efficiency for whom? The discussion of energy efficiency under issue (2) would also be applicable here. For issue (3) above, the most obvious question arising out of the discussion of energy efficiency for whom is:

> Should the criteria for approval of an electric DSM program include its impact on the sales of a competitor fuel, and more specifically, on the sales of natural gas?

The Commission concludes that, consistent with the previous discussion under issue (2) herein, the criteria should not include consideration of the impact of electric DSM programs on natural gas sales at this time, or vice versa. Excluding the impact of an electric DSM program on the sales of natural gas as a criteria for approval would also be consistent with the Commission's orders in docket No. E-100, Sub 73, establishing guidelines for self-generation deferral rates and for economic incentive rates. The order of July 21, 1994, specifically omitted from the guidelines any statement prohibiting such incentive rates from being used to gain a customer's natural gas load, citing the opinion that the guidelines should not favor one form of energy over another.

(b) Incentives. Another fundamental question arising under issue (3) above is:

> Should incentives be allowed at all for influencing fuel choice?

Not even the gas utilities are in agreement on this question, even though some gas utilities are the primary opponents of such incentives. The electric utilities and the Public Staff support incentives where they are demonstrated to be cost-effective for the ratepayers.

CP&L pointed out in its comments that neither Public Service nor the electric utilities objected to incentive programs encouraging all-electric (or all-gas) homes, nor did they support Commission involvement in customer fuel choice. CP&L also emphasized that cost-effective measures to improve load factor (i.e., to increase winter sales) are legitimate goals for electric utilities and that cost-effective incentive programs are legitimate means of achieving those goals. CP&L contended that incentives play an important role in the market place, and that many, if not all, products/services have been promoted through some kind of incentive at one time or another.

Duke contended in its comments that G.S. § 62-140(c) does not prohibit cost-effective promotion of a utility's product or services, nor should it be construed to prohibit competition. Duke pointed out that the statute simply requires the Commission to consider evidence of consideration or compensation paid by any competitor. N.C. Power contended in its comments that the proposed MOU addresses the concerns of NCNG and Piedmont by placing limitations on electric incentive programs.

The Commission is of the opinion that the issue regarding whether or not incentives should be allowed at all for influencing fuel choice is addressed by the adoption of guidelines herein.

(c) Piedmont Proposal. Piedmont proposed that the Commission apply four tests in deciding whether or not to approve a program pursuant to G.S. § 62-140(c) as follows:

(a) The program should promote conservation of the sponsoring utility's fuel without discriminating against competing fuels;

(b) The program should not penalize or prohibit the use of competing fuels;

(c) The program should not provide direct cash incentives to builders, contractors or homeowners for use of one fuel over another; and

(d) The program should not provide products or services whose value exceeds the cost of installing higher efficiency equipment over conventional equipment.

Piedmont contended that the Commission should not permit promotional programs involving incentives that exceed the cost of installing higher efficiency equipment than required by various standards. Piedmont also contended that the Commission should not permit promotional programs that are "unlawful" or " anti-competitive." And finally, Piedmont contended that the Commission should stop the electric utilities from trying to "buy the market."

(d) NCNG Proposal. NCNG proposed that the Commission consider the following in deciding whether or not to approve a program pursuant to G.S. § 62-140(c):

(a) The program should not promote one utility's energy source over another;

(b) The program should not constitute "unfair competition" between utilities;

(c) The program should promote energy efficiency from the customers perspective;

(d) The program should be cost effective for ratepayers; and

(e) The program should not add to peak load and/or should offset the need for additional generating facilities (in the case of electric utilities).

NCNG contended that incentive programs requiring all-electric equipment are destructive competition, forcing competitors to match the programs until neither utility is ultimately better off. NCNG also contended that Commission allowance of all-electric incentive programs amounts to the Commission choosing electric energy over gas, and is a form of "central planning" by the Commission.

(e) The Memorandum of Understanding. The electric utilities and one gas utility (Public Service) filed a memorandum of understanding containing guidelines for approval of programs pursuant to G.S. § 62-140(c) plus several other matters in contention between the electric and gas utilities. The MOU is addressed separately herein.

(f) General. In general, the Commission assumes for purposes of this proceeding that a given DSM program covered by issue (3) above requires approval by the Commission: (a) because it involves an incentive per G.S. § 62-140(c); or (b) because it is to be paid for by the ratepayers.

The Commission is of the opinion that DSM programs covered by issue (3) above involving incentives per G.S. § 62-140(c) should be evaluated in accordance with the guidelines adopted by the Commission herein.

The Commission is also of the opinion that electric or gas DSM programs covered by issue (3) above that do not involve incentives but are to be paid for by ratepayers should be evaluated in accordance with criteria typically used by the Commission in previous general rate cases or similar cases, as appropriate.

The Commission has already concluded that the criteria for evaluating DSM programs should not include consideration of the impact of such programs on the sales of a competitor fuel; and it has also concluded that incentive programs should be evaluated based on the energy efficiency of electricity alone, or of gas alone, as applicable. These conclusions should sufficiently address the proposals by Piedmont and NCNG described above except where they are addressed by the guidelines adopted herein.

The Commission's Orders of February 24 and July 13, 1994, herein requested the parties to discuss: **(4) ARE ADVERTISING COSTS FOR PROMOTING DSM PROGRAMS REASONABLE IN LIGHT OF THE ANTICIPATED ECONOMIC BENEFITS OF THE DSM PROGRAMS?**

The comments by the Public Staff urged the Commission to include showcase/model homes expenditures in the definition of "consideration" pursuant to G.S. § 62-140(c). The Public Staff Brief stated that it "cannot understand how any utility concluded these incentives were not covered by the statute." The Public Staff also urged that costs of promotional advertising be excluded from rates.

Public Service pointed out in its comments that NCUC Rules R12-12 and R12-13 already disallow recovery of the costs of promotional advertising from ratepayers, and contended that there has not been sufficient explanation from the Public Staff as to why the existing rules are not adequate or why additional rules are required to govern advertising.

The comments by NCNG urged the Commission to require that utility advertisements comparing the economics of electricity versus gas be filed with the Commission along with workpapers supporting the basis for the economic comparisons used.

The Commission is of the opinion that the reasonableness of the level of advertising costs in issue (4) above would be better determined on a case by case basis in general rate cases or similar proceedings. The Commission has traditionally handled promotional advertising and similar matters in general rate cases, and it is not clear from the comments by the parties why such issue should be decided in this docket. It is also unclear why the related issue of whether or not such costs should be recovered from ratepayers or from shareholders should be decided in this docket instead of in general rate cases as the Commission has done in the past.

The Commission is further of the opinion that the issue of whether or not promotional advertising or the cost of showcase/model homes are subject to G.S. § 62-140(c) would best be decided in Docket No. M-100, Sub 124, where it has been recommended by the Public Staff that they be included as a part of the definition of "consideration."

Finally, the Commission concludes that it should not seek to regulate the details of advertising content (other than whether or not such advertising is promotional in character). NCNG's request that advertising related workpapers be filed with the Commission would appear to be more compatible with a Commission intent to regulate the details of advertising content. A better approach would be for the parties to seek relief in advertising disputes either from the courts or in formal complaint proceedings before the Commission that deal with specific issues on a case-by-case basis.

MISCELLANEOUS ISSUES

Deferred Accounts for DSM Programs

The Public Staff contended that the electric utilities no longer need to defer DSM expenses in their deferred accounts. It pointed out that it initially supported establishment of the deferred accounts as a means to give a "jump start" to DSM programs. It now believes that the deferred accounts have had enough time to accomplish whatever they could, and that whether or how well the "jump start" worked is debatable.

The Public Staff also contended that the rate impact measure (RIM) test seems to drive almost every DSM program now, and that such emphasis on the RIM test reduces the need to defer costs. It contended that when programs pass the RIM test, there are no revenue losses that have to be recovered from ratepayers. The Public Staff recommended that the Commission order the electric utilities to cease deferring DSM expenses to a deferred account.

CUCA supported the Public Staff proposal to terminate the existing DSM deferred accounts. CUCA pointed out that it was virtually alone in opposing such deferred accounts at the time they were approved in 1991 and 1992.

Duke responded that although the issue was raised in this docket, no in-depth investigation of the deferral account was made and the evidence offered at the hearing was insufficient to warrant reconsideration of the deferred accounts. Duke pointed out that the deferred account was based partly on its stipulation with the Public Staff that Duke should expand its DSM efforts, and that if Duke did so, it could defer expenses associated with expanding the DSM programs. Duke subsequently did expand its DSM programs, and it did defer associated expenses. Duke also pointed

out that approximately 80 percent of its deferred expenses in 1994 were spent on interruptible service programs that were not disputed in this proceeding. Duke recommended that whether or not deferral accounts should be discontinued is best decided in Duke's next general rate case. The Commission notes that the Public Staff raised this issue in the current IRP proceedings in Docket No. E-100, Sub 75. The Commission is of the opinion that it should defer any decision on the issue until it completes consideration of the IRPs in Docket No. E-100, Sub 75.

Docket No. G-5, Sub 327 - Public Service Rate Case.

The Public Staff recommended that the Commission reexamine its language in the last Public Service rate case order (Docket No. G-5, Sub 327) and "disapprove" such language to the extent it allows the cost of promotional advertising to be charged to ratepayers. The Public Staff pointed out that a Commission panel allowed promotional advertising costs to be charged to the ratepayers of Public Service in that proceeding; that the Public Staff filed exceptions to the order; and that the Public Staff did not appeal the order because the overall level of rates was reasonable.

Public Service responded that the Commission should not reopen the rate case, if that is what the Public Staff is recommending. Public Service pointed out that if the Public Staff is simply recommending a prospective rule disallowing promotional advertising costs in rates, such a rule already exists in NCUC Rules R12-12 and R12-13. Public Service contended that there has not been sufficient evidence in this proceeding to conclude that the existing rules are not adequate or why an additional rule is required. The Commission agrees.

DISCUSSION OF FINDINGS OF FACT AND CONCLUSIONS NOS. 11 THROUGH 17

Memorandum of Understanding

On March 14, 1995, CP&L, Duke, N.C. Power, Nantahala, and Public Service filed a joint Memorandum of Understanding (MOU), which they characterized as a framework for the Commission to resolve the issues presented herein. The MOU contained proposed guidelines describing what a utility must demonstrate in order to obtain Commission approval of a program involving incentives subject to G.S. § 62-140(c).

The Commission is of the opinion that the proposed guidelines should be re-stated herein for discussion purposes in order to clarify the Commission's understanding of the details contained therein.

The guidelines contained in the MOU filed herein on March 14, 1995, can be re-stated as follows:

1. To obtain Commission approval of a residential or commercial program involving incentives per Rule R1-38, the sponsoring utility must demonstrate that the program is cost effective.

- Maximum incentive payments to any party must be capable of being determined from an examination of the applicable program.

- Programs previously approved by the Commission shall be subject to this guideline as well as programs not yet approved. (Utilities shall file a listing of existing programs subject to these guidelines, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all within 60 days after approval of the MOU).

- Utilities shall file a description of any new program or of a change in an existing program, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all at least 30 days prior to changing or introducing the program.

2. If a program involves an incentive paid to a "third party" and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.

- If the presumption that a program is promotional is not successfully rebutted, the cost of the incentive shall not be recoverable from the ratepayers.

- If the presumption that a program is promotional is successfully rebutted, the cost of the incentive shall be recoverable from the ratepayers. The amount of recovery is limited to the difference between the cost of installing equipment and/or constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.

- The presumption that a program is promotional may be rebutted at the time it is filed for approval by demonstrating that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes and appliance standards.

3. If a program involves an incentive paid to a third party builder (residential or commercial), the builder shall receive the incentive on a per structure basis without having to agree to: (a) a minimum number or percentage of all-gas or all-electric structures to be built in a given subdivision development or in total; or (b) the type of any given structure (gas or electric) to be built in a given subdivision development.

- Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.

- A builder shall be advised of other options, where available, whenever the builder does not qualify or does not want an all-electric or all-gas incentive program.

- A builder receiving incentives shall not be required to advertise that the builder is exclusively an all-gas or all-electric builder for either a particular subdivision or in general.

4. The promotional literature for any program offering energy-efficiency mortgage discounts shall explain that the structures financed under the program need not be all-electric or all-gas.

5. Expenditures for showcase/model homes are advertising and not subject to G.S. § 62-140(c), to the extent such advertising is reasonable considering the size of the market to be reached by the promotion and the anticipated number of potential buyers.

- Advertising under this guideline number 5 shall not be used to circumvent the provisions of guideline number 3.

6. Duke's proposed Food Service Program shall be modified to include a definition of qualifying equipment and of conventional equipment, and is subject to approval in accordance with guideline number 1 of this agreement.

- The nature or amount of incentive contained in each program encouraging the installation of commercial appliances (electric or gas) that use the sponsoring utility's energy product, such as Duke's Food Service Program, shall be unaffected by the availability or use of alternate fuels in the applicable customer's facility.

- Commercial clients (builders, customers, etc.) who are offered incentives for installation of appliances shall be advised of other options, where available, whenever the client does not qualify or does not want an all-electric or all-gas incentive program.

- Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.

7. Rates, rate design issues, and terms and conditions of service approved by the Commission are not subject to these guidelines or stipulations.

8. The parties to this MOU will file a report in this docket 24 months after approval of the MOU that recommends eliminating, amending, or extending the guidelines.

Comments By the Parties

(a) Public Service

Public Service stated in its comments that the MOU represents a proposed resolution of the issues in this docket, not a "settlement". It is a compromise that permits both electric and gas utilities to offer all-electric and all-gas structures, respectively, while placing limits on their abilities to do so. It requires the filing and approval of all incentive plans, as recommended by CUCA. It limits the amount of incentive, or "consideration," paid to the difference between the costs of constructing a structure to meet existing federal/state energy efficiency standards and the more stringent standards set forth in the sponsoring utility's program, as recommended by SELC.

The MOU prohibits utilities from requiring builders to construct a specified number of all-electric or all-gas structures within a given subdivision, or in total, as a condition for receiving the all-electric or all-gas program incentive. If the builder does not want to build an all-electric or all-gas structure, the MOU permits the builder to still receive part of the incentives available under a given program (in proportion to the incentives available under the program for the complete package) in return for partial compliance with the program.

The MOU requires that the utility advise builders of options other than all-electric or all-gas programs where such options are available. Public Service interprets this to mean that the utility must advise builders in areas where alternatives are available or may be available by means of a simple extension of a line, whether gas or electric. The MOU also excludes the cost of promotional programs from rates unless the programs are demonstrated to be cost effective.

(b) Piedmont

Piedmont contended that the MOU is simply a statement of the position of the four electric utilities in this proceeding that was joined in by Public Service because it gave Public Service what it wanted - the exclusion of promotional expenses from rates - in return for Public Service not opposing electric utility promotional programs. The MOU should not be used as a basis for resolving these proceedings.

The MOU does not address the unfair and anticompetitive actions of the electric utilities regarding DSM programs. In paragraph 1 of the guidelines, "cost effectiveness" is not defined, and only requires that the maximum incentive be disclosed. The paragraph places no limit on the maximum incentive, and it does not apply to non-monetary incentives.

In paragraph 2, incentives will continue to be recoverable in rates because the electric utilities contend that their DSM programs have the effect of encouraging construction of homes that are more energy efficient than required by state/federal standards. Therefore the paragraph is meaningless.

Furthermore, the provision in paragraph 2 that would preclude recovery of promotional expenses in rates is unlawful. While signatories of the MOU may waive their right to seek recovery of promotional expanses in rates, they cannot waive the other LDCs' rights to do so.

Paragraph 3 changes very little, because it still allows incentives for constructing all-electric homes that exclude use of gas. Paragraph 5 fails to place any limits on the amount of payments or services that can be provided under showcase/model homes programs.

Paragraph 6 fails to specify definitions of "qualifying" equipment and "conventional" equipment (it only requires Duke to specify such definitions), and it reiterates that the all-electric structures programs can continue. In sum, the guidelines fail to: (1) prohibit incentives to customers and third parties that influence fuel choice; (2) prohibit excluding gas from structures as a condition for receiving incentives; or (3) prohibit strategic sales programs that build electric load at the expense of gas sales.

(c) NCNG

NCNG contended that the electric utilities are using their incentive programs to exclude competition and gain market share, rather than to reduce load through energy conservation or to market their product in ways acceptable under free competition. NCNG was prepared to compromise with the electric utilities regarding the MOU, but allowing the all-electric homes programs to continue was unacceptable.

Paragraph 2 of the guidelines will give automatic rate recovery of incentive programs to the electric utilities, since they assert that their programs make structures, at least in part, more efficient than the building code requirements.

Paragraph 3 gives a false impression of even-handedness when it refers to all-electric and all-gas structures. There are no all-gas structures; electricity could never be excluded from a home in the manner that all-electric homes programs exclude gas.

Paragraph 6 provides that incentives in Duke's Food Service program will not be tied to the fuel used in another appliance on the customer's premises. Then the sentence allowing all-electric programs is added, rendering the previous sentence meaningless. NCNG assumes that Duke will tie incentives on one appliance to the type of energy used in another appliance in a commercial business as a result of the all-electric provision of paragraph 6.

(d) CP&L

CP&L contended that if electric utilities are prohibited from offering incentive programs that are cost-effective for electric ratepayers, the electric IRP process will be undermined. It is also important to recognize that the electric IRP rules are not concerned with the impact of IRP programs on the sales of other types of energy; the rules are only concerned with the cost-effective provision of electricity. In any event electric IRP programs do not unreasonably impact gas sales, as demonstrated by the fact that gas still retains the lion's share of the home heating market where gas is available.

Excluding non-electric appliances from the all-electric homes program increases a customer's use of electricity and thereby increases the incentive a customer has to utilize time-of-use rates. It also improves the utility load factor and thereby reduces the rates to ratepayers.

(e) Duke and N.C. Power

Both utilities pointed out that "packages" of incentive programs are often cost-effective even where each of the component parts of the package are not. The total cost of a given program includes the cost of advertising and promotion. A given program may not be large enough to remain cost-effective when it must be promoted by itself; but if it is combined in a package with other similar programs in order to share the cost of promotion, then the given program becomes cost-effective. The value of a "package" of promotional programs is not necessarily limited to the sum of the values of each component program in the package.

(f) Public Staff

The Public Staff recommended that the Commission should not make rulings on ratemaking issues in this docket, (such as those referred to in paragraphs 2 and 5 of the guidelines), except for a ruling that promotional programs should be charged to shareholders instead of ratepayers.

For example, the provision in paragraph 2 allowing the cost of incentives to be recovered from ratepayers if such incentives will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state/federal standards is contrary to the Public Staff position that an incentive should be no greater than necessary to induce the desired action. To the extent that the guidelines allow a utility to offer an incentive at a certain level without first determining whether a smaller incentive will suffice, such feature of the guidelines should be rejected.

The exclusion of expenditures for showcase/model homes programs from G.S. § 62-140(c) in paragraph 5 of the guidelines is inappropriate and unlawful. The Public Staff cited instances where promotional advertising costs were excluded from rates in previous general rate cases, and recommended that the practice be continued.

In discussing how to identify a promotional program or a promotional aspect of a program, the Public Staff objected to identifying all strategic sales programs as promotional because some strategic sales programs do not compete with gas (security lighting, for example). The Public Staff objected to identifying any program in which an incentive is paid to a third party rather than to the end user as promotional because the definition is too broad. It would include trade show payments (which the Public Staff agrees are promotional), but it would also include payments to builders to offset the difference in cost of a standard heating unit (gas or electric) versus a higher efficiency heating unit.

The Public Staff also objected to identifying any program involving an end use "subject to" fuel switching as promotional because it would include many conservation/load management programs which are cost-effective and beneficial to ratepayers.

The Public Staff favored identifying any program which "encourages" fuel switching as promotional. Furthermore, the Public Staff favored a rebuttable presumption that a program involving an end use "subject to" fuel switching is promotional in order to place the burden of proof on the sponsoring utility as to whether or not such a program "encourages" fuel switching.

The Public Staff is concerned that the language in paragraph 6 of the guidelines relating to Duke's Food Service Program might be interpreted to mean that the effect of such an incentive program should be considered in isolation, and that the Commission cannot consider how such program might affect other customers and other utilities.

The Public Staff contended that Duke's Food Service program is largely promotional, contrary to the Public Staff's earlier belief. It increases electricity usage, particularly at peak hours, by seeking to encourage conversions from existing gas to electric equipment. The program should be approved; provided it is charged to shareholders instead of ratepayers, and provided the Commission sets up a mechanism to monitor the effect of the program on Duke's peak loads and on the gas company revenues.

The Public Staff recommended that paragraphs 1 and 3 of the guidelines cover industrial programs as well as the residential and commercial programs they are proposed to cover. The Public Staff also pointed out that the lack of precision in terminology contained in the guidelines should be corrected.

(g) CUCA

CUCA contended that the MOU does not address all of the issues raised in this proceeding. In general, competition results in better service at lower cost to customers. Therefore, the Commission should not become involved in competition issues except to prevent "unfair or destructive competitive practices." The Commission should center its efforts upon preventing ratepayers from subsidizing the competitive efforts of the utilities.

In order to prevent ratepayer subsidization of competitive programs, the Commission should not allow promotional programs to be charged to ratepayers. However, contrary to recommendations by the Public Staff, the test for whether a program is promotional or not should not be whether it "encourages fuel switching." A program may encourage fuel-switching and still not be charged to the ratepayers; such a program should be allowed.

Cost-effectiveness in paragraph 1 of the guidelines is not defined. Some parties still advocate use of the Total Resource Cost (TRC) test for cost-effectiveness, under which a program can still increase a customer's rates and also pass the TRC test. The Commission should ensure that a program passes the Rate Impact Measure (RIM) test for cost-effectiveness in order to ensure that any given customer's rates do not increase as a result of the program.

The Commission should also prohibit promotional programs that are not available to all similarly-situated customers, and it should limit recovery of the cost of approval of promotional programs to the customer class to which such programs are available.

(h) SELC

The SELC contended that the Commission should reject the Public Staff recommendation that costs of DSM programs no longer be deferred. Support for ratepayer funded efficiency programs should be re-affirmed. The Commission should not rely solely on the RIM test for cost-effectiveness.

However, ratepayer funding of load management programs (as contrasted to "efficiency" programs) should be eliminated. The vast majority of dollars in the deferred account for DSM programs represent interruptible - rather than true efficiency-programs.

The Commission should consider the impact of a utility program on the sponsoring utility, competing utilities and the environment. It is a fallacy to consider only the impact on the sponsoring utility.

Discussion

All-Electric and All-Gas Homes

Duke witness Gibson testified that high-efficiency all-electric homes reduce summer electricity demand and can defer new generating resources and enable the utility to operate its generating system more efficiently. He explained that some incentives are designed to reduce the cost differential between options; for example, the cost difference between purchasing air conditioning with higher efficiency ratings, or the cost difference between levels of insulation.

CP&L and Duke witness Spann testified that incentives to influence consumer behavior are an important part of a utility DSM program. He said that as the electric and gas business continues to become more competitive, these businesses will, of necessity, adopt marketing and pricing strategies that resemble market-driven industries. He said incentives are often used by competitive firms as a means of calling attention to products and/or product introductions.

CP&L witness Williams testified that "offering incentives for the construction of energy-efficient all-electric homes promotes overall energy efficiency by encouraging the construction of homes with higher thermal integrity and energy-efficient HVAC systems." He testified that these energy-efficient homes require "less energy for heating and cooling; impose a lower peak demand on the electric utility, thus helping defer the need for additional generating capacity; and improve the utilization of electric facilities, all of which contribute to an improvement in energy efficiency and overall lower cost of electricity." Witness Williams also testified that CP&L offers incentives "not as a long-term solution, but rather as a short-term effort to gain market acceptance of higher efficiency equipment until consumers can be educated to the point of demanding energy-efficient construction."

N.C. Power witness Doswell testified that all-electric homes "feature greatly increased efficiencies in heating and cooling equipment from those prevalent in the existing residential market, as well as markedly increased thermal standards," and that "since the builder is the market point of entry (influencer), none of these efficiencies will materialize if builders and other trade allies do not participate in the program. Oftentimes, incentives are necessary to insure such participation." She testified that the promotion of natural gas by developers will advance the goals of energy efficiency if the program addresses "all applicable supporting thermal efficiencies, as well as applicable equipment efficiencies focused primarily on gas equipment."

Piedmont witness Warfield argued that "the Commission should prohibit electric and gas utilities from offering direct incentives to developers, builders, heating contractors, and other energy decision-makers to promote the use of natural gas or electricity." Piedmont Witness Warfield argued that "gas is a more efficient fuel than electricity. Since this efficiency tends to be reflected in the price of gas (versus the price of electricity), there should be no need to offer incentives to energy decision-makers to promote the use of gas."

NCNG witness Teele argued that, given "the extensive promotional program of electric utilities and the apparent confusion created by claims of low-cost, efficient electric heat pumps and water heaters compared to natural gas appliances, incentives by gas utilities to offset the electric promotional programs may be necessary." Witness Teele argued that "the space heating market is the natural gas utilities' single largest residential and commercial load, and without that particular load the gas companies would probably not receive enough revenue to make residential service economically feasible, ever."

P&S witness Noone argued that "any incentive that pertains to the thermal envelope and well-designed ventilation requirements is fuel neutral and, we feel, is a policy that benefits all concerned." Witness Noone continued: "The use of natural gas for its inherent thermal characteristics is also more efficient, especially when energy trajectory efficiencies are considered." Witness Noone concluded that natural gas cooling programs should be evaluated on the basis of "how well they help fill valleys in natural gas thruput and reduce peak demand for the electric utilities."

The Commission finds that incentives to developers to build all-electric homes or to promote the use of natural gas advance the goals of energy efficiency and help reduce peak demand by promoting efficient utilization of energy through the use of end user equipment which exceeds federal and state efficiency standards and through the more efficient, year-round use of utility equipment. Before offering such incentives, however, the utility must demonstrate that the incentives are cost-effective for its customers in order to obtain Commission approval.

Commission Guidelines

The Commission concludes that it should adopt guidelines herein to govern certain aspects of the disputes between the electric utilities and the natural gas utilities in this proceeding. The Commission further concludes that the guidelines proposed in the Memorandum of Understanding filed herein are an appropriate starting point, with certain modifications described below.

(a) Paragraph 1. The Commission is of the opinion that more discussion on the record is needed before paragraph 1 can include industrial programs in addition to residential and commercial programs as recommended by the Public Staff. Industrial programs would involve self-generation deferral rates, economic development rates, etc., which were addressed in a separate docket and involved a significant amount of discussion in their own right.

The Commission is of the opinion that the "cost-effectiveness" requirement in paragraph 1 already addresses concerns by Piedmont about limitations on the amount of incentives.

The Commission also is of the opinion that the guidelines herein should include elements specifying that: (1) energy efficiency will be evaluated on the basis of electricity alone or natural gas alone, consistent with the discussion of energy efficiency contained herein; and (2) the impact of electric programs on the sales of natural gas, or vice versa, should not be a part of the guidelines, consistent with the discussion of evaluation criteria contained herein.

(b) Paragraph 2. The Commission is of the opinion that the sub-paragraph of paragraph 2 regarding the cost of incentives for promotional programs not being recoverable in rates should be revised by

substituting the word "may" for "shall", and by adding the phrase "unless the Commission finds good cause to do so" at the end of the sub-paragraph in order to give the Commission more flexibility. Such language will also address the concerns by Piedmont that the ban on recovery of promotional expenses is unlawful.

The Commission is of the opinion that the sub-paragraph of paragraph 2 regarding limits on the amount of recovery in rates should be revised by substituting the words "shall not exceed" for the words "is limited to" in order to clarify that the amount of recovery may be up to the amount described, but is not required to be at such upper limit. Such language should also address the concerns by the Public Staff that rulings on ratemaking issues should generally not be made in this proceeding.

The Commission is of the opinion that the sub-paragraph of paragraph 2 describing how a program may be successfully rebutted should be revised by inserting the word "generally" after may", and by inserting the phrase "subject to Commission approval" at the end of the sub-paragraph in order to give the Commission more flexibility in the event this requirement proves too narrow or too broad. It would also allow any interested party to challenge the appropriateness of the requirement when a specific program is seeking approval.

(c) Paragraph 3. The Commission is of the opinion that paragraph 3 should be revised by inserting the words "be advised by the sponsoring utility that the builder may" between the words "shall" and "receive" in order to clarify that the sponsoring utility is expected to inform the builder about the provisions of this paragraph.

The Commission is of the opinion that the sub-paragraph of paragraph 3 regarding a builder being advised of other options should be clarified by inserting the words "by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate" after the word "advised" and by deleting the remainder of the sentence. Such language should adequately clarify that the availability of other options includes areas where alternatives are available or may be available by means of a simple extension of a line, whether electric or gas.

(d) Paragraph 5. The Commission is of the opinion that paragraph 5 should be deleted in view of its finding in Docket No. M-100, Sub 124, that expenditures for showcase/model homes programs are subject to G.S. § 62-140(c).

(e) Paragraph 6. Duke's Food Service Program is a strategic sales program to encourage the installation of "qualifying efficient electric food preparation equipment in commercial kitchens." Duke witness Ernst testified that this program is designed to "make customers aware of efficient food service equipment that is available" and "is part of an effort to help food service facilities use electricity efficiently and remain competitive." He said that the program provides benefits to Duke Power Company and non-participating customers by providing additional revenues over which to spread the utilities' fixed costs. He also said that the increased revenues associated with the program exceed the program costs as demonstrated by the RIM (rate impact measure) test results. He testified that "promotional efforts are sometimes necessary to raise customer awareness of newer, more efficient technologies. Without the increased awareness, customers will likely continue to choose more familiar, but less efficient, equipment."

Piedmont witness Warfield argued that the "food service market remains, as a whole, dedicated to natural gas use" because it is "the preferred fuel because of overall efficiency of natural gas at less cost." In rebuttal testimony, Witness Ernst testified that the food service industry is actually dedicated to "providing quality products at the lowest cost and maximum profit in the very competitive food service market."

Witness Warfield referenced a University of Minnesota study which she alleged showed that natural gas is less costly than electric for several types of equipment. Witness Warfield further contended that the study showed that use of natural gas for food service equipment results in a "more efficient use of natural resources." She requested that the Commission deny Duke's request for approval of the proposed food service program. Duke witness Ernst testified that witness Warfield's testimony is based on "outdated data" and that witness Warfield "picked and chose" data to reach a predetermined result. Witness Ernst stated that the study was conducted in 1982 and that new electric technology makes the twelve-year-old study obsolete.

The Commission is of the opinion that the acceptability of any definitions for "qualifying" equipment and "conventional" equipment proposed by Duke pursuant to paragraph 6 might best be determined after Duke re-files the Food Service program for approval rather than as a part of this decision-making.

The Commission is of the opinion that the sub-paragraph of paragraph 6 regarding a commercial client being advised of other options should be clarified in the same manner as the comparable sub-paragraph under paragraph 3.

The Commission is of the opinion that the sub-paragraph of paragraph 6 regarding electric and gas utilities continuing to promote all-electric and/or all-gas structures is redundant (see paragraph 3) and should be deleted.

(f) Paragraph 8. The Commission is of the opinion that paragraph 8 should be deleted in favor of a similar ordering paragraph in this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the guidelines attached hereto as Appendix "A" are hereby adopted as an appropriate resolution of certain issues regarding incentive programs as described herein.

2. That Duke's Food Service Program shall be re-filed with the Commission for consideration in accordance with the criteria contained in the guidelines adopted herein.

3. That this docket shall remain open for twenty-four (24) months after the date of this Order; and that the parties to this proceeding shall file a report or comments in this docket twenty-four (24) months after the date of this Order that recommend eliminating, amending, or extending the guidelines adopted herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of October, 1995.

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

Commissioner Redman's term expired before decision-making in this docket. Commissioner J. Hunt did not participate.

Appendix A

GUIDELINES FOR RESOLUTION OF ISSUES
REGARDING INCENTIVE PROGRAMS

1. To obtain Commission approval of a residential or commercial program involving incentives per Rule R1-38, the sponsoring utility must demonstrate that the program is cost effective.

(a) Maximum incentive payments to any party must be capable of being determined from an examination of the applicable program.

(b) Existing approved programs are grandfathered. However, utilities shall file a listing of existing approved programs subject to these guidelines, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all within 60 days after approval of these guidelines.

(c) Utilities shall file a description of any new program or of a change in an existing program, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all at least 30 days prior to changing or introducing the program.

(d) The matter of the relative efficiency of electricity versus natural gas under various scenarios (space heating alone, space heating plus A/C, etc.) cannot now be resolved. A better approach at this time would be to determine the acceptability of incentive programs herein based on the energy efficiency of electricity alone or of natural gas alone, as applicable.

(e) The criteria for determining whether or not to approve an electric program pursuant to G.S. § 62-140(c) should not include consideration of the impact of an electric program on the sales of natural gas, or vice versa.

2. If a program involves an incentive paid to a "third party" and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.

(a) If the presumption that a program is promotional is not successfully rebutted, the cost of the incentive may not be recoverable from the ratepayers unless the Commission finds good cause to do so.

(b) If the presumption that a program is promotional is successfully rebutted, the cost of the incentive shall be recoverable from the ratepayers. The amount of recovery shall not exceed the difference between the cost of installing equipment and/or constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.

(c) The presumption that a program is promotional may generally be rebutted at the time it is filed for approval by demonstrating that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes and appliance standards, subject to Commission approval.

3. If a program involves an incentive paid to a third party builder (residential or commercial), the builder shall be advised by the sponsoring utility that the builder may receive the incentive on a per structure basis without having to agree to: (a) a minimum number or percentage of all-gas or all-electric structures to be built in a given subdivision development or in total; or (b) the type of any given structure (gas or electric) to be built in a given subdivision development.

(a) Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.

(b) A builder shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

(c) A builder receiving incentives shall not be required to advertise that the builder is exclusively an all-gas or all-electric builder for either a particular subdivision or in general.

4. The promotional literature for any program offering energy-efficiency mortgage discounts shall explain that the structures financed under the program need not be all-electric or all-gas.

5. Duke's proposed Food Service Program shall be modified to include a definition of qualifying equipment and of conventional equipment, and is subject to approval in accordance with guideline number 1 above.

(a) The nature or amount of incentive contained in each program encouraging the installation of commercial appliances (electric or gas) that use the sponsoring utility's energy product, such as Duke's Food Service Program, shall be unaffected by the availability or use of alternate fuels in the applicable customer's facility.

(b) Commercial clients (builders, customers, etc.) who are offered incentives for installation of appliances shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

6. Rates, rate design issues, and terms and conditions of service approved by the Commission are not subject to these guidelines.

7. Pending applications involving incentive programs are subject ot these guidelines.

DOCKET NO. E-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Consideration of Certain Standards for Electric Utilities Relating to Integrated Resource Planning, Investments in Conservation and Demand-Side Management, and Energy Efficiency Investments in Power Generation and Supply Pursuant to Section 111 of the Energy Policy Act of 1992	)))))))	ORDER PURSUANT TO SECTION 111 OF THE ENERGY POLICY ACT OF 1992

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on March 8, 1994, at 9:30 a.m.

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Charles H. Hughes, Laurence A. Cobb, Judy Hunt and Ralph A. Hunt

APPEARANCES:

For Carolina Power & Light Company:

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

Robert W. Kaylor, Bode, Call and Green, Post Office Box 6338, Raleigh, North Carolina 27628-6338

For Duke Power Company:

William Larry Porter, Deputy General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001

For Nantahala Power & Light Company:

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

For North Carolina Power:

James S. Copenhaver, Senior Regulatory Counsel, North Carolina Power, Post Office Box 26666, Richmond, Virginia 23261

For CIGFUR I and CIGFUR II:

Cathleen M. Plaut, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602

For Southern Environmental Law Center:

Oliver A. Pollard, III, Staff Attorney, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902

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: This proceeding was instituted for the purpose of complying with Section 111 of the Energy Policy Act of 1992 (EPACT) which the President signed into law on October 24, 1992. Section 111 of the EPACT amends Section 111 and other related sections of the Public Utility Regulatory Policies Act of 1978 (PURPA), codified as 16 U.S.C.A. §2621 and other related sections.

Section 111 of EPACT establishes the following new Federal standards:

Integrated resource planning. - Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

Investments in conservation and demand management. - The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand-side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and

efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand-side management measures shall be appropriately monitored and evaluated.

Energy efficiency investments in power generation and supply. - The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment.

16 U.S.C.A. §2621(d)(7), (8) and (9).

The term "integrated resource planning" is defined as a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis. 16 U.S.C.A. §2602(19). The term "system cost" means all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance. 16 U.S.C.A. §2602(20). The term "demand-side management" includes load management techniques. 16 U.S.C.A. §2602(21).

Section 111 of the EPACT further provides that each State regulatory authority, with respect to each electric utility for which it has ratemaking authority, shall consider the above-quoted standards and make a determination whether or not it is appropriate to implement such standards to carry out the purposes of the Chapter. 16 U.S.C.A. §2621(a). The purposes of the Chapter are "to encourage (1) conservation of energy supplied by electric utilities; (2) the optimization of the efficiency of use of facilities and resources by electric utilities; and (3) equitable rates to electric consumers." 16 U.S.C.A. §2611. Consideration of the standards must be made after a public notice and hearing; the determination whether or not to implement the standards must be in writing, based upon findings and upon evidence presented at the hearing, and available to the public. 16 U.S.C.A. §2621(b).

The State regulatory authority may either implement a standard or decline to implement a standard and state in writing the reasons therefore. 16 U.S.C.A. §2621(c). In addition, the State regulatory authority expressly has the authority to adopt, pursuant to State law, a standard or rule that is different from any standard established by Section 111. 16 U.S.C. 2627. The State regulatory authority must complete its consideration and make its determination by October 24, 1995. 16 U.S.C.A. §2622(b)(2).

If a State regulatory authority implements one of the above-quoted standards, the authority shall

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand-side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

16 U.S.C.A. §2621(c)(3).

In undertaking its consideration and in making its determination with respect to these standards, the State regulatory authority may take into account any appropriate prior determination with respect to a standard and the evidence upon which such prior determination was based. 16 U.S.C.A. §2622(a).

In order to implement these provisions of Federal law, the Commission took the following action:

(1) The evidence and Commission orders in the following dockets were incorporated into this docket: Docket No. E-100, Sub 54 - Investigation and Rulemaking Proceeding to Consider Least Cost Integrated Planning; Docket No. E-100, Sub 58 - Analysis and Investigation of Least Cost Integrated Resource Planning in North Carolina--1989/1990; and Docket No. E-100, Sub 64 - Analysis and Investigation of Least Cost Integrated Resource Planning in North Carolina--1992.

(2) The preliminary conclusion was drawn that the evidence and determinations made in the above-cited three dockets provide a sufficient evidentiary basis for determining that the Commission has considered and found it appropriate (to the extent reflected in the Commission Orders) to implement the first two Federal standards (relating to integrated resource planning and investments in conservation and demand management).

(3) Public notice was required and a hearing scheduled for Tuesday, March 8, 1994.

(4) The testimony presented at the hearing was allowed to address only the third federal standard (energy efficiency investments in power generation and supply) and the effect of implementation of the three standards on small demand-side management businesses.

(5) Any party desiring to present additional evidence as to the first two standards (integrated resource planning and investments in conservation and demand management) was required to file a motion for leave to do so explaining why additional evidence, beyond that already incorporated in the record from Docket No. E-100, Subs 54, 58, and 64, was needed.

(6) Briefs and/or proposed orders on all three standards were received at the conclusion of the hearing.

(7) Carolina Power & Light Company (CP&L), Duke Power Company (Duke), Virginia Electric & Power Company d/b/a North Carolina Power (NC Power), and Nantahala Power and Light Company (Nantahala) were made parties of record.

On December 29, 1993, Piedmont Natural Gas Company, Inc. (Piedmont) filed a petition asking to intervene and to present additional evidence as to the first two standards. In support of its motion to present additional evidence, Piedmont asserted that implementation of these two standards by electric utilities will have a direct effect on Piedmont and that the Commission should consider this effect.

On January 10, 1994, responses were filed by CP&L and Duke. In general, CP&L and Duke asserted that the present proceeding is limited to the issue of whether the federal standards should be implemented, that this Commission has already thoroughly investigated whether the first two standards should be adopted in previous dockets and has determined that they should be implemented, that Piedmont could have expressed its views in the previous dockets but did not do so, and that the appropriate forum for challenging the effect of individual electric integrated resources planning (IRP) and demand-side management (DSM) programs on Piedmont is either the Commission's periodic IRP investigations or the individual dockets in which specific programs are proposed.

On January 12, 1994, Piedmont filed a reply addressing Duke Power's "objection to Piedmont's intervention in this docket. . ." The Commission notes that Duke Power's response did not in fact object to Piedmont's intervention; it only objected to Piedmont's request to present additional evidence as to the first two standards.

On January 13, 1994, the Public Staff filed a response asserting that Piedmont had not offered any explanation as to why additional evidence on the first two standards should be received and that Piedmont appeared to want "reconsideration of over six years of development and implementation of electric LCIRP for purposes totally outside of the requirements of the EPACT."

Finally, on January 20, 1994, NC Power filed a response arguing that Piedmont's concerns are not appropriate to this docket, which is for the limited purpose of determining whether to implement the new federal standards specified in Section 111 of EPACT.

By Order dated January 21, 1994, the Commission, after careful consideration of all of the filings, allowed Piedmont to intervene, but concluded that Piedmont had not shown why additional evidence as to the first two standards should be allowed. The Commission pointed out that the purpose of the present proceeding, as provided by Section 111 of EPACT, is to consider the standards and make a determination whether or not it is appropriate to implement the standards. With respect to integrated resource planning and investments in conservation and demand management, the Commission has already conducted thorough investigations and decided that they should be implemented, to the extent reflected in the prior Commission orders. Congress realized that some states may have already partially fulfilled the mandate of Section 111, and EPACT provides that state commissions may consider prior determinations with respect to the standards and the evidence upon which they were based. 16 U.S.C.A. §2623(a). The Commission pointed out that Piedmont had an opportunity to intervene in those previous dockets, but it did not do so. Further, the specific concern expressed by

Piedmont, the "effect of these electric programs on Piedmont," is more appropriately addressed in a proceeding where specific programs are at issue. The Commission therefore reiterated that the testimony to be presented at the hearing in this docket could address only the third federal standard (energy efficiency investments in power generation and supply) and the effect of implementation of the three standards on small demand-side management businesses.

On February 25, 1994, CP&L filed a letter notifying the Commission and all parties of record that the following stipulation had been reached: All parties agreed to waive the filing of rebuttal testimony; waive the right to cross-examination; that the prefiled direct testimony would be copied into the record without objection; that all parties would be afforded the opportunity to file briefs (or proposed orders) and reply briefs; and that the hearing scheduled for March 8, 1994, would be convened to allow any public witnesses to appear and present their testimony.

The matter came on for hearing as scheduled on March 8, 1994. The following direct testimony was copied into the record: On behalf of CP&L, David R. Nevil,Manager - Rates & Energy Services; on behalf of Duke, Donald H. Denton, Senior Vice President and Chief Planning Officer; on behalf of Nantahala, Kenneth C. Stonebraker, Vice President, Finance and Treasurer; on behalf of NC Power, Larry W. Ellis, Senior Vice President - Power Operations and Planning and Mary C. Doswell, Demand-Side Planning; and on behalf of the Public Staff, Michael C. Maness, Supervisor, Electric Section of the Accounting Division of the Public Staff, and James S. McLawhorn, Engineer, Electric Division of the Public Staff.

Based on the evidence adduced at the hearing and other matters of record, the Commission makes the following

FINDINGS OF FACT

1. This proceeding was initiated by the Commission for the express purpose of complying with the requirements of Section 111 of the EPACT which amends sections of the Public Utility Regulatory Policies Act of 1978 (PURPA), codified as 16 U.S.C.A. §2621 and other related sections.

2. The evidence and determinations made in Docket No. E-100, Sub 54 - Investigation and Rulemaking Proceeding to Consider Least Cost Integrated Planning; Docket No. E-100, Sub 58 - Analysis and Investigation of Least Cost Integrated Resource Planning in North Carolina--1989/1990; and Docket No. E-100, Sub 64 - Analysis and Investigation of Least Cost Integrated Resource Planning in North Carolina--1992 provide a sufficient evidentiary basis for determining that the Commission has considered and found it appropriate, to the extent reflected in the Commission Orders, to implement the first two Federal standards relating to integrated resource planning and investments in conservation and demand management.

3. The Commission's Least Cost Integrated Resource Planning (LCIRP) rules, published as Rule R8-56 through Rule R8-61, and the Commission's Orders in the above-cited three dockets establish the standards or rules by which this Commission will implement integrated resource planning in North Carolina. To the extent these rules and orders are in conflict with the federal standards or other states' interpretations of these standards, this Commission's rules and orders control.

4. The Commission declines to adopt the third federal standard (energy efficiency investments in power generation and supply) except to the extent it is already contained in Chapter 62 of the North Carolina General Statutes and the Commission's rules.

5. Utility responsibility for making appropriate energy efficiency investments in power generation and supply is already inherent in North Carolina policy and law.

6. The LCIRP rules and orders previously adopted by this Commission have not been used in such a way as to provide the electric utilities with unfair competitive advantages over small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand-side management measures.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2 AND 3

All parties submitting testimony agreed with the Commission's determination in its September 21, 1993, Order herein that the evidence and findings in Docket Nos. E-100, Sub 54, 58, and 64 provide a sufficient evidentiary basis for determining that the Commission has considered and found it appropriate to implement the first two standards described herein.

A State regulatory authority expressly has the authority to adopt, pursuant to State law, a standard or rule that is different from any standard established by Section 111. 16 U.S.C.A. §2627. Pursuant to that authority, this Commission concludes that it is appropriate to implement the first two federal standards (relating to integrated resource planning and investments in conservation and demand management) to the extent reflected in the Commission Orders in Docket Nos. E-100, Sub 54, 58 and 64.

These Commission Orders adopted Least Cost Integrated Resource Planning (LCIRP) rules, published as Rule R8-56 through Rule R8-61, and implemented those rules in accordance with North Carolina law and policy. To the extent these rules and orders are in conflict with the federal standards or other states' interpretations of these standards, this Commission's rules and orders control.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 AND 5

CP&L witness Nevil recommended that the Commission adopt the third federal standard (energy efficiency investments in power generation and supply); however, he said it was not necessary for the Commission to take any action at this time to further implement the standard. He described actions CP&L was already taking to meet the spirit of the standard.

Duke witness Denton testified that Duke was not requesting any incentive at this time related to efficiency in generation, transmission or distribution, and that Duke would continue to identify and evaluate opportunities to improve energy efficiency and make the appropriate business and operational decisions in that regard.

Nantahala witness Stonebraker testified that Nantahala does not recommend that any incentives be adopted at this time, but expressed concern over the disincentives it perceived in the ratemaking policy for purchased power.

NC Power witness Ellis testified that NC Power supported the implementation of the third federal standard, but was not proposing any specific ratemaking recommendations in this proceeding.

Public Staff witnesses Maness and McLawhorn testified that it is not appropriate or necessary for the Commission to adopt the federal standard in order to carry out the purposes of Chapter 16 of the United States Code. They said that the purpose set forth in the Chapter most directly related to the federal standard, "the optimization of the efficiency of use of facilities and resources by electric utilities," is sufficiently encouraged by existing North Carolina law and regulatory policies which are more specifically attuned to the needs of this state than a general national standard. Furthermore, they said substantial encouragement for efficiency is being provided by the environment in which North Carolina electric utilities presently operate.

Witnesses Maness and McLawhorn pointed out the following specific factors, which were discussed in detail in this testimony, to demonstrate that adoption of the federal standard is unnecessary:

(1) The public utilities laws and regulations of the State of North Carolina, as well as the regulatory practices put into effect thereunder, do not create disincentives for cost-effective improvements in energy efficiency. In fact, these laws and regulations, which give the Commission considerable authority to compel adequate service by the regulated electric utilities, provide a broad incentive for sound management, including increases in energy efficiency which minimize overall cost.

(2) The types of additional incentives which are typically presented as inducements to increases in efficiency, such as increments to the rate of return or alternative revenue mechanisms, are not appropriate under current North Carolina law.

(3) The increasingly competitive environment in which the electric utilities of North Carolina find themselves today itself acts as a strong incentive for improvements in energy efficiency and other areas which serve to minimize costs and thus lessen the need for increases in rates.

The Commission concludes that, consistent with its decision to adopt standards pursuant to North Carolina law and policy, it should decline to adopt the third federal standard (energy efficiency investment in power generation and supply) except to the extent it is already contained in Chapter 62 of the General Statutes and the Commission's rules.

The Commission concludes that utility responsibility for making appropriate investments in energy efficiency measures is already inherent in North Carolina policy and law. This conclusion is discussed in detail below.

The public utilities laws embodied in Chapter 62 of the North Carolina General Statutes, as further illuminated by the Commission's rules, require public utilities to provide adequate service. The Commission has the authority to compel public utilities to provide adequate service, as well as the authority to use its ratemaking powers to disallow the costs of inadequate service from rates and/or penalize public utilities for providing inadequate service. The requirement that public utilities

provide adequate service is thus tied to the Commission's responsibility to establish just and reasonable rates. Both the requirement of public utilities to provide adequate service and the authority of the Commission to enforce said requirement have been confirmed by decisions of the North Carolina appellate courts.

The requirement contained within Chapter 62 to provide adequate service places on public utilities the responsibility to provide high quality service in a cost-effective and efficient manner. This emphasis on cost effective and efficient service is particularly highlighted by the integrated resource planning rules and process implemented by the Commission in recent years. The utilities' responsibility extends to active consideration of cost-effective improvements in the energy efficiency of power generation, transmission, and distribution. Where the utilities fail or refuse to engage in that consideration, the Commission can use its enforcement authority including, as appropriate, the disallowance of costs and/or the imposition of penalties. The risk of financial loss to public utilities for failing to engage in LCIRP behavior thus not only creates no disincentive for cost-effective efficiency improvements, but in fact should create a considerable incentive for the utilities to actively consider and implement such improvements.

Several statutes within Chapter 62 contain such provisions. As a starting point, the declaration of policy embodied in G.S. §62-2 states in part as follows:

§ 62-2. Declaration of policy.

. . . It is hereby declared to be the policy of the State of North Carolina:

. . .

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

. . .

(4) To provide just and reasonable rates and charges for public utility services. . . consistent with long-term management and conservation of energy resources by avoiding wasteful uneconomic and inefficient uses of energy;

. . .

(Emphasis added).

As can be seen, subparagraph (4) indicates that the reasonableness of public utility rates and charges depends partly on the efficient use of energy.

Consistent with the declaration of policy, G.S. §62-32 confers upon the Commission and the Commission the general authority to supervise the rates and service of public utilities and to compel "reasonable service":

§ 62-32. Supervisory powers; rates and service.

(a) Under the rules herein prescribed and subject to the limitations hereinafter set forth, the Commission shall have general supervision over the rates charged and service rendered by all public utilities in this State.

(b) . . . [T]he Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service.

(Emphasis added).

Continuing more specifically with regard to service, G.S. § 62-42 sets forth specific situations in which the Commission is authorized to order a public utility to make changes in its equipment or its service:

§ 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.

(a) Except as otherwise limited in this Chapter, whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds:

(1) That the service of any public utility is inadequate insufficient or unreasonably discriminatory, or

. . .

(3) That additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility . . . ought reasonably to be made, or

. . .

(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity,

the Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or affected within a reasonable time prescribed in the order. . . .

(Emphasis added).

G. S. §62-131 again brings together the concepts of just and reasonable rates and the provision of adequate service:

§ 62-131. Rates must be just and reasonable; service efficient.

(a) Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable.

(b) Every public utility shall furnish adequate efficient and reasonable service.

(Emphasis added)

G.S. § 62-133, in setting forth the ratemaking process that the Commission is required to follow in the setting of non-fuel rates, specifically gives the Commission the authority to take adequacy of service into account. First, the statute provides for the ratemaking disallowance of increased costs due to inadequate service. Specifically, G. S. § 62-133(b)(1) requires the Commission to "ascertain the reasonable original cost of the public utility's property" used and useful in providing electric service. (Emphasis added). Additionally, G. S. § 62-133(b)(3) requires the Commission to "ascertain such public utility's reasonable operating expenses. . . ." (Emphasis added). Per G.S. § 62-133(b)(5), both of these components of "reasonable" cost are to be utilized in fixing rates. If the costs of inadequate service were incurred imprudently or were otherwise unreasonable, the Commission would have the authority and the obligation to disallow them in the setting of rates.

Second, G.S. § 62-133(b)(4) provides in part as follows regarding the determination of the appropriate rate of return on the rate base:

(4) [The Commission shall][f]ix such rate of return on the cost of the property ascertained pursuant to subdivision (1) as will enable the public utility by sound management to produce a fair return for its shareholders. . . .

(Emphasis added).

In other words, the Commission is prohibited from setting the rate of return at a level that would allow the utility to practice unsound management and still earn a fair return for its shareholders. Furthermore, if at the time rates are set the cost of capital of the public utility is elevated due to increased risk caused by unsound management, the Commission should not include the increment of cost of capital due to said unsound management in the rate of return it fixes pursuant to G.S. § 62-133(b)(4). If the utility's management later improves sufficiently, the cost of capital will presumably decrease, all other things being equal, to a level that will enable the utility to earn a fair return under the rates established by the Commission.

Finally, G.S. § 62-133(d) requires the Commission to consider "all other material facts of record that will enable it to determine what are reasonable and just." These other material facts of record could of course include the overall adequacy of the Company's service and management.

In several general rate cases, the Commission has either disallowed certain costs as unreasonable or reduced the rate of return due to inadequate service on the part of the utility. For example, in Carolina Power & Light Company's 1988 general rate case (Docket No. E-2, Sub 537), the Commission excluded a portion of the financing costs of the Shearon Harris nuclear plant, as well as

certain other construction costs, on the basis of imprudence on the part of the Company. There have also been a number of general rate cases in which the Commission has explicitly reduced the rate of return due to inadequate service. These include three involving electric utilities: Virginia Electric and Power, Docket No. E-22, Sub 257; Carolina Power & Light Company, Docket No. E-2, Sub 444; and Carolina Power and Light Company, Docket No. E-2, Sub 461.

The Commission presented a consistent rationale supporting its authority to impose a rate of return penalty in all three of the electric cases. As set forth in its final order in the 1983 Carolina Power & Light Company case, this rationale was as follows:

> . . . [T]he Commission concludes that, in the absence of any consideration of CP&L's history of poor nuclear performance and the inefficiency and imprudence of CP&L's management in the area of nuclear plant performance, a 15.25% rate of return upon equity would be the fair rate of return for CP&L in this case. However, when CP&L's poor nuclear plant performance and the past history of inefficiency and imprudence of CP&L's management in the area of nuclear plant performance is taken into consideration, the Commission concludes that it cannot allow that level of return upon equity. . . . The Commission therefore concludes that CP&L should be allowed an opportunity to earn no more than a 14.5% rate of return on equity.
>
> This Commission operates under a legislative mandate that requires it to fix rates which will allow a utility "by sound management" to pay all of its reasonable operating costs, including maintenance, depreciation, and taxes, and to earn a fair return on its investment. G. S. 62-133(b)(4); State of North Carolina ex rel. Utilities Commission v. Duke Power Company 285 N.C. 377, 206 S.E. 2nd 269 (1974). However, upon a finding that a utility is not soundly managed, it may be penalized by being authorized to earn less than a "fair return." State of North Carolina ex rel. Utilities Commission v. General Telephone Company of the Southeast, 285 N.C. 671, 208 S. E. 2nd 681 (1974). In order to penalize a utility on rate of return, the Commission must make specific findings showing the effect upon its decision of the poor management it has found. Utilities Commission v Morgan Attorney General 277 N.C. 255, 177 S. E. 2nd 405 (1970). The penalty must not result in a confiscatory rate of return. 285 N.C. 671.

(Order on Reconsideration, December 7, 1983, Docket No. E-2, Sub 461)

In addition to G.S. § 62-133, which covers non-fuel rates, G.S. § 62-133.2 and Commission Rule R8-55, which govern the setting of fuel rates, contain provisions for the determination of the "reasonable" amount of fuel expenses to be ultimately recovered from the ratepayers through the fuel rate. With regard to the recoverability of fuel expenses, G.S. § 62-133.2(d) states:

> The Commission shall allow only that portion, if any, of a requested fuel adjustment that is based on adjusted and reasonable fuel expenses prudently incurred under efficient management and economic operation.

Thus, the same general requirements of adequate and efficient service which are factors in the setting of non-fuel rates are present in the process for setting the fuel rate as well.

The rules and regulations of the Commission further illuminate the concepts embodied in the statutes. Specifically, Rule R8-23 reads as follows:

> **Rule R8-23. Extent of system on which utility must maintain service.**
>
> Each electric utility, unless specifically relieved in any case by the Commission from such obligation, shall operate and maintain in safe efficient and proper condition, all the facilities and instrumentalities used in connection with the regulation, measurement and delivery of electric current to any consumer up to and including the point of delivery into the wiring owned by the consumer.

(Emphasis added)

Additionally, the Commission's LCIRP rules, Rules R8-56 through Rule R8-61, address the issue of meeting the demand for electric service in the most cost-effective manner possible.

It is clear that Chapter 62 and the Commission's rules both require that public utilities provide adequate service and give the Commission the authority to compel such service. Moreover, it is clear that the overall concept of "adequate" service encompasses "efficient" and "economical" service as well.

Recently, the Commission stated that Chapter 62 does not authorize a supply-side special cost recovery or incentive mechanism. In the most recent integrated resource plan proceeding (Docket No. E-100, Sub 64), Carolina Power & Light Company proposed an annual rider or deferred accounting mechanism to recover increases in costs due to long-term power purchases and purchases from qualifying facilities. The Company also proposed that the mechanism include a reward to the shareholders to recognize the risks faced in selecting the least cost option. Additionally, Allied Signal, Inc., asked the Commission to state explicitly that any incentive or cost recovery mechanism developed for demand-side management programs would also include cost-effective utility transmission and distribution (T&D) efficiency investments. In response to these proposals, the Commission stated in part the following in its Order:

> At the outset the Commission must determine whether or not it has the authority to establish a supply-side cost recovery or incentive mechanism for purchased power and T&D investments, as requested by CP&L and Allied Signal, respectively. The Commission concludes that it does not have such authority. Neither the general ratemaking statutes, nor the fuel charge adjustment statute, nor the policy statute G.S. 62-2(3a) authorizes such a mechanism.
>
> . . . .
>
> An issue similar to this one was presented by NC Power in its 1990 rate case, Docket No. E-22, Sub 314. NC Power proposed to recover non-utility generation expense outside the framework of a general rate case through annual purchased capacity and purchased energy riders. The Commission concluded that an adjustment to base rates between general rate cases, for which there is no specific statutory authority, to reflect changing non-utility

generation expenses is not authorized under current North Carolina law.

Fuel charge adjustment statutes provide authority for the recovery of fuel costs outside of the scope of a general rate case. The annual fuel charge adjustment proceedings currently being held by the Commission are pursuant to G.S. 62-133.2. This statute explicitly excludes any purchased power costs, other than the fuel portion.

Another statute that must be considered is G.S. 62-2(3a). This statute declares the following to be the policy of the State:

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

As previously discussed, this statute foresees fixing rates 'to the end' of assuring use of demand-side options. The Commission considers demand-side programs to be those programs that are undertaken for the purpose of increasing a customer's energy efficiency, reducing his consumption of electricity (on peak or off), or improving his load factor. Consideration of available purchased power and T&D efficiency options are a necessary part of least cost planning, but they are not demand-side options. Thus, ratemaking mechanisms such as those proposed by CP&L and Allied Signal are not authorized by G.S. 62-2(3a).

Witness Plett [AlliedSignal's witness] cited the Energy Policy Act of 1992 as support for his proposal. While this act is new and will require further study and consideration, the Commission concludes that there is nothing in the act that compels the Commission to approve special ratemaking treatment for purchased power or T&D investments in this proceeding.

Accordingly, the Commission concludes that CP&L's and Allied Signal's proposals for special cost recovery/incentive mechanisms for supply-side expenditures are not authorized by law and cannot be approved.

(Order Adopting Least Cost Integrated Resource Plans, June 29, 1993, Docket No. E-100, Sub 64, pp. 51-53).

Exclusive of any consideration of the legality or lack thereof of an additional reward/incentive for supply-side efficiency investments, establishment of such is not appropriate under the statutory ratemaking methodology used in this State. The law requires the utility to provide adequate service; in correlation, the utility is allowed to charge rates based on its reasonable costs and a rate of return set to allow the recovery of a fair return, given sound management. No additional compensation to the utility's shareholders is necessary to provide a fair return. To pay an additional return to the

shareholders for supply-side efficiency investments or to split out this one aspect of costs for special ratemaking treatment would be to provide special treatment for something that the utility is already required to do under the law and is already explicitly compensated for by the existing ratemaking process.

The net effect of EPACT will be an increase in the competitive nature of the wholesale electric industry nationally. It appears there will be an increase in alternatives on a retail basis as well. In an effort to combat these competitive threats, well-run utilities will seek to minimize costs and improve efficiencies throughout all areas of operations, including generation, transmission and distribution. Therefore, cost-effective efficiency improvements resulting in lower overall costs should be a top priority for utilities, even without state or federal directives in this area.

Based on the foregoing the Commission concludes that it will not adopt the third federal standard (energy efficiency investments in power generation and supply) except to the extent it is already contained in Chapter 62 of the General Statutes and the Commission rules. The Commission further concludes that utility responsibility for making appropriate investments in energy efficiency measures is already inherent in North Carolina policy and law.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this conclusion can be found in the testimony of Duke witness Denton, Nantahala witness Stonebraker, and NC Power witness Doswell.

Duke witness Denton testified that Duke did not believe any action is needed by the Commission to protect the interest of small businesses engaged in providing DSM products and services.

Nantahala witness Stonebraker testified that the implementation of the standards did not have a negative impact on small DSM businesses.

NC Power witness Doswell described the programs NC Power has instituted and their effect on small DSM businesses. She concluded that its programs either enhanced business opportunities, or, at the very least, do not provide it with an unfair advantage. In addition, she noted that NC Power is planning to conduct an experimental DSM bid solicitation. She expects small energy services companies to serve the types of markets this will address. The bidding also is expected to increase the participation of small businesses.

All of the evidence in this proceeding supports findings and conclusions that implementation of the federal standards to the extent reflected by Commission Orders as described herein will have a positive impact on small demand-side businesses and that such standards have not and will not provide the electric utilities with an unfair advantage over such small businesses. The Commission therefore concludes that it has complied with the requirements of Section 111 of the EPACT with respect to the impact of LCIRP on small DSM businesses.

IT IS, THEREFORE, ORDERED that this Order be issued as the Commission's consideration and determination pursuant to Section 111 of the EPACT.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of May 1995.

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

DOCKET NO. E-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of Commission Rule R8-14	)	ORDER ADOPTING
Governing Electric Meter Testing	)	REVISED RULE R8-14

BY THE COMMISSION: On March 8, 1994, Duke Power Company filed a Motion for a change in NCUC Rule R8-14 governing meter testing at the request of a customer.

Duke proposed that the period within which a customer may request an additional meter test be revised from six months to 12 months in paragraph (b). Duke also proposed that the specific fees outlined in paragraph (b) be eliminated, and that paragraphs (b) and (c) be revised to require that utilities obtain Commission approval of respective schedules of fees for various types of meter tests. Duke further proposed that paragraph (f) be revised in order to allow the utility to provide meter test results to the customer informally except where the customer requests a written report.

By Order issued March 31, 1994, the Commission established a rule-making proceeding and published the proposed revised rule for comment. CP&L, Vepco (NC Power), Nantahala and the Public Staff filed comments. Duke did not file further comments.

All parties who filed comments agreed with the proposed revisions, except as follows:

CP&L proposed that the period between free meter tests be three (3) years instead of the one (1) year proposed by Duke. CP&L described the improvements in the manufacture and accuracy of meters as well as the results of its statistical meter sampling program to support its contention that very few meters are ever discovered to register too fast, and that required testing at company expense more frequently than once every three years is unwarranted.

NC Power proposed that the period between free meter tests be at least two (2) years instead of the one (1) year proposed by Duke. NC Power described the results of its meter testing program to support its contention that meters rarely register too much usage, and that it is unnecessary to test meters as frequently as once each year.

The Public Staff proposed: (1) some minor wording changes for clarity; (2) addition of a sentence specifying that the utility shall inform the consumer that he has a right to request a written copy of the utility's report of the meter test; and (3) addition of language specifying that the initial meter test within the period of time defined in the rule is free to the customer. The Public Staff observed that it believed the utilities were already performing the initial meter test at no charge to the customer even though the existing rule does not require it.

On June 17, 1994, the Attorney General filed its response to comments filed in the docket, in which it supported the revised rule as modified by the Public Staff.

The Commission is of the opinion that its Rule R8-14 should be modified at this time as proposed by the Public Staff.

IT IS, THEREFORE, ORDERED as follows:

1. That the revised Rule R8-14, attached hereto as Appendix A, is hereby adopted effective the date of this Order.

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

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of June 1994.

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

APPENDIX A

Rule R8-14 Meter testing at request of consumers.

(a) Upon reasonable notice, when requested in writing by the consumer, each utility shall test the accuracy of the meter in use by the consumer.

(b) No deposit or payment shall be required from the consumer for a meter test, except when the consumer has requested, within the previous twelve months, that the same meter be tested, in which case the consumer shall be required by the utility to deposit with it an amount as determined by the Commission to cover the reasonable cost of such test.

(c) A schedule of deposits or fees for testing various classifications of meters shall be filed with, and approved by, the Commission.

(d) The amount so deposited with the utility shall be refunded or credited to the consumer (as a part of the settlement in the case of a disputed account) if the meter is found, when tested, to register more than 2% fast; otherwise the deposit shall be retained by the utility.

(e) The consumer may, if he so requests, be present when the utility conducts the test on his meter, or if he desires, may provide (at his expense) an expert, or other representative appointed by him to be present at the time of the meter test.

(f) A report of the results of the meter test shall be made within a reasonable time after the completion of the test. This report shall give the name of the consumer requesting the test, the date of the request, the location of the premises where the meter is installed, the type, make, size and serial number of the meter, the date of removal, the date tested, and the results of the test, a copy of which shall be supplied to the consumer upon request. The utility shall inform the consumer that he has a right to request such written copy of the report of the meter test.

DOCKET NO. E-100, SUB 74

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities - 1994	)	ORDER ON PENDING MOTIONS

BY THE COMMISSION: On November 29, 1994, Duke Power Company filed a Motion in Docket No. E-100, Sub 74, asking the Commission to (1) suspend its current avoided cost rates and (2) authorize Duke to begin signing contracts at the avoided cost rates and contract terms that it has proposed in this proceeding. Duke argues that its current avoided cost rates were approved in the last biennial proceeding in July 1993 based on projections calculated in 1992-93, that its proposed avoided cost rates are substantially lower because of Duke's declining costs and improved nuclear capacity factors, and that contracts signed now at the current rates will cost Duke substantially more than they should. Duke would except certain projects which have already obtained certificates: it will sign contracts at the current rates with the Avalon, Mayo and Spray Cotton Mills hydro facilities and the Enerdyne cogeneration facility. Additionally, rates for the Noah Corporation hydro facility are the subject of a pending complaint proceeding and will not be affected by this motion. If relief is granted and Duke signs a contract at the proposed rates before the Commission's final decision in this docket, Duke agrees to amend the contract if the Commission ultimately approves rates different from the proposed rates. If the Commission approves rates lower than the proposed rates, the QF would have the option of cancelling its contract altogether.

The Public Staff makes the following points in its Response of January 13, 1995. Generally, an approved rate should remain in effect until a hearing is held and a new rate approved, but avoided cost rates are somewhat different since they are only visited biennially and they are based on projections. If relief is granted and a new contract signed, the Public Staff objects to the rate in that contract going down even if the Commission approves a lower rate at the hearing. Also, even if new rates are allowed, the Public Staff objects to use of Duke's new contract terms; it plans to contest them at the hearing.

Several existing hydros have intervened. They filed a Response on January 20, 1995, in which they adopt the Public Staff's arguments and oppose Duke's motion. They argue that the Commission, not Duke, should set the new rates.

Southeastern Hydro-power, Inc., is a hydro project under development in Wilkes County. Its certificate application is pending in Docket No. SP-44. On December 13, 1994, it filed a Petition to Intervene in this docket, citing its interest in the level of avoided cost rates. The Petition was signed by Southeastern's president. On January 10, 1995, he asked the Commission to accept his filings until he can hire an attorney to adopt them. On January 25, 1995, an attorney made an appearance for Southeastern. Southeastern made a filing on January 10, 1995, opposing Duke's motion to suspend its current avoided cost rates. He has been working on the Southeastern project since 1981. There have been delays in getting a license from FERC, and he redesigned the project to accommodate the concerns of various State agencies. He first applied for a certificate here in 1986, but he did not pursue it then because of the redesign. He filed a revised application on December 9, 1994, and that is currently pending. Public notice is being given; no certificate has been issued. Mierek says that he has been relying on avoided cost rates at or near the levels approved in the past, but Duke's proposed rates are almost 1/3 lower and would make the project infeasible. If relief is granted to Duke, he asks that an exception be made for hydro projects with certificate applications pending. Mierek cites the last biennial PURPA proceeding in which the Commission suspended NC Power's approved rates but allowed one QF to sign a contract at the suspended rates. (True, but Staff notes that that QF had a certificate.) Mierek says that Duke's proposed rates will be contested at the hearing and that "few principles are more sacrosanct" than that requiring a full hearing before utilities are allowed to change rates.

Duke filed a Response to Southestern on January 25, 1995. Duke argues, among other things, that Southeastern never contacted it about this project until June 1994, that Southeastern still does not have a certificate and did not apply for one until after Duke filed its pending motion, and that Southeastern is trying to shift the risk of delay onto Duke and to get ratepayers to subsidize the project. Duke quotes the Commission's order in the last biennial proceeding to the effect that it is the Commission's role to determine avoided cost, not just to set rates at a level that will make QF projects economically feasible for developers.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of February 1995.

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

DOCKET NO. E-100, SUB 74

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Biennial Determination of Avoided Cost	)	ORDER ESTABLISHING STANDARD
Rates for Electric Utility Purchases	)	RATES AND CONTRACT TERMS FOR
from Qualifying Facilities - 1994	)	QUALIFYING FACILITIES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh North Carolina, on Tuesday, February 7, 1995, and on Wednesday, March 8, 1995, through Thursday, March 9, 1995.

BEFORE: Judge Hugh A. Wells, Presiding; Commissioners Allyson K. Duncan and Ralph A. Hunt.

APPEARANCES:

For Carolina Power & Light Company:

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

For Duke Power Company:

Robert W. Kaylor, Attorney at Law, Bode, Call & Green, Post Office Box 6338, Raleigh, North Carolina 27628-6338

and

Jeffrey M. Trepel, Associate General Counsel, 422 South Church Street, Charlotte, North Carolina 28242-0001

For North Carolina Power:

James S. Copenhaver, Senior Regulatory Counsel, Post Office Box 26666, Richmond, Virginia 23261

and

Frank Schiller, Attorney at Law, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For Nantahala Power & Light Company:

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

For Carolina Utility Customers Association:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For Hydro-Power Intervenors:

Donnell Van Noppen, III, Attorney at Law, Patterson, Harkavy & Lawrence, Post Office Box 27927, Raleigh, North Carolina 27611

For Carolina Industrial Groups for Fair Utility Rates I & II:

Ralph McDonald, Attorney at Law, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

For Peregrine Energy Corporation & Cogentrix Energy, Inc.

Louis S. Watson, Jr., Attorney at Law, Moore & Van Allen, Post Office Box 26507, Raleigh, North Carolina 27611

For the Using and Consuming Public:

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

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

Section 210 of PURPA and the regulations promulgated pursuant thereto by the FERC prescribe the responsibilities of the FERC and of State regulatory authorities, such as this Commission, relating to the development of cogeneration and small power production. Section 210 of PURPA requires the FERC to prescribe such rules as it determines necessary to encourage cogeneration and small power production, including rules requiring electric utilities to purchase electric power from, and to sell electric power to, cogeneration and small power production facilities. Under Section 210 of PURPA, cogeneration facilities and small power production facilities which meet certain standards

and which are not owned by persons primarily engaged in the generation or sale of electric power can become "qualifying facilities," and thus become eligible for the rates and exemptions established in accordance with Section 210 of PURPA.

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

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

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

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

On July 18, 1994, the Commission issued its Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing to begin February 7, 1995. That Order made Carolina Power and Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company, d/b/a North Carolina Power (NC Power), Nantahala Power and Light Company (Nantahala), and Western Carolina University (WCU) parties to the proceeding to establish the avoided cost rates each is to pay for power purchased from qualifying facilities pursuant to the provisions of Section 210 of PURPA and the FERC regulations implementing those provisions and to establish the rates each is to pay for power purchased from small power producers as required by G.S. 62-156.

By Order dated September 2, 1994, the Commission required the utilities to file comments with their testimony on whether or not a utility can refuse to negotiate with a QF because the utility is planning to pursue competitive bidding for its next block of capacity.

The following parties intervened: Carolina Utility Customers Association (CUCA), Carolina Industrial Group for Fair Utility Rates (CIGFUR I and II), Peregrine Energy Corporation, Cogentrix Energy, Inc., and Milburnie Hydroelectric, Inc., Brushy Mountain Hydro Power Co., Inc., Cook Industries, Inc., Hydrodyne Industries, LLC, Hydrotech, Inc., Lake Industries, Inc., Town of Lake Lure, Avalon Hydro, Inc., Mayo Hydro, Inc., Carbonton Hydroelectric, Inc., State Hydro, and Southeastern Hydro-Power, Inc. (Hydroelectric Intervenors).

On November 29, 1994, Duke filed its Motion to Suspend the Availability of Previously Approved Schedule PP Rates and Contracts. On January 25, 1995, Southeastern Hydro-Power, Inc. filed its response in opposition to Duke's motion to suspend the availability of current rates. On January 13, and January 20, 1995, respectively, the Public Staff and the Hydroelectric Intervenors filed responses.

The Commission Order dated February 13, 1995, allowed Duke to suspend the avoided cost rates approved in Docket No. E-100, Sub 66; and authorized Duke to sign any new contracts with QFs using the rates proposed in Duke's pre-filed testimony, subject to possible later upward adjustment based on the Order of the Commission arising out of this proceeding, but fixing as a minimum Duke's proposed rates; and required Duke to sign contracts at the rates approved in Docket E-100, Sub 66 with the QFs which already had certificates of public convenience and necessity from the Commission (the Avalon, Mayo, and Spray Cotton Mill hydro facilities and the Enerdyne cogeneration facility).

On April 3, 1995 Duke filed a Motion for Clarification seeking to clarify that the rate suspension approved by the Commission Order of February 13, 1995 applied only to fixed, long-term avoided cost rates and not to variable rates. By Order dated April 6, 1995 the Commission granted said motion.

On December 22, 1994, the Public Staff filed a motion requesting that the evidentiary hearing be rescheduled. By Order dated January 5, 1995, the Commission rescheduled the evidentiary part of the hearing to begin March 8, 1995.

On January 13, 1995, WCU filed a motion requesting that its testimony be copied into the record without the presence of its witness and that it be excused from appearing at the hearing. By Order dated January 26, 1995, the Commission granted Western Carolina's motion.

The February 7, 1995, hearing for public witnesses was held as scheduled. No public witnesses appeared to testify.

On March 3, 1995, NC Power filed its Notice of Affidavits of Kurt W. Swanson and Jeffrey L. Jones. Also on March 3, 1995, the Public Staff and the Hydroelectric Intervenors filed a motion requesting that the Commission require the utilities to prefile rebuttal testimony. This motion was granted by Order dated March 6, 1995. CP&L, Duke, NC Power, and Nantahala filed rebuttal testimony.

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

The matter came on for evidentiary hearing on March 8, 1995, as previously noticed and scheduled. The prefiled testimony of George W. Wooten offered on behalf of WCU was copied into the record without Mr. Wooten being present to testify.

NC Power moved the affidavits of Kurt W. Swanson, Regulatory Specialist; and Jeffrey L. Jones, Director of Capacity Contracting and presented the testimony of Daniel J. Green, Director of Planning Services. Witness Jones' testimony addressed North Carolina Power's experience with negotiating non-utility power production contracts and modifications proposed by North Carolina Power to its existing Standard Contract under the Company's Rate Schedule 19. Witness Jones' testimony also addressed proposed charges regarding multiple Schedule 19 projects at the same site. Witness Swanson's testimony introduced North Carolina Power's revised Rate Schedule 19 and explained the new capacity and energy rates offered under that rate schedule. Witness Green discussed the methodology used by North Carolina Power to develop its avoided cost rates for Rate Schedule 19 and compared the DRR methodology, used by North Carolina Power to develop those rates, with the peaker methodology. He also discussed the line loss component and the working capital component used in the avoided cost calculations. .

Duke Power presented the testimony of a panel consisting of its employees as follows: Steven K. Young, Manager of the Rate Department, and Kenneth B. Keels, Jr., Nonutility Generation Manager. Witness Young explained the calculations supporting the Company's proposal for revision of its Schedule PP. Witness Keels testified with regard to Duke's experience with QFs and with respect to changes in Duke's Standard Purchased Power Agreement and to the term and conditions of Schedule PP.

CP&L offered the testimony of G. Wayne King, its Principal Engineer in the Rates and Energy Services Department. Witness King presented CP&L's proposed Cogeneration and Small Power Producer Schedule, CSP-16, and updated the Commission on the amount of QF capacity on CP&L's system.

Duke and CP&L cosponsored the testimony of Bruce J. Ambrose, Vice President of National Economic Research Associates, Inc., a firm of consulting economists. He discussed the methodologies most often used for deriving avoided costs and their strengths and weaknesses and recommend an appropriate method for use.

The Public Staff presented the testimony of Dr. Ben Johnson, a consulting economist and President of a management research firm specializing in public utility economics. He presented his analysis of the peaker and differential revenue requirement (DRR) methodologies of estimating avoided costs and his evaluation of the avoided cost estimates and proposed rate schedules filed by CP&L, Duke, and NC Power.

The Hydroelectric Intervenors presented the testimony of Paul Chernick, President of Resource Insight, Inc. He testified about the problems in the derivation of avoided costs as it relates to small

hydroelectric power producers and proposed alternative methods and estimates to be used for setting rates for such facilities.

Nantahala offered the testimony of Kenneth C. Stonebraker, Vice President, Finance and Treasurer. Witness Stonebraker presented Nantahala's proposed rates for purchases from QFs and the proposed standard from of contract between QFs and Nantahala.

Rebuttal testimony was presented by witness King for CP&L, witness Young for Duke, witness Ambrose for CP&L and Duke jointly, witness Green for NC Power, and witness Stonebraker for Nantahala.

All parties to the proceeding were provided the opportunity to file proposed orders with the Commission within 30 days after the March 22, 1995, mailing of the final transcript in the proceeding.

NC Power made an oral motion for interim approval of its proposed rates at the close of the hearing on March 10, 1995, which was reduced to writing and filed on March 14, 1995. On March 22, 1995, the Commission entered an Order on North Carolina Power's Motion for Interim Relief, permitting North Carolina Power to offer the rates filed in this docket, subject to adjustment based on the Commission's final decision in this docket. The Commission's Order did not grant North Carolina Power interim authority to offer its proposed contract terms. On April 4, 1995, North Carolina Power filed a Motion for Amended Order, requesting that its interim authority be expanded to include offering the contract terms proposed by North Carolina Power in this docket. That Motion was granted by the Commission's Order Amending Order on North Carolina Power's Motion for Interim Relief dated April 17, 1995.

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

FINDINGS OF FACT

1. Duke and CP&L use the peaker method to develop avoided capacity costs. NC Power uses the DRR methodology. Both the peaker method and the DRR method are generally accepted and used throughout the electric utility industry and are reasonable for use in this proceeding.

2. CP&L should be allowed to discount its 1998 estimate of installed capacity cost back to 1995 for purposes of this proceeding.

3. CP&L should be allowed to discount its 1998 estimate of fixed O&M costs back to 1995 dollars for purposes of this proceeding.

4. CP&L should not be required to offer long-term levelized rates at the levels established herein, where such rates would begin at the time the QF becomes operational during the next two years and would continue thereafter for the full 5, 10, or 15-year periods established herein.

5. CP&L should not be allowed to revise the availability of long-term levelized rates to non-hydro QFs from capacities of 5 Mw or less to capacities of 100 Kw or less for purposes of this proceeding.

6. CP&L should be required to pay capacity credits during on-peak hours of off-peak months as well as during on-peak hours of on-peak months for purposes of this proceeding.

7. CP&L should be allowed to revise the definition of holidays in its avoided cost rate schedules to be consistent with the holiday definition in its standard retail rates.

8. CP&L should be allowed to revise its standard contract with QFs to include language that specifies the time between consummation of the contract and the project coming on-line.

9. A performance adjustment factor of 1.2 should be utilized by both CP&L and Duke for their avoided cost calculations in this proceeding. However, the matter of performance adjustment factors should be addressed in greater detail in the next biennial proceeding. The Commission is also open to further discussion in the next biennial avoided cost proceeding of the merits of encouraging hydro generation by calculating avoided cost rates paid to hydro QFs based on performance adjustment factors larger than 1.2.

10. CP&L and Duke should not be allowed to limit the availability of long-term levelized rates based on the nameplate capacity of the applicable generating unit for purposes of this proceeding.

11. The utilities should not be required to include environmental compliance costs in their respective avoided cost calculations that are unknown or uncertain in nature for purposes of this proceeding.

12. CP&L, Duke, NC Power, and Nantahala should be required to discuss in the next biennial avoided cost proceeding the direct and indirect costs of air pollution, nuclear decommissioning, and other environmental costs that are avoided because of hydro generation on their respective systems.

13. Duke should not be required to adjust its avoided capacity costs by a factor of 1.0075 for general plant for purposes of this proceeding.

14. Duke should be allowed to limit the availability of its standard rates and contracts for QFs to facilities directly interconnected with Duke and located in its North Carolina service territory.

15. A utility may legally defer negotiations with a QF when the utility is pursuing competitive bidding for its next block of capacity needs.

16. NC Power should not be required to offer capacity credits to QFs prior to 1999 for purposes of this proceeding.

17. NC Power should not be allowed to offer avoided cost rates to QFs that are based on the QF being either a baseload or a peaking operation for purposes of this proceeding.

18. NC Power should be allowed to limit the availability of its standard avoided cost rates to one operational facility per site as proposed herein.

19. NC Power should be allowed to limit the availability of its standard avoided cost rates and contracts established in this proceeding to QFs who execute such contracts by December 31, 1996, and who begin operation by January 1, 1999.

20. Nantahala should be required to base its standard avoided cost rates on the costs of its purchases of capacity and energy from Duke, its primary supplier.

21. Nantahala maintains 100 MW of installed generating capacity. Nantahala provides approximately 50 percent of its annual energy needs; Nantahala has installed capacity to serve 67 percent of its summer peak demand requirements and nearly 43 percent of its winter peak demand.

22. Nantahala purchases supplemental capacity and energy from Duke Power Company pursuant to an interconnection agreement. Nantahala's existing arrangements with Duke are generally similar to previous arrangements between Nantahala and the Tennessee Valley Authority (TVA).

23. When TVA supplied supplemental power to Nantahala, Nantahala based its avoided costs on purchase costs outlined in the agreement between Nantahala and TVA. At that time, Nantahala was adamant that its avoided costs should be tied to the purchases from TVA to protect ratepayers and QFs.

24. Nantahala's costs to purchase supplemental capacity and energy from Duke are not similar to Duke's proposed avoided cost rates in this proceeding.

25. FERC regulations define avoided costs as the incremental costs of energy or capacity or both which, but for the purchase from the QF, the utility would generate itself or purchase from another source. 18 CFR § 292.101(b)(6).

26. Western Carolina is the utility that most closely resembles Nantahala in this proceeding, and it has requested that its avoided costs be based on a formula consistent with its costs of alternate power purchases.

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

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

29. NC Power should continue to offer long-term levelized energy payments as an additional option to small qualifying facilities rated at 100 Kw or less capacity.

30. CP&L should offer nonhydroelectric qualifying facilities contracting to sell generating capacity of more than five megawatts the options of contracts at the variable rates set by the Commission herein or contracts at negotiated rates and terms:

31. Nonhydroelectric qualifying facilities larger than five megawatts capacity desiring to sell generating capacity to Duke or NC Power should participate in their respective competitive bidding processes for obtaining additional capacity.

32. Nantahala should not be required to offer long-term levelized avoided cost rate options to qualifying facilities. In view of the Commission's requirement herein that Nantahala base its avoided cost calculations on its cost of purchased power, Nantahala may or may not wish to include long-term levelized rate options in its filing of a new proposed rate schedule in response to this Order. The Commission will entertain any proposal that Nantahala wishes to make in that regard at the time of its filing.

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

34. It is not appropriate at this time for the Commission to set specific guidelines for negotiations between utilities and qualifying facilities. All utilities should negotiate in good faith with qualifying facilities.

35. Appropriate protection for the utilities against financial loss due to default by a QF on a contract for long-term levelized rates is a matter best left to negotiation between the utilities and those nonhydroelectric QFs contracting to sell more than 5 Mw capacity. Hydroelectric QFs contracting to sell 80 Mw or less capacity should not be required to offer such protection against financial loss.

36. The rate schedules, contracts and terms and conditions proposed by CP&L, Duke, and NC Power in this proceeding should be approved subject to the modifications discussed herein.

37. WCU's proposed Small Power Production Supplier Reimbursement Formula is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence to support this finding of fact is found in the Commission's Orders in Docket No. E-100, Subs 59 and 66, the testimony of CP&L witness King, Duke witness Young, CP&L and Duke witness Ambrose, NC Power witness Green, Public Staff witness Johnson, and Hydro witness Chernick.

CP&L and Duke have used the peaker methodology in each of the past several avoided cost proceedings and NC Power has used the Differential Revenue Requirement (DRR) methodology to develop avoided costs. Each utility proposes to continue using the same respective methodology in this proceeding. Various concerns have been expressed in the last two biennial proceedings concerning the divergence between the utilities' retail rates and their avoided cost rates, the utilities' short-term need for more peaking capacity versus their long-term need for more base load capacity, the appropriate application of the peaker and DRR methodologies in a manner that would avoid understating avoided costs, and the low level of Qualifying Facility (QF) activity occurring in the State. As a result, in the last proceeding, the Commission ordered the electric utilities to provide a detailed reexamination of the peaker and DRR methodologies in this proceeding.

In this proceeding, all of the witnesses discussed three primary methods that have been used to estimate the cost of avoided capacity and energy. They are the peaker method, the differential revenue requirements (DRR) method, and the proxy unit method.

Peaker Methodology

The peaker methodology used by CP&L and Duke is based on a method for estimating marginal costs developed by the National Economic Research Associates, Inc. (NERA). The method was described in detail in what became known as the "Grey Books" series of publications, jointly sponsored by the National Association of Regulatory Utility Commissioners, the Electric Power Research Institute, the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperative Association. It is one of four marginal costing methodologies developed in the "Electric Utility Rate Design Study" portion of the "Grey Books" series (Topics 1.3 and 1.4).

According to the theory underlying the peaker method, if the utility's generating system is operating at equilibrium (i.e., at the optimal point), the cost of a peaker (combustion turbine or CT) plus the marginal running costs of the system will produce the utility's avoided cost. Theoretically, it will also equal the avoided cost of a baseload plant, despite the fact that the capital costs of a peaker are less than those of a baseload plant.

In theory, the lower capital costs of the CT are offset by the fuel and other operation and maintenance expenses included in system marginal running costs, which are higher for a peaker than for a new baseload plant. The theory indicates that the summation of the peaker capital costs plus the system marginal running costs will exactly match the cost per Kwh of a new baseload plant--assuming

the system is operating at the optimum point. Put another way, the fuel savings of a baseload plant will offset its higher capital costs, producing an equal to the capital costs of a peaker.

CP&L and Duke witness Ambrose testified that the goal intended by PURPA was to encourage the development of efficient QF projects–those which can supply power at a lower resource than the utility. In fact, efficiency was one of PURPA's three stated purposes along with conservation and equity. He further testified that PURPA intended for there to be an equal chance for QF power to compete with power from traditional utility sources.

Given the goal of efficient QF development, witness Ambrose testified that it was very important that QF rates have the following attributes: they should (1) incorporate only the cost components that the utility actually avoids, (2) account for changes in avoided costs throughout the term of the contract, (3) reflect the relative levels of avoided capacity and energy costs, and (4) vary with changes in avoided costs across hours of the day, days of the week, and seasons of the year. He further testified that only the peaker method will meet the goal of efficient QF development because it is the only method that has all of the necessary attributes.

Witness Ambrose testified that a great virtue of the peaker method is that it measures the avoided cost of any system, irrespective of its optimality. He said the peaker method does not assume or require that the system be operating at optimum.

Witness Ambrose argued that the reason CP&L and Duke run their baseload plants less than optimum is because they also have existing baseload capacity that is available at the same time as their peaking capacity, and because their baseload capacity operates at lower fuel costs than peaking capacity. He said it does no good to wish away existing baseload capacity because it inconveniently deviates from the theoretical optimum generation mix.

NC Power argued that it operates its peaking plants at approximately 1% capacity factor instead of the theoretical 50% "crossover point" capacity factor suggested by witness Johnson because economic dispatch of existing units results in use of baseload units most of the time. It said if CTs were run 50% of the time, the Company's fuel costs would be $165 million per year higher.

The Public Staff argued that the three purposes of PURPA cited by witness Ambrose (efficiency, conservation and equity) were the purposes of Title I of PURPA. The Public Staff contended that the law establishing the avoided cost proceedings and mandatory purchases from QFs was part of Title II of PURPA and that the United States Supreme Court had held that the purposes of Title II were to overcome two perceived problems that were impeding the development of nontraditional generating facilities: (1) traditional electric utilities were reluctant to buy power from and sell power to these nonutility facilities and (2) regulation of these alternative energy facilities by state and federal regulatory authorities would impede their development.

Witness Johnson described the peaker method as providing two sets of avoided costs--energy and capacity. Avoided energy costs are calculated by using a cost simulation model to analyze marginal system running costs, in order to determine the degree to which these running costs (fuel and O&M) can be reduced if a block of QF power displaces some of the utility's generation--or, what amounts to the same thing, if the utility's load is reduced by the same magnitude as the assumed block

of QF power. He said avoided capacity costs are determined separately, by estimating the lowest cost capacity option for each year of the planning horizon. The capacity costs are then levelized or annualized to convert the figures into current dollars terms.

Witness Johnson identified the most serious problem with the peaker method to be the method's basic premise that the summation of system running costs plus peaking capacity costs can be used to estimate the total avoided costs of the utility. He said that while the underlying theory is sound in the abstract, it includes certain critical assumptions that may not be valid in practice.

Witness Johnson testified that the key to the avoided cost calculation is the crossover point; i.e., that point on a load duration curve where a utility would be indifferent between constructing a peaking unit or a baseload unit. The capital cost of a CT plus the running cost of that CT would equal the capital cost of a baseload unit plus the running cost of that baseload unit when they are both running at the crossover point.

The major distinction between the peaker method and the total cost of a generating unit operating at the crossover point for witness Johnson is: (1) the peaker method utilizes the capital cost of a CT plus the marginal running costs of the entire system, while (2) the crossover point consists of the capital cost of a CT plus the running costs of that CT. Given this distinction, witness Johnson contended that the peaker method actually produces the same avoided costs as the cost of a generating unit operating at the crossover point when the system is at its optimum point, or "static equilibrium".

Witness Johnson argued that the optimum system, or system in static equilibrium, would run its generating units in accordance with the crossover point; i.e., loads of shorter duration than the crossover point would be served by CTs, and loads of longer duration than the crossover point would be served by baseload units. He suggested that a system serving a significant amount of its loads of shorter duration than the crossover point by means of baseload units was not operating at optimum, and that the peaker method was not valid for such a system.

Witness Johnson testified that whenever the peaker method or the DRR method produce an avoided cost estimate which is lower than the full cost of building and operating a baseload plant, the Commission should carefully examine the methodologies to determine if they are valid. He further testified that a basic reason both methods may yield inaccurate estimates of avoided costs is that they both ignore the concept of opportunity cost, as discussed elsewhere herein.

DRR Methodology

NC Power witness Green and Public Staff witness Johnson both described the DRR methodology as one that involves a comparison of the revenue requirements which result from two alternative system expansion plans--one including a block of new QF capacity and the other excluding such a block. The utility's generation costs are calculated on a yearly basis for an extended period of time for each of these two scenarios. The difference between the two scenarios is then computed for each year, and the results converted into present value terms, thereby providing an estimate of the present value of the total avoided cost of the assumed block of QF capacity.

Witness Green testified that the DRR method calculates avoided costs in a manner that reflects the financial effects of how a utility would change its schedule of planned capacity additions in response to a purchase of QF capacity and the effect that change would have on the utility's revenue requirements. He said that although NC Power calculated its avoided cost rates using the DRR method in this proceeding, it also compared those rates to the comparable rates produced by using the peaker method in accordance with the Commission's directive in Docket No. E-100, Sub 66. The results of that comparison showed that in the case of NC Power, the DRR method and the peaker method produce similar results.

CP&L argued that the DRR method requires additional models and many more assumptions than are involved in the peaker method. It said the additional complexity involved in the DRR method, and the additional studies and monitoring necessary to achieve a transition from one method to another and to verify the accuracy and representativeness of the new method, are inconsistent with Public Staff witness Johnson's characterization of the DRR method as "fairly intuitive and straightforward".

Witness Johnson testified that a major virtue of the DRR method is that it is fairly intuitive and straightforward. That is, it provides an easily understood picture of what costs are potentially avoided when QF power is acquired by the utility, and some other source of power is displaced or avoided.

He further testified, however, that the DRR method did not necessarily overcome the potential problems he identified with respect to the peaker method. He said the DRR method might or might not produce the actual avoided cost--depending upon the assumptions used in developing the DRR analysis. Specifically, if the analyst treats the cost of the utility's baseload plants as unavoidable sunk costs, and ignores the possibility of selling some of the spare plant capacity to another utility, the high capital costs of the baseload plants will not be reflected in the calculated avoided cost using the DRR method, according to witness Johnson.

In addition, he testified that when a new baseload plant is under construction, the DRR method can yield anomalous results, if the plant is treated as a sunk (unavoidable) cost. He said that rather than influencing the avoided cost figure upward, to reflect the high costs of the utility's own generating plant expansion program, the presence of a new baseload plant might actually reduce the avoided cost estimate--because the high capital costs would be ignored (assumed to be sunk), while the plant's high efficiency and low fuel costs would drive down the projected system running costs. Thus, a problem with mismatching low baseload fuel costs with low peaker (or zero) capital costs can still arise with the DRR method, as it can with the peaker method, according to witness Johnson.

Witness Johnson preferred the DRR method, however, because he believed its nature makes it easier to understand and identify the problems he had discussed and to correct for them. He believed it was likely that a careful review of the DRR calculations would reveal whether the utility's baseload plants have all been assumed to be completely unavoidable, or if any recognition has been given to the possibility that one of them can be delayed, or sold, or otherwise avoided. He said the DRR methodology tends to make such assumptions explicit, making it easier for the Commission to understand why the cost estimates are so low, and making it easier to modify the assumptions, in order to produce more realistic cost estimates.

Witness Johnson recommended that the Commission require CP&L, Duke and NC Power to use the DRR method in future proceedings. He testified that any advantages the peaker method has be retained by using the peaker method to split overall avoided costs into capacity and energy components while still using the DRR method to estimate the overall level of avoided costs.

Proxy Unit Methodology

Hydro witness Chernich proposed the use of a baseload coal plant as a proxy unit for calculating avoided costs for small hydro facilities. He contended that the peaker and DRR methods both mismatch low baseload fuel costs with low peaker capital costs. He argued that either (1) the higher fuel costs of a peaker should be used with the lower capital cost of a peaker, or (2) the lower fuel cost of a baseload unit should be used with the higher capital cost of a baseload unit. He recommended the second alternative.

Witness Ambrose testified that it is wrong to focus on the avoided cost of a particular plant instead of the avoided cost to the entire system. He pointed out that avoided cost rates are intended to recover the costs of the entire system. He further pointed out that the actual avoided capacity costs of the utilities in this proceeding are properly based on peaking plants because they need new peaking plants, not new baseload plants, for the immediate future. On the other hand, he emphasized that the actual avoided energy costs of the utilities in this proceeding are properly based on system running costs, which are dominated by avoidable baseload capacity.

Opportunity Cost

Witness Johnson testified that as typically implemented, both the peaker and the DRR method tend to view the utility in isolation, ignoring any opportunities the utility might have to sell power, or power plants, off-system. He said that if a utility has more baseload capacity than it really needs, both the peaker and the DRR methods will yield relatively low avoided cost estimates.

He also said that when a utility with a more than optimum amount of baseload capacity continues to own and operate all of its baseload plants, rather than sell one of them (or its output) to another utility, it incurs an opportunity cost equal to the highest amount that could be achieved through such a sale. He contended that even if the utility decides that it won't consider such a sale, as long as one is theoretically possible, the value which would be received from such a transaction represents an opportunity cost which is foregone by the utility's decision to not engage in the transaction. In other words, by deciding to retain the existing mix of generating plants, a utility incurs opportunity costs which are equal to the market value of those plants if they were sold to another utility, according to witness Johnson.

He further testified that, whether using either the peaker method or the DRR method, a utility's estimate of avoided cost can change dramatically over time. If the utility lacks enough generating capacity, the avoided costs estimated using either method could be very high. If the utility has ample capacity, and especially if it has more capacity than it really needs, the peaker and DRR methods will both yield relatively low avoided cost estimates.

According to witness Johnson, the value of the utility's existing baseload plants (or their output, if sold in the wholesale market), and thus the magnitude of the opportunity costs which it incurs, will vary depending upon many factors, including the extent of excess capacity in the region, the availability of transmission capacity, the number, type and location of new plants that are planned or under construction in the region, and other factors. He said in most cases, when generating plants, or fractional interests in such plants, have been sold by one utility to another, the price has been far higher than zero, but less than the cost of constructing a new plant of similar quality.

Witness Johnson's key point is that even if a particular utility is not planning, or cannot avoid, the construction of any new baseload capacity, it faces an opportunity cost associated with the continued ownership of its existing plants. It can always avoid this opportunity cost, by selling some of its existing baseload capacity. Thus, one would expect that the true level of its avoided cost (including the opportunity costs) would approach the full cost of building and operating a baseload plant.

Witness Johnson recommended that the Commission require the companies to provide information in the next biennial proceeding concerning avoidable opportunity costs and also require them to justify any discrepancy that exists between their estimates of avoided cost and the actual cost of building and operating a new generating plant (both CT and coal).

Witnesses King and Ambrose contended in rebuttal that witness Johnson's recommendations about opportunity costs were developed as a way of correcting the supposed "mismatch" between the capital costs of a peaking unit and the running costs of a baseload unit. They pointed out that CP&L and Duke do not need new baseload capacity at this time, and that when the companies build needed new peaking capacity, they expect to operate those new peaking units as little as possible. Instead, they will operate existing baseload units during those hours the baseload units are not already operating to the extent possible.

Witness Ambrose also pointed out that a utility will build a coal-fired unit only if it plans to operate the unit at a high capacity factor, so that over the life of the unit the savings resulting from burning coal instead of oil or gas will outweigh the extra capital costs of the unit. He said the extra capital costs of the coal-fired unit actually represent energy costs, not capacity costs.

Witness Ambrose further testified that the peaker method measures avoided costs correctly whether or not the utility system is optimally balanced. He said that it is precisely because the systems were not optimally balanced, but instead are weighted toward baseload capacity, that the estimated avoided costs are lower than the cost of a new coal-fired plant. Witness Ambrose testified that the information necessary for the study of opportunity costs recommended by witness Johnson was confidential, and other utilities would not be willing to hand it over to a consultant or regulator from another state.

NC Power argued that witness Johnson's recommendation to include opportunity cost in avoided cost calculations is inconsistent with PURPA. It cited language in PURPA Section 210 (d) which provides that rates for QF purchases shall not exceed the utilities' incremental cost of alternative electric energy (defined as the cost to the electric utility of electric energy which, but for the purchase from such QF, such utility would generate or purchase from another source).

NC Power also cited FERC Order No. 69 in Docket No. RM79-55 as follows:

This is not to say that electric utilities which have excess capacity need not make purchases from qualifying facilities; qualifying facilities may obtain payment based on the avoided energy costs of a purchasing utility's system.

The FERC also said in Order No. 69:

A qualifying facility may seek to have a utility purchase more energy or capacity than the utility requires to meet its total system load. In such a case, while the utility is legally obligated to purchase any energy or capacity provided by a qualifying facility, the purchase rate should only include payment for energy or capacity which the utility can use to meet its total system load. These rules impose no requirement on the purchasing utility to deliver unusable energy or capacity to another utility for subsequent sale.

Conclusions

The Commission concludes that it should not require CP&L, Duke and NC Power to utilize a common methodology in the next biennial proceeding for calculating avoided costs. There are obviously widely divergent opinions among even those who are most expert in these matters as to what costs are actually avoided and what methodologies will best identify those costs. For purposes of this proceeding, the Commission is of the opinion that each utility should be allowed to pursue its own preferred method for calculating avoided costs, subject to the ongoing review and discussion that takes place in these biennial proceedings.

The peaker method and the DRR method are generally accepted and used throughout the electric utility industry. The Public Staff did not challenge the adoption of either method in this biennial proceeding or in the previous biennial proceeding. Furthermore, NC Power's comparison of the results of the peaker and DRR methodologies as applied to them herein showed very little difference between the methodologies.

The Commission also concludes that it should not require the utilities to adopt a specific generating unit or type of unit for calculating avoided costs in this proceeding. The Commission has consistently found in previous biennial proceedings that the avoided cost of a utility system is not necessarily unit specific. Addition or deletion of a given generating unit affects how the remaining generating units are run. The economics of a generation mix is usually determinative, not the economics of a single unit.

The Commission further concludes that it should not require the utilities to provide special information in the next biennial proceeding regarding opportunity costs. Much of the opportunity costs discussed herein revolve around whether or not a utility has excess baseload capacity that represents an opportunity cost, and whether or not such excess baseload capacity is demonstrated when a utility runs an idle baseload unit instead of a peaking unit to serve a load of shorter duration than the theoretical crossover point; i.e., that point on a load distribution curve where a utility would theoretically be indifferent between constructing and operating a peaking unit or a baseload unit.

The problem seems to be that the theoretical crossover point illustrates the choice between (1) constructing and operating a new peaking unit versus (2) constructing and operating a new baseload unit, while a more representative crossover point might illustrate the choice between (1) operating the existing generation mix plus constructing and operating a new peaking unit versus (2) operating the existing generation mix plus constructing and operating a new baseload unit. Even then, a crossover point would illustrate economic choices only, not other choices that must be made in determining the next capacity addition, such as diversity of fuel type or generator type.

In any event, reliance on the theoretical crossover point to determine the appropriate running time for peaking units versus baseload units apparently leads some parties to the assumption that a peaking unit whose operating hours fall far short of such theoretical crossover point should operate more hours per year, even when such additional peaking unit running time means less baseload unit running time, thereby rendering the affected baseload capacity to be "excess". The Commission is not persuaded that peaking units should be expected to run for many more hours per year than they already run in order to satisfy a theoretical crossover, or equilibrium, point; or that the utility should be expected to sell baseload capacity in order to make room for the peaking units to run more.

The Commission also concludes that it should not require the utilities to provide special information in the next biennial proceeding regarding discrepancies between their respective avoided cost estimates versus the cost of building and operating new generating plants. The discrepancies between avoided energy costs and the operating costs of peaking plants is already explained by the availability, most of the time, of lower fuel cost baseload units. Marginal energy is typically supplied, most of the time, by older baseload units that are used primarily for intermediate generation duty; i.e. as a filler between peaking and baseload requirements. The Commission is of the opinion that the marginal energy needs of a system can be supplied by existing baseload (or intermediate) units at the same time that the marginal capacity needs of the system may require a new peaking unit.

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

The evidence for these findings of fact is found in the testimony of CP&L witness King and Public Staff witness Johnson.

Witness King testified that CP&L's calculation of avoided capacity costs was based on the cost of building a combustion turbine in 1998. He testified that this is the first year in which it will be possible to avoid adding capacity to CP&L's system. As a result, this is the first year in which a purchase from QF will allow CP&L to avoid any capacity costs. CP&L has no need for any new capacity in 1995 or 1996. In 1997 CP&L will begin operation of a group of new combustion turbine units at the Darlington County Plant. The certification process for these units is complete, construction has already begun and the units are not now avoidable. Therefore, CP&L calculated its avoided capacity costs for 1995-97 by discounting 1998 turbine costs.

Witness Johnson testified that CP&L's avoided capacity costs should be based on the costs of building a combustion turbine in 1995, not 1998, because even though the Darlington County turbines are under construction and the capacity is needed, CP&L can stop construction, defer construction, or sell the units once they are complete. If this is done, CP&L would need new capacity in 1997.

The Commission concludes that CP&L should be allowed to discount its 1998 estimate of installed capacity cost back to 1995 for purposes of this proceeding. CP&L has determined that the 1998 capacity is needed and has committed to build it. Whether or not CP&L can stop or delay construction of the Darlington County units which are scheduled for completion in 1997, or sell the units, does not tell us if doing so would be reasonable. CP&L contends it would not be reasonable, and the Commission is not persuaded otherwise. Consequently, if CP&L makes a purchase of QF capacity, it will not avoid the costs of the Darlington County units, but instead will avoid the costs of the next peaking units after Darlington County, which are scheduled for completion in 1998.

The Commission further concludes that CP&L should be allowed to discount its 1998 estimate of fixed O&M costs back to 1995 dollars for purposes of this proceeding, consistent with its determination regarding installed capacity costs for CP&L.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is found in the testimony of CP&L witness King and Hydro witness Chernick.

Witness Chernick recommended in his testimony that CP&L be required to design long-term levelized rates for hydro QFs in this proceeding where the contract period would begin in 1996 or 1997. In other words, he recommended that the hydro QFs should be allowed to enter into long-term contracts now at the rates established herein for such contracts, but that the full 5, 10 or 15-year duration of the contracts should not begin until such time as the hydro QFs become operational, either in 1996 or 1997. He indicated that his recommended approach would at least partially compensate hydro producers for bearing all of the risk of avoided cost rates beyond the typical 5, 10 or 15-year contract terms.

Witness King testified that the forecasting process was imprecise enough without trying to set rates for 15-year contracts that begin two years from now. He pointed out that the Commission re-sets standard avoided cost rates every two years. He suggested that any QF not wanting to sell power under the long-term contract durations applicable to the rates established herein could sign up for the long-term levelized rates established in the next biennial avoided cost rate proceeding, and utilize the variable rate established herein for any sales of power prior to that time.

The Commission concludes that CP&L should not be required to offer the long-term levelized rates established herein for periods longer than the applicable contract durations established herein. If QFs who are not yet operational want to sell power at a long-term levelized rate that begins when the QFs are actually operational and extends thereafter for the full 5, 10 or 15-year contract period, they can enter into a long-term contract at rates established in the next biennial avoided cost proceeding. In the meantime, they can sell power at the variable rate established herein upon becoming operational.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is contained in the testimony of CP&L witness King and Public Staff witness Johnson.

In this proceeding, CP&L proposed to revise the availability of long-term levelized rates for non-hydro QFs from capacities of 5 Mw or less to capacities of 100 Kw or less. Long-term levelized rates would still be available to hydro QFs with capacities of 80 Mw or less.

As an alternative to the 100 Kw or less availability, CP&L proposed that the 10-year and 15-year long-term levelized rate options be eliminated for non-hydro QFs (leaving only the 5-year rate option.)

Witness King testified that CP&L paid an average of 5.96 cents per Kwh for QF power over the past 12 years, with the great majority of such payments under long-term levelized rates. He estimated that it resulted in overpayments of $388 million due to the decline of actual avoided costs during that period. He emphasized the difficulty in accurately forecasting costs for long periods of time into the future, and that such difficulty substantially increases the risks associated with long-term levelized rates. He also pointed out that the proposed 100 Kw limit is consistent with the level required by the Federal Energy Regulatory Commission (FERC).

The Public Staff, Carolina Utility Customers Association (CUCA) and Peregrine Energy Corporation all opposed the CP&L proposal on grounds that any further limitation on the availability of long-term levelized rate options would effectively discourage QF development. They pointed out that the Commission has considered revisions to the 5 Mw limit in two previous avoided cost proceedings, and each time concluded that the 5 Mw limit is appropriate.

The Commission concludes that CP&L should not be allowed to revise the availability of long-term levelized rates to non-hydro QFs from capacities of 5 Mw or less to capacities of 100 Kw or less for purposes of this proceeding. While long-term rates involve more forecasting risks, the utilities are also getting better at identifying the various forecasting risks and incorporating features in their calculations to address such risks.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony of CP&L witness King, Public Staff witness Johnson and Hydro Intervenor witness Chernick.

CP&L proposed a change in the timing of its capacity credit payments. Instead of capacity credit payments throughout the entire year, CP&L has proposed to eliminate capacity credit payments for the months of March, April, May, October, and November, thereby concentrating the payments during the remaining on-peak months.

Witness King testified that concentrating capacity credit payments in the peak months would align the capacity credits more closely with the value of the purchased capacity, and would enable the QFs to schedule maintenance during off-peak months without losing any of their capacity credit payments.

Witnesses Johnson and Chernick opposed concentrating the capacity credit payments in peak months only, on grounds that outages during peak months would have a more severe financial impact on the QFs involved, and that QF capacity would need maintenance during on-peak as well as off-peak months.

The Commission concludes that CP&L should be required to pay capacity credits during on-peak hours of off-peak months as well as during on-peak hours of on-peak months for purposes of this proceeding. While the Commission understands the desire to align capacity credits more closely with periods when such credits are most valuable, it also recognizes that not all maintenance outages can be performed off-peak, and that even off-peak outages can create a need for more capacity under certain circumstances.

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

The evidence for these findings of fact are contained in the testimony of CP&L witness King.

Witness King explained that CP&L proposes to revise the definition of holidays in its avoided cost rate schedules to be consistent with the holiday definition in its retail rate schedules. He said Fridays or Mondays will be considered off-peak periods when holidays fall on the adjacent Saturdays or Sundays respectively.

Witness King also explained that CP&L proposes to revise its standard contract to include language that specifies the time between consummation of the contract and the project coming on-line. He said when there is an unreasonable delay in bringing a project on-line, the contract offer now continues for an indefinite period. He contended that a time limit in the contract would protect ratepayers as well as the QF from detrimental changes in avoided costs during long delays in project completion.

No one opposed the two CP&L proposals, and the Commission concludes that they should be allowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is found in the testimony of CP&L witness King, Duke witness Young, and Hydro witness Chernick.

CP&L and Duke proposed performance adjustment factors of 1.116 and 1.164 respectively to calculate their avoided cost rates instead of the 1.2 factor that has been consistently used by the Commission. Duke proposed this same adjustment in the last avoided cost proceeding and offered the same justification--that the 1.2 factor is based on the generating reserve margin Duke uses for planning purposes, and includes an allowance for forecast error, weather variations and other things

unrelated to QF performance. Duke contended that the 1.164 factor represented the planned maintenance and forced outage schedules which are directly related to QFs.

CP&L contended that its proposed 1.116 factor is based on the forced outage rate for a combustion turbine, and would be consistent with paying capacity credits only during the peak summer or winter months.

The Commission found in Docket Nos. E-100, Subs 59 and 66, that a purpose of the performance adjustment factor is to allow a QF to experience some level of outages and still receive its entire capacity credit payment. Without a performance adjustment factor, a QF would have to run 100% of the time during peak hours to receive its full capacity credit payment. A performance adjustment factor of 1.2 requires a QF to operate 83% of the on-peak hours. The Commission rejected Duke's proposed reduction of the factor (and corresponding increase in the required level of operation) in the last proceeding.

On cross-examination by the Public Staff, CP&L witness King and Duke witness Young each conceded that their respective company's system average capacity factor was considerably lower than 83% (55.5% for CP&L and 62.7% for Duke), but contended that this was not a fair comparison because of economic dispatch. However, they also conceded that their baseload capacity factors were lower than the 83% capacity factor at which QFs were currently expected to operate, and that even their nuclear units did not exceed 83% (80% for CP&L and 82.3% for Duke).

The Commission concludes that a performance adjustment factor of 1.2 should be utilized by both CP&L and Duke for their avoided cost calculations in this proceeding. This finding is consistent with the Commission's determinations in previous avoided cost proceedings. However, the matter of performance adjustment factors should be addressed in greater detail in the next biennial avoided cost proceeding, including the appropriate levels of reserve margins in a competitive environment. Such competitive environment might involve open access to transmission lines, retail wheeling, etc.

The Public Staff's proposed Order in this proceeding recommended that a performance adjustment factor of 2.5 be used by CP&L and Duke to calculate the capacity credits paid to hydro QFs. It cited cross-examination by the Public Staff of witnesses King and Young showing that hydroelectric plants are operated at such low capacity factors that an equivalent performance adjustment factor would exceed 6.0. It also cited evidence indicating that operations of small hydro QFs are constrained by rainfall over which the QFs have no control.

The Commission is of the opinion that the 1.2 performance adjustment factor prescribed herein should not be altered for hydro QFs in this proceeding. However, the Commission is open to further discussion in the next biennial avoided cost proceeding of the merits of encouraging hydro generation by calculating avoided cost rates paid to hydro QFs based on performance adjustment factors larger than 1.2.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for these findings of fact is found in the testimony of CP&L witness King, Duke witness Keels, Public Staff witness Powell and in the Commission's Order of April 7, 1987, in Docket No. E-100, Sub 53.

Both CP&L and Duke proposed in this proceeding to specify that availability of long-term levelized rates to non-hydro QFs be based on the nameplate capacity of the applicable generating unit. In the past, the standard long-term rates have been made available to non-hydro QFs "contracting to sell" 5 Mw or less.

Duke witness Keels testified that the nameplate capacity provides a readily available basis for determining whether or not a QF is eligible for the standard long-term levelized rate. For example, a QF may contract to deliver less than 5 Mw but may actually deliver greater than 5 Mw. At less than 5 Mw, the QF is eligible for the standard long-term levelized rate. At greater than 5 Mw, the QF is only eligible for the standard variable rate unless it negotiates a long-term levelized rate with the utility. Witness King supported essentially the same position as witness Keels.

The Public Staff, CUCA, and Peregrine opposed the proposals. Witness Powell testified that the nameplate capacity was not as exact as Duke implied, and recommended that the Commission retain the current practice of making standard rates available to QFs who "contract to sell" 5 Mw or less capacity.

Peregrine pointed out in its brief that the Commission's Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, dated April 7, 1987, in Docket No. E-100, Sub 53, states:

> the Commission realizes there may exist non-hydroelectric QFs with generating capacities of more than 5 Mw which consume some of that capacity internally and only contract to sell 5 Mw or less of generating capacity. Since the risk of default relates to the capacity which is subject to sale, the Commission has, on its own initiative, decided to restate the maximum limit on the availability of long-term levelized rates for non-hydroelectric QFs as those facilities contracting to sell generating capacities of 5 Mw or less. Although no such issue was raised at the hearing, the commission finds it appropriate to make this change.

The Commission concludes that CP&L and Duke should not be allowed to limit the availability of long-term levelized rates based on the nameplate capacity of the applicable generating unit for purposes of this proceeding. The Commission is not persuaded at this point that its reasoning in the E-100, Sub 53 proceeding is no longer valid. However, a fuller discussion of the issue is desirable. Therefore, the Commission also concludes that CP&L, Duke, and NC Power should file testimony and exhibits as appropriate in the next biennial avoided cost proceeding discussing the availability of long-term levelized rates to QFs based on the nameplate capacity of the generating unit versus such availability based on the capacity that the QF contracts to sell.

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

The evidence for these findings of fact are found in the testimony of CP&L witness King, Duke witness Young, CP&L and Duke witness Ambrose, and Hydro witness Chernick.

Witness Chernick testified that the respective values used by CP&L and Duke for S02 emissions allowances in their avoided cost calculations was too low. He said that emissions allowances are tradeable commodities and that the costs of such allowances can be avoided by trading.

Witness Chernick also recommended that avoided cost calculations should include (1) known environmental compliance costs, (2) unknown costs of complying with pending environmental requirements, (3) costs of complying with possible future environmental requirements, and (4) costs of residual environmental damages.

Witness Young testified that Duke already incorporates known environmental compliance costs into its calculations, including S02 emissions allowance costs and fuel premiums paid for low sulfur coal.

Witness King testified that CP&L incorporates the cost of emission allowances (including heat rate and scrubber operation) into the fuel cost of its coal fired units, and that CP&L does not designate a specific amount of such fuel cost as attributable to the cost of emission allowances.

Witness Ambrose testified that each utility's avoided cost calculations include the utility's estimate of all reasonably certain off-system sales and purchases.

The Public Staff recommended in its proposed Order that the utilities be required to provide detailed information in the next biennial avoided cost rate proceeding pertaining to the direct and indirect costs of air pollution, nuclear decommissioning, and other costs that are avoided because of hydro generation on their systems.

The Commission concludes that the utilities should not be required to include environmental compliance costs in their respective avoided cost calculations that are unknown or uncertain in nature for purposes of this proceeding. Quantifying actual out-of-pocket avoided costs is problematic enough without introducing unknown environmental costs into the equation, particularly if such costs would not be out-of-pocket costs to the utility.

On the other hand, the Commission concludes that the utilities should be required to discuss in the next biennial avoided cost proceeding the direct and indirect costs of air pollution, nuclear decommissioning, and other environmental costs that are avoided because of hydro generation on their respective systems. There was too little discussion from the parties in this proceeding that addressed the relationship between hydro generation and various environmental considerations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is found in the testimony of Duke witness Young and Public Staff witness Johnson.

Public Staff witness Johnson recommended that Duke be required to include a 1.0075 factor for general plant in its avoided cost calculations. He pointed out that his recommended factor is the same factor used by CP&L herein and appears to be conservative relative to Duke's actual general plant costs. He contended that Duke did not do a more detailed study of this issue in this proceeding, although it was requested to do so in the last proceeding. CUCA agreed with the Public Staff.

Duke witness Young argued that the cost reductions in general plant are offset by cost increases for employees, office space, and equipment for the oversight of interconnections, avoided cost rate design and the administration of purchased power contracts.

Witness Johnson argued that in the absence of a specific, detailed study of the general and administrative expenses and investment associated with the planning, development, construction, and operation of Duke's own generating plants relative to the analogous costs associated with QF purchases, it is reasonable to assume that the latter costs are lower. More specifically, he said it is reasonable to exclude any consideration of general and administrative expenses, but to require Duke to include a modest adjustment for general plant costs, like CP&L.

In the last avoided cost rate proceeding, the Commission allowed Duke to exclude a general plant cost factor, concluding that there is considerable uncertainty as to what extent a utility's general plant costs associated with its own generation are offset by the general plant costs associated with its power purchases from QFs. The Commission further concluded in the previous proceeding that the matter should be addressed in more detail in the next avoided cost proceeding, although there was no specific ordering paragraph to that effect in the decision-making Order.

For purposes of this proceeding, the Commission concludes that Duke should not be required to adjust its avoided capacity costs by a factor of 1.0075 for general plant. The Commission remains unpersuaded that a detailed study of general plant costs as described by witness Johnson herein would be justified in order to verify a modest factor of 1.0075. Although the discussion herein added little to the discussion of the issue continued in the previous proceeding, the Commission is not prepared to assume that a factor of 1.0075 is warranted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is found in the testimony of Duke witness Keels and in the Commission's Order of February 14, 1995, in Docket No. E-7, Sub 545.

Witness Keels proposed language in Duke's standard contracts with QFs specifying that the standard avoided cost rates are available only to facilities which are directly interconnected with Duke and located in its North Carolina service area. The proposal was unopposed in this proceeding, although it was an issue in a recent Commission decision, Noah vs. Duke (Docket No. E-7, Sub 545).

The Hearing Examiner's recommended order of February 7, 1995, in Docket No. E-7, Sub 545 denied the Noah complaint, finding that Noah Corporation, a hydro generator, was not entitled to Duke's standard rates and contracts for hydro QFs because its facility was not located within North Carolina and it was not interconnected with the Duke system. The Order found that standard avoided

cost rates established by the Commission were intended to be applicable only to QFs located in North Carolina and interconnected with the purchasing utilities in North Carolina.

The Commission concludes in this proceeding that Duke should be allowed to limit the availability of its standard rates and contracts for QFs to facilities directly interconnected with Duke and located in its North Carolina service territory, consistent with the Commission's decision in the Noah vs. Duke complaint.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

On August 25, 1994, the Commission issued an Order on motion of Duke in Docket No. E-100, Sub 64 approving a temporary moratorium allowing Duke to defer consideration of non-utility generator (NUG) proposals not otherwise excluded by the Order. The moratorium was allowed to address Duke's concern that NUGs might try to avoid participating in Duke's competitive bidding process by submitting proposals "under the wire" just prior to formal issuance of Duke's request for competitive bidding proposals. The Commission's Order cited concerns raised by the Public Staff as to whether a utility may legally refuse to negotiate with a QF because the utility is planning to pursue competitive bidding for its next block of capacity. The Commission therefore issued an Order in this docket on September 2, 1994, asking parties to comment on this issue in their testimony herein. The issue is whether a utility may refuse to negotiate individually with a QF where the utility is planning to pursue a competitive bidding process for its next block of capacity needs and where the QF is seeking to sell not only energy, but also capacity that would otherwise be satisfied by the successful bidders in the utility's competitive bidding process. The Commission concludes that it may.

Duke and NCPower generally take the position that competitive bidding is a permissible means of determining a utility's avoided costs and that requiring the utility to deal with a QF just before a competitive bidding is initiated would frustrate the bidding process. It would require the utility to deal with the very offers that the bidding is intended to weed out, and this would lead to higher costs. Duke concludes that a utility should be able to defer negotitions when it has "definitive plans" to utilize competitive bidding for its next block of capacity. The Public Staff agrees that a utility may refuse to negotiate when it has "an active competitive bidding process underway." The Commission agrees. The exact point at which a utility may invoke this refusal should be resolved by motion to the Commission, like the motion Duke filed in Docket No. E-100, Sub 64.

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

The evidence for these findings of fact is found in the testimony and exhibits of NC Power witness Green and Public Staff witness Johnson.

Witness Johnson testified that he was troubled by NC Power's decision to provide no capacity credits to QFs until 1999. His review of NC Power's DRR avoided cost study indicates that no capacity is needed until that date, and thus capacity costs are considered unavoidable prior to that time. He further testified, however, that it should be understood that the QFs selling energy to NC Power prior to 1999 will have to bear the capacity cost of the plant they use to generate energy. He said a refusal to pay anything for capacity during periods when NC Power is not planning to build a

plant results in relatively low QF rates during the early years of a project, and will discourage the development of QF capacity in NC Power's service area. CUCA agreed with the Public Staff.

The Commission concludes that NC Power should not be required to offer capacity credits to QFs prior to 1999 for purposes of this proceeding. Such conclusion is consistent with the Commission's determination elsewhere herein regarding CP&L's avoided costs being based on capacity that cannot be avoided prior to 1998.

Witness Johnson also testified that he was concerned about NC Power's proposal to require each QF to select either the baseload or peaking tariff option. He said that while NC Power's internal generation expansion options can be classified into these two categories, some potential QFs may not fall neatly into one or the other of these two distinct categories. They may display some of the characteristics of a peaking plant and some of the characteristics of a base load plant. Witness Johnson explained that there is a wide gap between the optimal number of operating hours for a QF under the proposed peaking QF tariff, and the minimum required number of hours under the baseload QF tariff. QFs selecting the peaking option would only be paid the full peaking rate for approximately 350 hours, or 3.9% of the year. Beyond those operating hours, they would only be paid the non-firm energy rate, he said.

Witness Green testified that the rates offered to QFs should reflect the type of energy and capacity that the QF permits the Company to avoid. He said the Company's Integrated Resource Plan (IRP) indicates a need for peaking capacity in 1999 and a need for baseload capacity in 2005. Therefore, he contended that only peaking and baseload capacity can be avoided by purchases from QFs.

The Commission concludes that NC Power's proposal to require QFs to select either its proposed peaker or baseload option should be rejected. NC Power's peaker option would pay a QF for only 3.9% of the hours of a year. The only other option under NC Power's proposal, the baseload option, requires a QF choosing that option to meet a cumulative capacity factor requirement of 75%, which is higher than the baseload capacity factors consistently achieved by the utilities. These limitations on the availability of NC Power's standard contract may unduly discourage QF development.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18 AND 19

The evidence for these findings of fact are found in the testimony of NC Power witnesses Jones and Swanson.

NC Power proposed to limit the availability of its standard avoided cost rates to one operational facility per site. Witness Jones testified that a large QF may split its project into several facilities at the same site, with each facility being smaller than 5 Mw, thereby making each facility eligible for the standard rates and contract without participating in NC Power's competitive bidding process. He said the purpose of the limitation was to prevent QFs from circumventing the competitive bidding process.

NC Power also proposes certain exceptions to the limitation for circumstances that indicate that separate treatment of facilities at a single site is appropriate, such as separate facilities serving different steam hosts, all at a single site. No one opposed the proposed limitation to one facility per site.

NC Power also proposed to limit the availability of its standard avoided cost rates and contracts to QFs who execute such contracts by December 31, 1996, and who begin operation by January 1, 1999. Witness Swanson testified that the purpose of the limitation is to prevent the standard rates and contracts established herein from becoming too outmoded in the event the effective date for the avoided cost rates established in the next biennial proceeding are delayed beyond the beginning of 1997. No one opposed the proposal.

The Commission concludes that NC Power should be allowed to limit the availability of its standard avoided cost rates to one operational facility per site as proposed herein. The Commission further concludes that NC Power should be allowed to limit the availability of its standard avoided cost rates and contracts established in this proceeding to QFs who execute such contracts by December 31, 1996, and who begin operation by January 1, 1999.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 20 THROUGH 26

The appropriate methodology for determining Nantahala's avoided cost rates was a significant issue at the hearing. Nantahala first proposed standard rates designed to mirror Duke Power Company's two-year, variable rate. This was consistent with what the Commission approved in the last two avoided cost proceedings. Nantahala subsequently filed revised testimony proposing to offer long-term rates, and it again proposed to adopt Duke's proposed rates. Nantahala argues that it is appropriate to establish avoided costs for Nantahala through reference to Duke's avoided cost rates because Duke supplies supplemental power to Nantahala and Nantahala's purchase from a QF avoids construction of new generating facilities on Duke's system. However, Nantahala would put a limit on this approach. Should the Commission approve avoided cost rates for Duke that exceed the costs at which Nantahala purchases power from Duke under its interconnection agreement, Nantahala would instead base its avoided cost rates on the purchase costs under the interconnection agreement. The Public Staff, on the other hand, takes the position that Nantahala's avoided costs should reflect what it saves by avoiding purchases from Duke under the interconnection agreement. For the reasons stated hereinafter, the Commission agrees with the Public Staff.

Nantahala witness Stonebraker testified that Nantahala presently does not contract for the purchase of electricity from any QF. Witness Stonebraker explained that Nantahala maintains 100 MW of installed generating capacity and purchases supplemental capacity and energy from Duke under an existing interconnection agreement. By the existing arrangement, Nantahala presently provides approximately 50 percent of its annual energy needs and has installed capacity to serve 67 percent (100/150) of its summer peak demand requirement and nearly 43 percent (100/235) of its winter peak demand need. Public Staff witness Powell explained that the purchase agreement with Duke is similar to Nantahala's previous agreement for supplemental power with the Tennessee Valley Authority (TVA).

Although witness Stonebraker testified that "Duke must provide all capacity and energy needed to meet Nantahala's customer requirements in excess of Nantahala's generating capability," witness Powell identified several exceptions where Duke is not required to provide supplemental capacity to Nantahala. Examples include instances for which Duke would have to make a significant change to its generating system and situations where Nantahala acquires new load that differs significantly from its existing load make-up. Nantahala argues that these exceptions have never been used, that Duke can nonetheless be required to serve if adequate notice is given, and that Nantahala is still a full requirements customer of Duke.

When Nantahala received its supplemental power from TVA, all of its avoided cost rate proposals were based on purchase costs outlined in the agreement between Nantahala and TVA. Nantahala used a formula type of rate that was tied directly to the amount of money Nantahala paid to TVA for power. Nantahala was adamant that its avoided costs must be tied to its purchase agreement with its supplier to protect ratepayers and not discriminate against a QF. When Duke replaced TVA as Nantahala's supplemental power supplier, Nantahala recommended that it be allowed to adopt Duke's variable avoided cost rate. In the past two avoided cost proceedings, Nantahala has provided little discussion about its methodology for determining avoided cost. The Commission approved Nantahala's recommendations, but this is the first proceeding in which the issue has been fully developed.

Witness Powell testified that if Nantahala's avoided costs are tied to Duke's avoided costs, rather than the purchase costs under the interconnection agreement, it could result in either overpayments or underpayments to a QF, which would place Nantahala's ratepayers at risk. During cross-examination of witness Stonebraker, the Public Staff introduced Cross-Examination Exhibit No. 8, one of Nantahala's responses to a Public Staff data request, in which Nantahala indicated that with varying assumptions, comparison of Nantahala purchases on Duke's proposed avoided cost rates with the amount Nantahala presently pays to Duke under the interconnection agreement over several months could produce an overpayment of $3.5 million or an underpayment of $4.2 million. This evidence indicates that Nantahala's cost to purchase supplemental capacity and energy from Duke is not similar Duke's proposed avoided cost rates.

The FERC's PURPA regulations set forth at 16 CFR § 292.101 *et seq.* define avoided costs as

> the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source. (emphasis added)

This is consistent with 16 USCA 824a-3(d). The Commission could establish avoided cost rates for Nantahala as (1) Nantahala's cost to build generation or (2) Nantahala's cost to purchase from another source. Nantahala has no plans to build generation. The appropriate measure of avoided costs for Nantahala, since it buys its supplemental power from Duke, is the amount avoided due to a reduced purchase from Duke at $14.35/kW and $0.016/kWh.

WCU is the utility that most closely resembles Nantahala in this proceeding. WCU purchases all its energy and capacity requirements from Nantahala. As a wholesale customer, WCU buys its

power from Nantahala at rates regulated by the FERC, just as Nantahala buys its power from Duke. In this proceeding and in all past proceedings since 1984, WCU has employed a formula method of determining avoided costs, such as that proposed by the Public Staff for Nantahala in this case, that directly follows its purchase power agreement. The formula reimburses a QF based on the current rates charged by the supplier at any point in time. WCU witness Wooten indicated that WCU has no intention of changing its formula for establishing avoided costs.

Nantahala cites two FERC decisions as supporting its position. One case, City of Longmont et al, 39 FERC Sec. 61,301 (1987), involved a request by certain Cities for a waiver of the FERC-established obligation to purchase from a QF. The Cities purchased power from Platte River Power Authority (Platte) under an agreement that required Platte to purchase all QF power offered to the Cities at Platte's avoided cost. A QF intervenor contested the Cities' request for a waiver. The Cities contended that Platte's avoided costs were the proper measure of the avoided costs of the Cities since the generation to be avoided by QF purchases by the Cities would be Platte's generation and that QFs would therefore receive the same rate from Platte as from them. The FERC agreed, reasoning that the avoided costs of an all-requirements utility should be adjusted to reflect the avoided costs of the supplying utility. In the second case, In re Carolina Power and Light Company 48 FERC Sec 61,101 (1989), Haywood EMC negotiated to purchase power from a QF built in an area where Haywood purchased power from CP&L to resell to its members. CP&L sought approval from FERC of a rider that prevented Haywood from paying the QF more than CP&L would have paid the QF. FERC approved the rider, again noting that "the full requirements rate should be adjusted so that the full requirements supplier will be in the same position as if it had purchased power directly from the QF."

The Commission finds the FERC decisions distinguishable and not controlling in this proceeding. The FERC noted that the generation owned by the Cities provided only .5% and 1.5%, respectively, of their energy resource needs, which the FERC found to be a minute fraction of their requirements. The Cities' generation did not preclude them from being considered an "all-requirements" customer. The generation Nantahala owns and operates is not minute and Nantahala is not an "all-requirements" customer. Further, FERC found that Platte was ready and willing to make all purchases from QFs which the Cities would otherwise be obligated to purchase. Here there is no agreement that Duke will make all purchases from QFs which Nantahala would otherwise be obligated to purchase. Further, FERC pointed out that the waiver in the Cities' case was being requested pursuant to a regulation that FERC described as requiring the state regulatory agency or nonregulated utility to request the waiver. This Commission has no record of any such request for a waiver. Finally, PURPA delegates responsibility for implementing the rules dealing with avoided costs to state regulatory commissions as to those utilities for which the state commissions have ratemaking authority. The Commission believes that our present decision is consistent with the PURPA statutes and rules and that it is within our authority to determine how avoided costs will be set under PURPA for North Carolina's regulated utilities. The existing interconnection agreement between Nantahala and Duke sufficiently protects both Duke and Nantahala ratepayers. For all of these reasons, the Commission does not find the FERC rulings cited by Nantahala to be persuasive.

In conclusion, the Commission decides that Nantahala should establish its avoided costs as the cost of its power purchases from Duke under the existing interconnection agreement. Nantahala shall file a new proposed Schedule CG and, if appropriate, a new proposed contract that complies with the decision of the Commission. The other parties will be given 30 days to comment on the new filing.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 27 THROUGH 29

The evidence in support of these findings of fact is contained in the testimony of CP&L witness King, Duke witnesses Young and Keels, CP&L and Duke witness Ambrose, NC Power witnesses Swanson, Jones, and Green, Public Staff witness Johnson, and the Commission's previous final Orders in its biennial avoided cost rate proceedings.

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

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

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

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

The General Assembly has clearly indicated in G.S. § 62-156 a policy of encouraging hydroelectric facilities. Additionally, we note that many of the risks associated with standard long-term levelized rate options are either not present or tend to be minimized in the case of most hydroelectric facilities. For example, hydroelectric facilities are not subject to the risks associated with changes in fossil fuel costs or the business risks associated with the heat recovery aspect of cogeneration projects. Further, more of the capital costs involved in a hydroelectric facility tend to be "up front" costs which must be financed. Levelized rates facilitate financing by providing a degree of certainty and by allowing an income stream which more evenly matches the debt payments required

by financing. Finally, hydroelectric facilities by their very nature tend to entail a degree of permanence and stability as regards the major components of the facility, such as the dam and powerhouse. In light of the foregoing reasons, we believe and conclude that CP&L and Duke should continue to offer long-term levelized rate options to hydroelectric qualifying facilities less than 80 Mw as standard rate options.

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

Thus, based on the foregoing and the record as a whole in this proceeding, the Commission concludes that CP&L and Duke should offer long-term levelized rates for 5-year, 10-year, and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity which are owned or operated by a small power producer as that term is defined in G.S. § 62-3(27a) or (b) any other qualifying facility contracting to sell generating capacity of five megawatts or less.

As in previous proceedings, the Commission also concludes that the standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration.

The evidence and conclusions supporting the finding of fact for NC Power is the same as that set forth herein for Duke and CP&L. However, instead of a fixed long-term levelized energy payment, NC Power offers an energy payment based on a long-term levelized generation mix with adjustable fuel prices. Accordingly, NC Power should continue to offer long-term levelized capacity payments with energy payments based on a long-term levelized generation mix with adjustable fuel prices for 5-year, 10-year, and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity owned or operated by small power producers as that term is defined in G.S. 62-3(27a) or (b) any other qualifying facility which contracts to sell generating capacity of five megawatts or less. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration.

In the previous avoided cost proceedings, the Commission found that NC Power should offer a fixed long-term levelized energy payment as an option to small QFs rated at 100 Kw or less capacity. Accordingly, the Commission concludes herein that NC Power should continue to offer the long-term levelized energy payment option to small QFs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 30 AND 31

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

In this proceeding and in other filings, Duke indicated to the Commission its definitive plans to implement a competitive bidding process for its next block of capacity needs. NC Power has been authorized to require non-hydro QFs greater than 5 Mw capacity to participate in its competitive bidding process for the past several avoided cost proceedings. Therefore, consistent with earlier decisions regarding NC Power and its competitive bidding process, the Commission concludes that non-hydro QFs desiring to sell more than 5 Mw capacity to Duke at this time should participate in Duke's competitive bidding process for obtaining additional capacity. As in past proceedings, NC Power's ongoing competitive bidding solicitation program has been explained to the Commission, and the Commission concludes that nonhydroelectric facilities desiring to sell generating capacity of more than five megawatts to NC Power should participate in NC Power's competitive bidding process for obtaining additional capacity.

The Commission notes that QFs offering to sell 5 Mw or less capacity to Duke or NC Power are not required to participate in their respective competitive bidding processes. The Commission further notes that QFs offering to sell greater than 5 Mw capacity to Duke or NC Power are still eligible to sell energy only at the approved variable rates without participating in a competitive bidding process.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 32 AND 33

In past proceedings, the Commission has not required that Nantahala offer any standard long-term levelized rate options to qualifying facilities. The Commission concluded in the previous proceedings that the unique nature and circumstances of Nantahala's power supply arrangements made such options infeasible. While Nantahala owns some generating units, it is unable to serve its load from these sources alone. It must purchase capacity and energy under contract from others. Because of these contractual arrangements and the inherent uncertainty and monthly variations involved in these contractual arrangements, it was not considered feasible to require Nantahala to offer any form of standard long-term levelized rate options based on the cost of Nantahala's purchases from its outside supplier.

Nantahala proposed long-term levelized rates in this proceeding, but they were based on the long-term levelized rates proposed by Duke. The Commission's decision to require that Nantahala base its avoided cost rates on its cost of purchases from Duke renders Nantahala's proposed long-term levelized rates moot. In view of the Commission's requirement that Nantahala base its avoided cost calculations on its cost of purchased power, Nantahala may or may not wish to include long-term levelized rate options in its filing of a new proposed rate schedules in response to this Order. The Commission will entertain any propasal that Nantahala wishes to make in that regard at the time of its filing.

WCU has no generating facilities of its own and buys all of its power from Nantahala under an arrangement which is similar to that between Nantahala and Duke. Consistent with our conclusions in past proceedings, WCU should not be required to offer any long-term levelized rate options.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 34 AND 35

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36

The evidence and conclusions for this finding of fact are cumulative and are reflected in the foregoing findings and conclusions. The rate schedules, contracts, and terms and conditions of service proposed by CP&L, Duke, and NC Power in this proceeding are generally reasonable except as discussed elsewhere herein, and they should be approved subject to the modifications discussed herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 37

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

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L and Duke shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity owned or operated

by small power producers as that term is defined in G.S. 62-3(27a) or (b) any other qualifying facility contracting to sell generating capacity of five megawatts or less. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration.

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

3. That NC Power shall offer long-term levelized energy payments as an additional option for small QFs rated at 100 Kw or less capacity.

4. That CP&L shall offer nonhydroelectric qualifying facilities contracting to sell generating capacities of more than five megawatts the options of contracts at the variable rates set by the Commission or contracts at negotiated rates and terms.

5. That nonhydroelectric qualifying facilities larger than five megawatts capacity desiring to sell generating capacity to Duke or NC Power should participate in their respective competitive bidding processes for obtaining additional capacity.

6. That Nantahala shall file a new proposed avoided cost rate schedule and, if appropriate, a new proposed contract, within 30 days and other parties will be given 30 days to comment on it, and a further order will be issued at that time. The Commission will entertain any proposal that Nantahala wishes to make with respect to long-term levelized rates at the time it files a revised rate schedule pursuant to this Order.

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

8. That the rate schedules, contracts and terms and conditions proposed in this proceeding by CP&L, Duke, NC Power, and WCU are hereby approved, subject to the modifications discussed herein.

9. That Duke, CP&L, NC Power, and WCU shall file within ten (10) days after the date of this Order rate schedules, contracts, and terms and conditions implementing the findings, conclusions and ordering paragraphs herein. Additionally, CP&L, Duke and NC Power shall file supporting documentation showing the calculations made to arrive at their avoided cost rates.

10. That CP&L and Duke shall file testimony and exhibits as appropriate in the next biennial avoided cost proceeding discussing performance adjustment factors, including the appropriate levels of reserve margins in a competitive environment as discussed herein.

11. That CP&L, Duke and NC Power shall file testimony and exhibits as appropriate in the next biennial avoided cost proceeding discussing the availability of long-term levelized rates to QFs based on the nameplate capacity of the generating unit versus such availability based on the capacity that the QF contracts to sell.

12. That CP&L, Duke, NC Power and Nantahala shall file testimony and exhibits as appropriate in the next biennial avoided cost proceeding discussing the direct and indirect costs of air pollution, nuclear decommissioning, and other costs that are avoided because of hydro generation on their respective systems and the merits of encouraging hydro generation by calculating avoided cost rates for hydro QFs based on higher performance adjustment factors.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1995.

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

DOCKET NO. E-100, SUB 75A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Request by Duke Power Company to	)	ORDER APPROVING
Modify and Consolidate Six Demand-	)	PROGRAMS
Side Management Programs	)	

Heard In: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 12, 1995.

Before: Commissioner Allyson K. Duncan, presiding; Commissioners Laurence A. Cobb, Ralph A. Hunt, and Jo Anne Sanford

Appearances: For Duke Power Company:
Robert W. Kaylor, Attorney at Law, Bode, Call & Green, P.O. Box 6338, Raleigh, NC 27628-6338

For Southern Environmental Law Center:
Oliver A. Pollard III and Jeffrey M. Gleason, Staff Attorneys, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, VA 22902

For the Using and Consuming Public:
A.W. Turner, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, NC 27626-0520

BY THE COMMISSION: By letter dated August 1, 1995, Duke Power Company (Duke) requested approval by the North Carolina Utilities Commission to modify and consolidate six residential demand-side management (DSM) programs (the High Efficiency Heat Pump and Central Air Conditioning Payment Program, the Duct Sealing Payment Program for New Residential Structures, the Manufactured Housing Payment Program for New Residential Structures, the HVAC Tune-up Program, the Residential Insulation Loan Program, and the Residential Comfort Machine Loan Program) into three new programs (the New Residential Housing Program, the Existing Residential Housing Program, and the Nonresidential Heat Pump Program).

Duke indicated that it is reviewing all of its DSM programs with a goal of improving the effectiveness of the demand-side portfolio which Duke has developed over the past few years. In response to the increasingly competitive electric industry, Duke states that it is shifting its DSM emphasis from energy efficiency programs with large incentive payments to programs designed to encourage the efficient use of the system year-round. Duke contends that the requested changes are designed to increase the overall effectiveness of the programs and that the changes will lower program costs by lowering incentive payments and improving program delivery mechanisms.

On August 24, 1995, the Public Staff filed a Response recommending that the filing be approved with three exceptions. The Public Staff presented arguments in support of its three proposed modifications to Duke's request. Duke filed a response to the Public Staff's response on September 8, 1995.

On August 25, 1995, the Southern Environmental Law Center and the Conservation Council of North Carolina (hereinafter, collectively, SELC) filed a Response asking the Commission to either deny Duke's request or, in the alternative, defer consideration until after a full hearing and decision regarding Duke's 1995 Integrated Resource Plan (IRP) in Docket No. E-100, Sub 75. SELC argued, among other things, that the request lacks sufficient information to be evaluated; that the request marks a significant scaling-back of Duke's DSM programs, contrary to the Commission's directives; that Duke is abandoning programs which help to hold down peak growth in favor of load building; that the new programs are likely to increase use of electricity, contrary to public interest; and that a number of issues raised by the request are the same as issues pending in Docket No. E-100, Sub 75.

Duke filed a Reply on September 6, 1995, addressing SELC's arguments. Duke argued that studies conducted subsequent to its 1995 IRP led it to conclude that some DSM programs are not cost-effective and should be improved; and that Duke must be able to respond quickly to ongoing studies or else it will be placed at a disadvantage as to its competitors. Duke argued that the Commission has previously acted on individual DSM programs separately from a pending IRP investigation. In its reply, Duke asked the Commission to schedule its request for consideration at a Monday Staff Conference.

On September 7, 1995, Piedmont Natural Gas Company, Inc. (Piedmont) filed a Response to Duke's request. While favoring approval of Duke's request, Piedmont stated "a number of

substantive concerns regarding Duke's proposal" and urged the Commission to set Duke's request for hearing in conjunction with the hearing in Docket No. E-100, Sub 75.

By order dated September 8, 1995, the Commission Chairman found good cause to schedule Duke's request for oral argument. The Order stated that although the request is clearly relevant to matters pending in the IRP proceedings in Docket No. E-100, Sub 75, the Chairman recognizes Duke's desire to act more quickly in the present more competitive environment and that there is precedent for the Commission acting on a DSM program separate from a pending IRP investigation. The Order noted that Duke's request is of a type often considered by the Commission at a Monday Staff Conference, and that the oral argument should follow a similar format.

At the oral argument, Duke presented and explained its request first and then answered questions from the Commission. Next, the Public Staff and SELC presented their concerns, substantive and procedural, and their proposed modifications to Duke's proposal. Piedmont Natural Gas did not appear at the hearing, but filed a Motion for Clarification on October 9, 1995, asking: (1) for the Commission to clarify its intent as to which docket will be utilized to evaluate and approve (or disapprove) Duke's DSM programs; (2) for the Commission to provide for the presentation of evidence on those programs to include hearing with opportunity for cross-examination; and (3) for the Commission to compel Duke to respond to Piedmont's Data Request. Duke filed a response to Piedmont's motion on October 24, 1995.

On October 10, 1995, Public Service Company (PSNC) filed a response to Duke's programs stating that it would not object to Duke's proposed program consolidation if Duke uses shareholder dollars to finance these programs.

The Commission issued two orders on October 24, 1994 in Docket Nos. E-100, Subs 64A and 71, and M-100, Sub 124 addressing programs offering incentives. In response to those orders, Duke filed a letter on November 1, 1995, as an addendum to its August 1, 1995 filing herein. Piedmont withdrew its motion for clarification on November 7, 1995.

Based on the oral arguments and the entire record in this matter, the Commission now makes the following:

FINDINGS OF FACT

1. Duke is a public utility subject to the jurisdiction of the Commission.

2. G.S. §62-140(c) requires that Commission approval must be obtained if a public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility's service. Duke has appropriately filed the programs for approval pursuant to the statute.

3. Duke's filing meets the substantive requirements set forth in the Commission's October 24, 1994 order in Docket Nos. E-100, Sub 64A and Sub 71 which established guidelines for filing incentive programs pursuant to G.S. 62-140(c).

4. The anticipated cost-effectiveness of the proposed programs has been sufficiently demonstrated.

5. The proposed programs should be approved subject to the provisions discussed herein.

6. Recovery of the costs of those portions of the programs approved herein that promote electric equipment having a SEER of 11 or greater should be determined on a case-by-case basis by the Commission in a future rate proceeding and subject to the finding that such recovery would be just and reasonable.

7. Approval of those portions of the programs approved herein that promote electric equipment having a SEER less than 11 should be subject to the provision that such portions are presumptively not categorizable as DSM programs and that the costs of such portions be borne by the stockholders instead of the ratepayers.

8. The costs of the programs approved herein should not be placed in a deferral account.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This Finding of Fact is essentially informational and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2 THROUGH 8

The Commission issued two orders on October 24, 1994, in Docket Nos. E-100, Subs 64A and 71, and M-100, Sub 124, addressing programs offering incentives. The Order Adopting Rule R1-38 in Docket No. M-100, Sub 124 set forth the procedural issues regarding the types of incentives that cannot be offered by a utility without first obtaining approval by the Commission pursuant to G.S. 62-140(c), and established Commission Rule R1-38.

The Order Adopting Guidelines in Docket Nos. E-100, Subs 64A and 71 decided the substantive issues regarding what a utility must demonstrate in order to obtain Commission approval of a program involving incentives subject to G.S. §62-140(c). The order established guidelines to govern "certain aspects of the dispute between the electric utilities and the natural gas utilities" and established that pending applications are subject to these guidelines.

The Order Adopting Guidelines in Docket Nos. E-100, Subs 64A and 71 also set forth a rebuttable presumption that a program which "involved an incentive to a third party and ... affects the decision to install or adopt ... electric service" is promotional in nature. The presumption may be rebutted at the time of filing "by demonstrating that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes and appliance standards."

By letter dated August 1, 1995, Duke filed the proposed programs herein with the Commission, requesting approval, in Docket No. E-100, Sub 75A. In its August 1, 1995, filing, Duke demonstrated the cost-effectiveness of the proposed programs and included tariff sheets whereby the maximum amount and type of incentives are specified. Duke stated that (1) participation in the

proposed programs does not require a minimum number or percentage of all-electric structures to be built; (2) participation in the programs does not require builders to specify that homes in a given subdivision or development will be all electric; and (3) participation in the programs does not require advertisement that a builder is an all-electric builder for a subdivision or in general. Builders will be advised of the availability of natural gas as appropriate, pursuant to the guidelines.

The proposed programs involve incentives to a third party and could affect the decision to install or adopt electric service in the residential and commercial market; therefore, Duke also addressed how the incentive costs will be accounted for (i.e., whether or not the costs are costs which may be recoverable from customers). Based on the fact that the programs include elements which promote the installation of equipment which exceed federal appliance efficiency standards and measures which exceed state building codes, Duke contends that the program costs should be eligible for recovery from customers in future rate proceedings.[1] Duke noted an exception for some equipment included in the loan portion of the Existing Residential Housing Program. Duke proposed that the financing of standard efficiency equipment be included in the loan program. Duke committed that the interest rate for the loans for standard efficiency equipment will meet or exceed Duke's cost for the loans, thereby ensuring that there is no incentive from the Company. Duke noted that the interest rate for standard efficiency heat pumps and for component installations would be 9.5% and 11.5% respectively, and that these interest rates are higher than Duke's current cost to secure these loans. Duke stated that it is willing to insert a statement in its proposed tariff saying that "the interest rates for this equipment will meet or exceed Duke's cost to secure the loans," with regard to the loans for heat pumps with less than 11 SEER and the loans for components (indoor or outdoor units only).

Although Public Service did not make an appearance at the oral argument, its October 10, 1995, filing states that it does not object to Duke's proposed program consolidation if Duke will only use shareholder dollars to finance these programs. PSNC references Duke's statement that it "will not oppose the Public Staff's recommendation that no cost associated with the consolidated programs should be eligible for inclusion in the DSM deferred account."

In response, Duke stated during the October 12, 1995, oral argument that the Company has simply agreed with the Public Staff not to seek any special cost recovery treatment for these items in the form of deferral accounting. As explained in Duke's November 1, 1995, addendum to the August 1, 1995, filing, with the exception of loans for standard efficiency equipment and components, Duke contends that program incentive payments are eligible for recovery from customers since the payments "encourage construction of dwellings and installation of equipment that are more energy efficient than required by state and/or federal building codes and appliance standards" and the incentive payments do "not exceed the difference between the cost of installing equipment and/or constructing a dwelling to current ... standards and the more stringent energy efficiency requirements of the program." With regard to loans for standard efficiency equipment and components, Duke committed that it will not offer any incentives for these loans by ensuring these loans are made at interest rates which are at or above the interest rates at which Duke is able to secure the loans.

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1 The Public Staff requested that the Commission not allow Duke to defer incentive payments associated with the programs, and Duke did not oppose the request.

Compliance With Rules and Guidelines

Duke contended that Commission Rule R1-38 is inapplicable to Duke's filing herein because the Commission's Order of October 24, 1995, states on page nine that "pending applications need not be re-filed to comply with the requirements of this rule." The Commission agrees that R1-38 does not apply in this instance. The Commission notes that no one is now contesting the or filing requirements in this proceeding.

The Commission also notes that the guidelines adopted by the Commission in its Order of October 24, 1995, require that the programs filed herein be cost effective, but do not specify how cost-effectiveness is to be determined.

Duke contends that the programs filed herein are cost-effective because they pass the Rate Impact Measure (RIM) test, which determines the effect of a program on the price per kWh. None of the parties contend that the programs do not pass the RIM test. Furthermore, the Public Staff does not contest the cost-effectiveness of the programs.

SELC contended the programs were not cost-effective because they would result in higher system costs, higher customer bills, and reduced encouragement of energy efficiency. SELC is opposed to exclusive use of the RIM test herein.

The Commission concludes that the anticipated cost-effectiveness of the programs herein has been sufficiently demonstrated. Although some programs are designed to increase kWh sales during the winter months (and thereby result in "higher system costs "and" higher customer bills"), they will do so in a manner that reduces the price per kWh by spreading fixed costs over increased kWh sales. Such a strategy is supposed to balance the summer and winter loads on the system, thereby making more efficient use of generating capacity.

The Commission also concludes that the proposed programs meet the substantive requirements of the guidelines established in the Order of October 24, 1995, in Docket Nos. E-100, Subs 71 and 64A. Therefore, the Commission concludes that the proposed programs should be approved subject to the provisions discussed elsewhere herein.

Financing of Heat Pumps with SEERs Less Than 11

The Public Staff and SELC raise concerns with Duke's proposal to expand its heat pump financing offer to include heat pumps with Standard Energy Efficiency Ratings (SEERs) less than 11.

In its August 24, 1995, filing, the Public Staff states that there are no energy efficiency benefits to be derived from the installation of a minimum efficiency heat pump and that allowing Duke to do so will do nothing other than encourage increased electric sales. The Public Staff acknowledges that increased strategic sales may be desirable from a system operations standpoint, but states that such programs should not be accomplished under the guise of DSM.

In its September 8, 1995, response to the Public Staff's filing, Duke notes that the term DSM incorporates any utility efforts to influence the way customers use electricity and includes interruptible

options, load shift options, energy efficiency options, and strategic sales options. Duke states that while each of these options has different objectives, each is important in meeting customer electric needs in a low cost manner. Duke states that cost-effective strategic sales options enable the utility to spread its fixed costs over a greater kWh base, resulting in rates per kWh which are lower than they would be otherwise.

In its September 8, 1995, response to the Public Staff, Duke stated that it proposed to offer loans for all heat pumps (1) in order to offer customers additional options for purchasing heat pumps; (2) to meet customer demands created by competitor financing for gas heating systems; and (3) to specifically address Piedmont Natural Gas Company's similar program. Duke reports that Piedmont finances standard efficiency natural gas central heating systems.

SELC also objects to Duke's proposal to offer loans for heat pumps with SEERs less than 11. SELC contends that the change is "designed to increase market share" and "increase the load building aspects of Duke's DSM programs."

In its September 5, 1995, response to SELC, Duke argues that SELC's objection to Duke's proposal to offer incentives in the form of loans for SEER 10 heat pumps should be rejected because the proposal provides benefits to Duke's customers. Duke proposes offering loans for heat pumps less than 11 SEER in response to customers' requests for additional options for purchasing heat pumps and in response to Piedmont's similar program.

The Commission concludes that there is no dispute between the Public Staff and Duke regarding the cost-effectiveness of either the strategic sales goal or the energy efficiency goal. The dispute is a philosophical one concerning which goal should take precedence when the goals are in conflict. Reducing the qualification for the programs to a SEER of 10 will increase the impact of the programs on strategic sales, but will lessen the impact of the programs on energy efficiency.

On this record, the Commission finds no compelling reason to conclude that strategic sales goals should outweigh energy efficiency goals, or vice versa. The Commission notes that Rule R1-38 suggests energy efficiency as a consideration, not a requirement, for approval of an incentive program. The guidelines for implementation of Rule R1-38 specify that where energy efficiency is at issue, the energy efficiency of electricity alone or of natural gas alone, as applicable, will be used. The guidelines also specify that whether or not a program promotes energy efficiency may influence the extent to which the costs of the program are recoverable from the ratepayers.

The Commission concludes that Duke should be allowed to offer financing for the purchase of heat pumps having a SEER less than 11; provided that the cost of such financing is borne by the stockholders instead of the ratepayers. Financing offered for the purchase of heat pumps having a SEER of 11 or greater would be recoverable from the ratepayers to the extent allowed by the Commission on a case-by-case basis in a future rate proceeding and subject to the finding that such recovery would be just and reasonable.

Financing of Heat Pump Components With SEERs Less Than 11

In its August 24, 1995, filing the Public Staff opposes Dukes proposal to charge a higher interest rate for financing the replacement of an indoor or outdoor component of an existing heat pump. The Public Staff proposes basing the interest rate for financing the replacement of the indoor or outdoor component on the same rate as would be charged for financing the replacement of a complete heat pump system. The example used by the Public Staff is a customer with a 12 SEER heat pump who experiences a failure of the indoor or outdoor component and who replaces that component with a 12 SEER component. The customer would be charged a finance rate of 11.5% to replace the component, whereas the customer would be charged a finance rate of 7.5% to replace the entire system.

In its September 8, 1995, response to the Public Staff, Duke contends that the situation is much more likely that the failed component has a SEER level much lower than 12 or even 11, since such components typically last 10 to 15 years. Duke explains that the typical heat pump SEER of 15 years ago was about 7. Therefore, Duke believes the much more likely scenario is a customer with a SEER 7 heat pump whose indoor or outdoor unit fails. Duke notes that replacing that unit with an 11 or 12 SEER indoor or outdoor unit yields a system with an undetermined SEER rating. Duke explains that the higher interest rate for indoor or outdoor units is intended to encourage the customer to purchase an entire system as opposed to an indoor or outdoor unit only. Replacing the entire system will improve the efficiency of the system more than replacing the indoor or outdoor unit only. Duke noted that the proposed 11.5% interest rate is still much better than average credit card rates. Therefore, Duke believes that the proposal offers customers an additional option at an attractive interest rate. In the October 12, 1995, oral argument, Duke emphasized that the expansion of financing to include components is in response to customer request and that the customer is not obligated to take advantage of Duke's financing offer.

The Commission notes that this issue is similar to the Public Staff's issue regarding the financing of minimum efficiency equipment. The Public Staff in this case believes Duke's proposal to expand its financing options to include financing of heat pump system components in addition to whole heat pump systems is flawed because Duke fails to offer a lower interest rate for financing high efficiency components. Duke contends that it is merely offering customers additional options and that the customer is free to accept or reject the financing option.

The Commission also notes that the lower interest rate Duke would charge to finance replacement heat pumps having a SEER of only 10 would not promote strategic sales, since the customer in this instance already has a heat pump. Such lower interest rate would promote greater energy efficiency to the extent that the heat pump being replaced has a SEER less than 10 (or at least less than the SEER of the heat pump being replaced).

The Commission concludes that the dispute between the Public Staff and Duke on this issue does not seem to involve a conflict between the strategic sales goal and the energy efficiency goal. Instead, it involves a conflict between approaches to energy efficiency. Assuming the recommendations of both parties would be cost-effective, the questions become which recommendation would be more cost-effective or more energy efficient. Unfortunately, the answers are debatable and probably unknown.

The Commission concludes that Duke should be allowed to offer financing for the replacement of indoor and outdoor components of existing heat pump systems having a SEER less than 11; provided that the cost of such financing is borne by the stockholders instead of the ratepayers. Financing offered for the replacement of heat pump system components having a SEER of 11 or greater would be recoverable from the ratepayers to the extent allowed by the Commission on a case by case basis in a future rate proceeding and subject to the finding that such recovery would be just and reasonable.

Deferral of Incentives

In its August 24, 1995, filing the Public Staff recommends that no costs associated with the consolidated programs should be eligible for inclusion in the DSM deferral account. The Public Staff believes that Duke does not need the incentive of the deferral account for DSM programs that increase sales, pass the RIM test, and put downward pressure on rates.

In its September 8, 1995, response to the Public Staff, Duke states that it would not oppose the Public Staff's recommendation that no costs associated with the consolidated programs be eligible for inclusion in the DSM deferral account.

The Commission concludes that Duke should not defer any expenses associated with the consolidated programs set forth in Duke's August 1, 1995, filing.

Recovery of Program Costs

Duke contends that the proposed programs are cost-effective, and that at least the portion of the programs that promote electric equipment having a SEER of 11 or greater should be recoverable in future rate cases. However, Duke consented to the Public Staff request that it not place the costs of any of the programs into its DSM deferred accounts.

The Public Staff contends that Duke should not be allowed to recover costs associated with financing equipment having a SEER less than 11 in future rate cases. SELC agrees with the Public Staff.

The Commission notes that Duke's concession to not defer program costs does not necessarily mean Duke won't try to recover program costs that occur in the test year of a future rate case. The Commission also notes that Duke's contention that no incentive is involved in the financing of heat pump equipment at interest rate levels that are below its cost to secure the loans is not consistent with the definition of incentives contained in Rule R1-38. The definition of incentives includes "low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan are made available."

The Commission concludes that recovery of the costs of those portions of the programs approved herein that promote electric equipment having a SEER of 11 or greater should be determined on a case-by-case basis by the Commission in a future rate proceeding and subject to the finding that such recovery would be just and reasonable.

The Commission further concludes that the statement Duke offered to insert in its tariffs for the proposed programs in order to specify that interest rates will meet or exceed Duke's cost to secure the loans should not be required. Duke's offer to insert the statement is based on an interpretation of "incentive" which is different from that adopted in our Rule R1-38.

The Commission also points out that approvals of those portions of the programs that promote electric equipment having a SEER less than 11 is granted herein subject to the proviso that the cost of such programs is borne by the stockholders instead of the ratepayers. Therefore, the costs of such programs are inappropriate for deferral accounting treatment.

Strategic Sales

SELC objects to Duke's filing because it marks a "scaling-back of Duke's DSM programs" and, thus, is "contrary to the Commission's directives and not in the public interest." Duke responds that, "while it is true that the Commission commended Duke regarding its DSM efforts in the Commission's Order Adopting Least Cost Integrated Resource Plans in Docket No. E-100, Sub 64 in 1992, the Commission did not order Duke to continue the programs indefinitely nor did the Commission deny approval of other utilities' IRPs which contained significantly less demand-side efforts." Duke characterizes its proposed filing as an effort to increase the cost effectiveness of the programs while continuing to offer DSM programs.

The Commission concludes that Duke's filing is not contrary to the public interest but a response to an uncertain future for electric utilities and an effort to continue demand-side management programs but with increased cost-effectiveness.

Flat Incentive for High Efficiency Heat Pumps

SELC argues that Duke's proposed program changes "are flawed because they offer incentives ... which are no greater for installing heat pumps more efficient than SEER 11."

Duke states in its September 5, 1995, response that the changes are consistent with Duke's objective of improving the overall cost-effectiveness of the programs and of improving the administrative costs of the programs. Duke states that programs should not be rejected if they increase Duke's market share; and that cost-effective strategic sales of electricity enable Duke to spread its fixed costs over a greater kilowatt-hour base, resulting in an overall downward influence on customer rates per kWh.

The Commission concludes that Duke's proposal to offer a flat incentive payment for all heat pumps of 11 SEER and greater is reasonable in light of an increasingly competitive market and is consistent with Duke's goal of increasing the total cost-effectiveness of its DSM portfolio.

Elimination of Air Conditioning Incentive

SELC opposes Duke's proposal to eliminate incentive payments for high efficiency air conditioning, contending that "Duke is abandoning programs which help to hold down peak growth and ultimately forestall new base load plants, to the benefit of all customers, in favor of load

building." In its August 1, 1995, filing, Duke explains that the proposal to stop offering the air conditioning incentives is based on the relative benefits of heat pumps versus air conditioners. A high efficiency heat pump offers year-round energy sales to the Company and reduces summer peak demand while a high efficiency air conditioner reduces summer peak demand but offers no off-peak sales. Duke contends that the requested program changes result in a reduction in summer peak (as compared to offering no program at all).

The Commission concludes that Duke's basis for proposing to eliminate the air conditioning incentive is reasonable.

CONCLUSION

The Commission has examined the issues raised by the parties and concludes that Duke's proposed three programs herein should be approved subject to the caveats included herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Duke's proposed three programs herein are hereby approved subject to the caveats included herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1995.

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

Commissioner Cobb disents.

DOCKET NO. G-100, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On July 14, 1994, the Commission issued an Order proposing to change Commission Rule R6-5(11). The Commission provided that the proposed change would be made effective in 30 days if no opposing comments were filed. The change will require that the local distribution companies' biennial update reports, which are now due on or before January 1 of even-numbered years, shall in the future be filed with the Commission on or before October 31 of odd-numbered years.

No opposing comments have been filed.

IT IS, THEREFORE, ORDERED that Commission Rule R6-5(11) should be, and hereby is, changed as shown on Appendix A attached to the Commission's Order of July 14, 1994, in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of August 1994.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Cynthia S. Trinks, Chief Clerk

(Attached is a copy of rule changes.)

Rule R6-5(11)

Each franchised natural gas distribution company (LDC) shall file reports with the Commission detailing its plans for providing natural gas service in areas of its franchised territory in which natural gas is not available. Such reports shall be updated at least every two years on or before October 31 of odd-numbered years and, at a minimum, shall include:

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 Which Authorizes Gas Cost Adjustment Proceedings for Natural Gas Local Distribution Companies	)))	ORDER ADOPTING RULE CHANGE

BY THE COMMISSION: On June 8, 1994, the Commission issued an Order proposing to change Commission Rule R1-17(k)(6)(a) and (b). The Commission provided that the proposed change would be made effective in 30 days if no opposing comments were filed. The change relates to the filing date and hearing date for the annual gas cost prudence review of North Carolina Natural Gas Corporation.

No opposing comments have been filed.

IT IS, THEREFORE, ORDERED that Commission Rule R1-17(k)(6)(a) and (b) should be, and hereby is, changed as shown on Appendix A attached to the Commission's Order of June 8, 1994, in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of July 1994.

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

(Attached is a copy of rule changes.)

Rule R1-17(k)(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 October 31. 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 second 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.

DOCKET NO. G-100, SUB 68

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Deferral Accounting Treatment of Investment	)	
in Natural Gas Expansion Projects into Areas	)	ORDER REQUESTING COMMENTS
That are Economically Infeasible to Serve	)	

BY THE COMMISSION: On May 31, 1995, the Public Staff filed a Petition for Rulemaking in this docket asking the Commission to institute a proceeding to adopt a rule dealing with the use of deferral accounting in connection with investments by natural gas local distribution companies (LDCs) in projects to extend natural gas facilities into unserved areas within their franchised territories which are economically infeasible to construct. A proposed Commission Rule R6-89 was attached to the Petition.

The Public Staff's Petition reviews recent developments in the General Assembly and at the Commission dealing with the expansion of natural gas facilities. The Public Staff concludes that the Commission should explore new means of encouraging the expansion of natural gas facilities into unserved areas since the size of the expansion funds that have been created for the LDCs "is an obvious constraint on the pace at which expansion can proceed." The LDCs have suggested several new ratemaking devices to facilitate expansion, and the Public Staff concludes that one of these suggestions is straightforward and could be implemented by the Commission without any statutory changes. This suggestion is "the continued accrual of carrying costs on plant investment after construction has been completed until it can be included in rate base in a general rate case" or allowance for funds used for expansion (AFUFE). Therefore, the Public Staff, with the concurrence of the LDCs, proposes Commission Rule R6-89 "for review by the Commission upon comment by interested parties."

The Commission finds good cause to institute a rulemaking proceeding as requested by the Public Staff and to publish the proposed Commission Rule R6-89 for comments and reply comments. The Commission will issue an appropriate further order in this docket following the receipt of comments.

IT IS, THEREFORE, ORDERED as follows:

1. That a rulemaking proceeding should be, and hereby is, instituted in this docket for the purpose of considering a rule dealing with the use of deferral accounting in connection with investments by the LDCs in projects to extend natural gas facilities into unserved areas within their franchised territories which are economically infeasible to construct;

2. That proposed Commission Rule R6-89, attached hereto as Appendix A, is hereby published for comments;

3. That North Carolina Natural Gas Corporation; Piedmont Natural Gas Company, Inc.; Public Service of North Carolina, Inc.; and North Carolina Gas Service are made parties to this proceeding;

4. That other interested persons may petition to intervene on or before the deadline for initial comments as hereinafter provided;

5. That parties may file initial comments on the proposed Rule R6-89 on or before July 25, 1995, and reply comments addressing the initial comments of other parties on or before August 8, 1995;

6. That the Commission will proceed as it deems appropriate following the receipt of comments; and

7. That the Chief Clerk shall send a copy of this Order to all persons on the Commission's natural gas mailing list and all persons who intervened in one of the LDCs' last general rate cases.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of June 1995.

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

APPENDIX A

PROPOSED RULE R6-89

Rule R6-89. Deferral Accounting for Natural Gas Expansion.

(a) An LDC may request Commission approval to create a regulatory asset account for the purpose of accruing a return on its investment in transmission lines constructed as part of a Project of the type that would be eligible for use of an expansion fund pursuant to G.S. 62-158. Such a request may be filed with the Commission as part of a request for approval of a Project pursuant to Rule R6-84 but in no event less than 45 days prior to the date the accrual is to begin. AFUDC will accrue during construction; however, the accrual under this Rule shall begin no sooner than the date construction is completed and continue until the date new rates become effective in the LDC's next general rate case in

which the investment in the Transmission Facilities are included in the LDC's rate base. The Commission, however, may terminate the accrual upon the motion of any interested party and after notice to the LDC and opportunity for hearing. The accrual under this Rule for a particular project shall not exceed five (5) years unless so authorized by the Commission upon a showing by the LDC of good cause.

(b) For the purposes of this Rule, "Transmission Facilities" shall include the gas pipeline and all appurtenant related facilities, including land, mains, valves, meters, boosters, regulators, compressors and their driving units and appurtenances, and other related equipment constructed as part of the Project, the purpose of which is to facilitate the transportation of natural gas from an interstate pipeline, other portions of the LDC's system including existing transmission mains, or other suppliers of gas for ultimate delivery to a distribution system(s). Transmission Facilities shall end at the inlet side of the equipment which meters or regulates the entry of gas into one or more distribution systems.

(c) In determining whether to approve a request under this rule, the Commission will consider the desirability of providing gas service to the new area covered by the Project, the size and relative infeasibility of the Project for which deferral accounting is sought, the LDC's overall expansion plans as reported pursuant to G.S. 62-36A, the LDC's currently earned return on equity, the amount of the investment as a percentage of the LDC's rate base and the amount of the anticipated accrual as a percentage of the LDC's revenues, the estimated impact of the accrual on rates when the investment is included in the LDC's rate base in a general rate case, and any other factors affecting the public interest.

(d) The anticipated accrual under this Rule shall not affect the calculation of the net present value of a Project for the purpose of the use of an expansion fund pursuant to G.S. 62-158 and Rule R6-84. Approval of the use of expansion funds as partial funding for a Project pursuant to G.S. 62-158 is not required for the Project to be eligible for Commission approval of the deferral accounting treatment under this Rule.

(e) Upon receiving Commission approval, the LDC may, on a monthly basis, debit the account in an amount equal to the LDC's currently authorized overall rate of return on its investment in Transmission Facilities constructed as part of Projects that have been completed but not included in rate base.

DOCKET NO. G-100, SUB 68

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Deferral Accounting Treatment of Investment in Natural Gas Expansion Projects into Areas that are Economically Infeasible to Serve	))))	ORDER ADOPTING RULE R6-89

BY THE COMMISSION: On May 31, 1995, the Public Staff filed a Petition for Rulemaking whereby they proposed the following Rule R6-89:

RULE R6-89. Deferral Accounting for Natural Gas Expansion.

(a) An LDC may request Commission approval to create a regulatory asset account for the purpose of accruing a return on its investment in transmission lines constructed as part of a Project of the type that would be eligible for use of an expansion fund pursuant to G.S. 62-158. Such a request may be filed with the Commission as part of a request for approval of a Project pursuant to Rule R6-84 but in no event less than 45 days prior to the date the accrual is to begin. AFUDC will accrue during construction; however, the accrual under this Rule shall begin no sooner than the date construction is completed and continue until the date new rates become effective in the LDC's next general rate case in which the investment in the Transmission Facilities are included in the LDC's rate base. The Commission, however, may terminate the accrual upon the motion of any interested party and after notice to the LDC and opportunity for hearing.

(b) For the purposes of this Rule, "Transmission Facilities" shall include the gas pipeline and all appurtenant related facilities, including land, mains, valves, meters, boosters, regulators, compressors and their driving units and appurtenances, and other related equipment constructed as part of the Project, the purpose of which is to facilitate the transportation of natural gas from an interstate pipeline, other portions of the LDC's system including existing transmission mains, or other suppliers of gas for ultimate delivery to a distribution system(s). Transmission Facilities shall end at the inlet side of the equipment which meters or regulates the entry of gas into one or more distribution systems.

(c) In determining whether to approve a request under this rule, the Commission will consider the desirability of providing gas service to the new area covered by the Project, the size and relative infeasibility of the Project for which deferral accounting is sought, the LDC's overall expansion plans as reported pursuant to G.S. 62-36A, the LDC's currently earned return on equity, the amount of the

investment as a percentage of the LDC's rate base and the amount of the anticipated accrual as a percentage of the LDC's revenues, the estimated impact of the accrual on rates when the investment is included in the LDC's rate base in a general rate case, and any other factors affecting the public interest.

(d) The anticipated accrual under this Rule shall not affect the calculation of the net present value of a Project for the purpose of the use of an expansion fund pursuant to G.S. 62-158 and Rule R6-84. Approval of the use of expansion funds as partial funding for a Project pursuant to G.S. 62-158 is not required for the Project to be eligible for Commission approval of the deferral accounting treatment under this Rule.

(e) Upon receiving Commission approval, the LDC may, on a monthly basis, debit the account in an amount equal to the LDC's currently authorized overall rate of return on its investment in Transmission Facilities constructed as part of Projects that have been completed but not included in rate base.

This proposed rule would implement a procedure for the continued accrual of carrying costs of certain transmission pipeline investment after construction has been completed until such investment can be included in rate base through a general rate case.

On June 13, 1995, the Commission issued an Order providing for the filing of initial and reply comments to the Petition. Comments were filed during July and August 1995 by North Carolina Natural Gas Corporation (NCNG), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), Frontier Utilities of North Carolina, Inc. (Frontier), and Carolina Utility Customers Association, Inc. (CUCA). On August 2, 1995, the Public Staff filed a Motion requesting that its Petition be withdrawn and the docket closed. The Public Staff asserted that it filed its Petition with the support of the local distribution companies (LDCs), but that two LDCs had since proposed modifications contrary to the agreement and unacceptable to the Public Staff. Responses were filed by Piedmont, Public Service and CUCA, and the Public Staff filed a reply. The positions of the parties are summarized below.

In its Petition, the Public Staff stated that it recognizes that expansion into unserved areas can proceed only as fast as the LDCs can raise the necessary capital on reasonable terms, that mechanisms to fund infeasible expansion are not without limitation insofar as they put upward pressure on rates, and that no single approach or mechanism can guarantee the statewide availability of natural gas. Although the LDCs are expected to receive additional supplier refunds from time to time and although G.S. 62-158 provides for other sources of funding (including remittances by the LDCs when projects become feasible), still the size of the natural gas expansion funds is an obvious constraint on the pace at which expansion can proceed. The Public Staff believes that it is incumbent on the Commission to explore other reasonable means of encouraging the construction of facilities into unserved areas in order to maximize the funds that are available and to minimize the impact on the LDCs and their customers. Several months ago, in presentations to the Joint Utility Review Committee, the LDCs suggested some ratemaking devices that could facilitate expansion. These included use of a future test period, instantaneous roll-in of non-revenue producing assets, recovery of project cost when it goes into service, incremental rates, and continued accrual of AFUDC

(allowance for funds used during construction) on investment in plant that has been completed but has not been included in rate base. The Public Staff stated that it had given considerable thought to each of the devices proposed by the LDCs – whether they are consistent with existing statutes, whether they are administratively workable, to what degree they might facilitate expansion, and whether they are fair both to the LDCs and to their customers. The Public Staff concluded that the continued accrual of carrying costs on plant investment after construction has been completed until it can be included in rate base in a general rate case is the most straightforward approach and one that would not require any legislative changes. If this approach is adopted, however, the Public Staff believes it should be limited to projects that would otherwise be eligible for funding with expansion funds pursuant to G.S. 62-158 and should be subject to Commission approval on a case-by-case basis. The Public Staff further believes that before approving deferral accounting for a particular project the Commission should take into account a number of factors, including the size and relative infeasibility of the project, the LDC's overall expansion plans as reported pursuant to G.S. 62-36A, the LDC's current earned return on equity, the amount of the investment as a percentage of the LDC's rate base and the amount of the accrual as a percentage of the LDC's revenues, and the impact of the accrual on rates when the investment is included in the LDC's rate base in a general rate case. Finally, it believes the accrual should be subject to termination by the Commission prior to the LDC's next general rate case, after notice and hearing, upon the motion of any party.

NCNG supports the proposed rule which would provide another means to assist in expansion of natural gas facilities while minimizing the impact on NCNG and its customers.

Frontier supports the proposed rule, especially the provision that deferral accounting be used only for projects that are infeasible pursuant to G.S. 62-158

Piedmont states that when the proposed rule was drafted and filed with the Commission, Piedmont supported the rule. However, according to Piedmont, events that have occurred since the filing of the rule make it impossible for Piedmont to continue to support the rule, at least in its present form. According to Piedmont, shortly after the filing of the rule, the Public Staff advised Piedmont that the rule would be unavailable to Piedmont for expansion either in its presently certificated service area or in the four counties in which Piedmont sought to expand. If the Commission accepts the Public Staff's view, neither expansion funds nor deferred accounting will be available to Piedmont and Piedmont's hope that the proposed rule would remove obstacles to expansion and make expansion funds available to Piedmont will not be realized. Piedmont therefore requests the Commission to delete the phrase "of the type that would be eligible for use of an expansion fund pursuant to GS. 62-158" from the first sentence of paragraph (a) of the proposed rule, to change the word "will" to "may" in the first line of paragraph (c) of the proposed rule, and to add the following provisions to the proposed rule:

(f) For purposes of this rule, there shall be a prima facie presumption that any geographical area designated by an LDC as containing at least 100 potential natural gas end users not presently receiving natural gas service and located at least ten (10) miles from an existing transmission main shall be eligible for regulatory asset accounting.

(g) A project shall be eligible for the regulatory asset accounting prescribed by this rule upon a showing that the project is in the public interest and that it cannot reasonably be financed through traditional methods of financing. An LDC requesting use of regulatory asset accounting for a project shall file verified testimony or affidavits showing why the project is in the public interest and why it cannot be financed through traditional methods of financing. The showing that the project may not reasonably be financed through traditional methods of financing may be made by a net present value analysis calculated in a generally accepted manner or by any other competent, material, and substantial evidence showing that the project, standing alone, will not generate sufficient revenue to permit the LDC to earn its allowed return on its investment in the project. A notice of such filing shall be published in newspapers in the LDC's service area within ten (10) days of the filing. Interested parties shall have twenty (20) days after the publication of the last such notice in which to intervene and file testimony and/or affidavits supporting or opposing the LDC's filing. If during the twenty-day period no such testimony or affidavits are filed or if only supporting testimony or affidavits are filed, the Commission shall render its decision on the availability of regulatory asset accounting for the project within sixty (60) days of the date of the LDC's filing. If any party files testimony and/or affidavits opposing the project, the matter shall be set for hearing before a hearing examiner withing sixty (60) days of the date of the LDC's filing. In such event, the hearing examiner shall have thirty (30) days from the date of the close of the hearing to file with the Commission Clerk a recommended decision, and the Commission will issue its final decision within thirty (30) days after the filing of the recommended decision.

Public Service stated that it, like Piedmont, participated in the discussions with the Public Staff regarding the development of the proposed rule that was submitted with the Petition. At that time, Public Service also supported the proposed rule, while recognizing that it would not significantly increase either the funds available for expansion or the pace at which expansion will occur. Since that time, however, events have demonstrated that what little benefit was anticipated to flow from the proposed rule as drafted will not materialize. Accordingly, Public Service recommended that the proposed rule not be adopted unless it includes certain modifications. Public Service supports the modifications suggested by Piedmont except that the distance from existing facilities should be reduced from 10 miles to 3 miles and such distance should be measured from the facilities which describe the current outer limits of the LDC's system, whether designated as transmission or distribution.

CUCA stated that the accounting treatment recommended by the Public Staff is unlawful as it would allow the LDCs to include in rate base carrying costs incurred after a particular expansion project becomes "used and useful." Further CUCA stated that the use of expansion related deferred accounting would not be in the public interest inasmuch as the impact of implementing such deferred accounting will be to increase the energy bills paid by existing customers in order to facilitate the construction of gas transmission lines which are unlikely to ever pay for themselves. CUCA proposed that the proposed rule be amended to include the following sentence:

> The Commission will not approve a request for deferral accounting under this Rule in the absence of a specific showing that no other significant infrastructure-related obstacles to economic development in the area covered by the Project exist, that the area covered by the Project has had an unemployment rate at least 50% greater than the statewide average unemployment rate for the past five years, and that the availability of natural gas service in the new area covered by the Project will, in all probability, result in the recruitment of new industry to that area.

CUCA stated that the proposed Rule R6-89(a) should also be amended by striking the second sentence and inserting the following language in lieu thereof: "Such a request may be filed with the Commission in lieu of but not in addition to request for approval of a Project pursuant to G.S. 62-158 and Rule R6-84 but in no event less than 45 days prior to the date the accrual is to begin." Finally, CUCA proposed to strike proposed Rule R6-89(d) and insert the following in lieu thereof: "The accrual made possible under this Rule shall not be available in connection with any project receiving support from an expansion fund created pursuant to G.S. 62-158 and Rule R6-84." According to CUCA, any other result would place an undue burden on existing North Carolina natural gas customers.

Based upon the comments herein, the Commission is of the opinion that Rule R6-89, as originally proposed by the Public Staff, should be adopted. In adopting such rule, the Commission concludes that this mechanism is a reasonable and positive means of encouraging the construction of facilities into unserved areas and will compliment the use of expansion funds. Further, it will maximize the funds that are available for expansion and minimize the impact on the LDCs and their customers. The Commission has previously approved deferral accounting of costs associated with major electric generating plants between commercial operation dates and rate case orders. The Commission is of the opinion that such mechanism is administratively workable and fair to both the LDCs and their customers. However, the Commission further concludes that deferred accounting pursuant to this rule should be limited to projects that would otherwise be eligible for funding with expansion funds pursuant to G.S. 62-158 and should be subject to Commission approval on a case-by-case basis.

The Commission has considered the concerns expressed by Piedmont and Public Service as to whether the rule will be available to them. The Commission is mindful that the Public Staff has taken the position that Piedmont does not have any area in its franchised territory that would qualify for the use of expansion funds (or consequently, deferral accounting) and that the Public Staff has taken the position that "unserved areas" as used in G.S. 62-158 should mean only counties without any natural gas service or with service in only a small part of the county. In response to such concerns, the Commission notes that it has previously defined "unserved areas" in the context of Rule R6-81 and that any subsequent review and approval of a project for use of an expansion fund or deferral accounting will be considered and decided by the Commission based upon the Commission's own view of what constitutes an "unserved area."

In adopting Rule R6-89 as originally proposed by the Public Staff, the Commission has rejected the proposed amendments offered by Piedmont and Public Service. The Commission has carefully considered such proposed amendments and concludes that they would significantly broaden the applicability of the deferral accounting mechanism to the point that they would apply to projects not contemplated by G.S. 62-158. The Commission is adopting this rule in the interest of promoting the

expansion of natural gas service to unserved areas of the State, as encouraged by the General Assembly. The Commission deems the deferral accounting mechanism to be somewhat analogous to the "other sources of funding" provision in G.S. 62-158(b)(3). Accordingly, the rule should be limited to projects of the type eligible for use of expansion funds. To allow deferral accounting for projects beyond those eligible under G.S. 62-158 would afford the LDCs ratemaking treatment significantly more favorable than that allowed for any other utilities under the Commission's jurisdiction.

CUCA has proposed that the rule be amended to predicate the use of deferral accounting upon a showing of certain probable economic benefits accruing to the area. The Commission has twice rejected proposals by CUCA to link the approval of specific expansion projects to a showing of economic benefits to the areas to be served, and accordingly the Commission declines to adopt CUCA's proposal herein.

The Commission is, however, concerned with the indefinite or "open-ended" nature of the accrual period for the carrying charges. Accordingly, the Commission will add the following language to the end of section (a) of the rule:

> The accrual under this Rule for a particular project shall not exceed five (5) years unless so authorized by the Commission upon a showing by the LDC of good cause.

Finally, recognizing the innovative nature of the deferral accounting allowed by this rule, the Commission finds good cause to order that the rule expire five years from the date of this order unless extended by the Commission. As previously indicated, the Commission is adopting this rule in order to further the General Assembly's goal of encouraging natural gas expansion into unserved areas of the State. The Commission will monitor how well the rule in fact furthers this goal and will decide whether the rule should be maintained.

IT IS, THEREFORE, ORDERED:

1. That Rule R6-89 as set forth in Appendix A is hereby adopted;

2. That the Motion by the Public Staff to withdraw the Petition and close the docket is denied; and

3. That Rule R6-89 shall expire on October 13, 2000, unless otherwise ordered by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of October 1995.

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

APPENDIX A

RULE R6-89. Deferral Accounting for Natural Gas Expansion.

(a) An LDC may request Commission approval to create a regulatory asset account for the purpose of accruing a return on its investment in transmission lines constructed as part of a Project of the type that would be eligible for use of an expansion fund pursuant to G.S. 62-158. Such a request may be filed with the Commission as part of a request for approval of a Project pursuant to Rule R6-84 but in no event less than 45 days prior to the date the accrual is to begin. AFUDC will accrue during construction; however, the accrual under this Rule shall begin no sooner than the date construction is completed and continue until the date new rates become effective in the LDC's next general rate case in which the investment in the Transmission Facilities are included in the LDC's rate base. The Commission, however, may terminate the accrual upon the motion of any interested party and after notice to the LDC and opportunity for hearing. The accrual under this Rule for a particular project shall not exceed five (5) years unless so authorized by the Commission upon a showing by the LDC of good cause.

(b) For the purposes of this Rule, "Transmission Facilities" shall include the gas pipeline and all appurtenant related facilities, including land, mains, valves, meters, boosters, regulators, compressors and their driving units and appurtenances, and other related equipment constructed as part of the Project, the purpose of which is to facilitate the transportation of natural gas from an interstate pipeline, other portions of the LDC's system including existing transmission mains, or other suppliers of gas for ultimate delivery to a distribution system(s). Transmission Facilities shall end at the inlet side of the equipment which meters or regulates the entry of gas into one or more distribution systems.

(c) In determining whether to approve a request under this rule, the Commission will consider the desirability of providing gas service to the new area covered by the Project, the size and relative infeasibility of the Project for which deferral accounting is sought, the LDC's overall expansion plans as reported pursuant to G.S. 62-36A, the LDC's currently earned return on equity, the amount of the investment as a percentage of the LDC's rate base and the amount of the anticipated accrual as a percentage of the LDC's revenues, the estimated impact of the accrual on rates when the investment is included in the LDC's rate base in a general rate case, and any other factors affecting the public interest.

(d) The anticipated accrual under this Rule shall not affect the calculation of the net present value of a Project for the purpose of the use of an expansion fund pursuant to G.S. 62-158 and Rule R6-84. Approval of the use of expansion funds as partial funding for a Project pursuant to G.S. 62-158 is not required for the Project to be eligible for Commission approval of the deferral accounting treatment under this Rule.

(e) Upon receiving Commission approval, the LDC may, on a monthly basis, debit the account in an amount equal to the LDC's currently authorized overall rate of return on its investment in Transmission Facilities constructed as part of Projects that have been completed but not included in rate base.

DOCKET NO. T-100, SUB 25

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proposed Rulemaking to Amend Commission	)	ORDER IMPLEMENTING
Rules and Regulations to Require	)	NOTIFICATION
Regulated Motor and Passenger Carriers	)	PROCEDURES AND
to Maintain in Vehicles a Copy of Order	)	CLOSING DOCKET
Granting Authority	)	

BY THE COMMISSION: On June 23, 1993, the Commission issued an Order initiating a rulemaking proceeding in this docket to consider the adoption of proposed Rule R2-26.1 requiring regulated motor and passenger carriers to maintain in vehicles a copy of the order granting authority. The purpose of the proposed rule is to assist the North Carolina Division of Motor Vehicles Enforcement Inspectors in determining if a motor carrier or passenger carrier has the proper operating authority from this Commission to conduct regu- lated, for-hire operations over the highways of North Carolina.

The Order was mailed to all motor carriers and passenger car- riers holding authority from the Commission and requested that com- ments be filed on or before July 15, 1993. Reply comments were to be filed no later than July 26, 1993. Sixteen comments were filed with two carriers in favor of the proposed rule.

The Commission has delayed its decision in this proceeding because computers were to be installed in Division of Motor Vehicle Weigh Stations. Also, with the Federal preemption of intrastate regulation of rates, routes, and services, excluding household goods and passengers, which became effective January 1, 1995, the Commission presently regulates approximately 180 motor carriers of household goods and 50 passenger carriers.

Upon consideration thereof, the Commission is of the opinion that the most efficient and least burdensome solution is to provide the Division of Motor Vehicles periodic computer printouts with the names, addresses, and certificate numbers of regulated carriers. That being the case, it is not necessary to adopt proposed Rule R2-26.1.

IT IS, THEREFORE, ORDERED:

1. That this proceeding be, and the same is hereby, closed, and that proposed Rule R2-26.1 not be adopted.

2. That the Commission provide the North Carolina Division of Motor Vehicles, Enforcement Section, a computer printout of the names, addresses, and certificate numbers of passenger carriers and household goods motor carriers holding operating authority from the Commission on a monthly or quarterly basis depending upon the fre- quency of additions or deletions.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February 1995.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. T-100, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proposed Rulemaking to Amend Commission	)	ORDER
Rules and Regulations Setting Forth	)	ADOPTING
Application Requirements for Authorized	)	RULE R2-35.1
Suspension of Operations and Merging of	)	
Duplicate Commodity Groups Resulting from	)	
Transferred Authority	)	

BY THE COMMISSION: On August 22, 1994, the Commission issued an Order initiating a proceeding in this docket to consider the adoption of proposed Rule R2-35.1 which sets forth application requirements for authorized suspensions of operations. General Statute 62-112(b) provides for authorized suspensions but does not address the procedure for requesting the suspensions. The Order was mailed to all passenger carriers and motor carriers holding authority from the Commission and requested that comments be filed on or before September 23, 1994. Reply comments were to be filed no later than October 7, 1994. No comments were received.

The proceeding also considered the adoption of proposed Rule R2-8(b)(7) which deals with the merging of duplicate commodity groups resulting from transferred authority. Because of the Federal preemption of intrastate regulation of rates, routes, and services effective January 1, 1995, excluding household goods and passengers, the Commission can now issue authority for only one commodity group, household goods. Therefore, the adoption of this rule will no longer be considered.

Upon consideration of the entire record in this docket, the Commission is of the opinion, finds and concludes, that proposed Rule R2-35.1 should be adopted.

IT IS, THEREFORE, ORDERED:

1. That Commission Rule R2-35.1 as set forth in Appendix A attached hereto be, and the same is hereby, adopted to become effective as of the date of this Order.

2. That a copy of this Order shall be mailed by the Chief Clerk to all passenger carriers and motor carriers of household goods holding authority from this Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February 1995.

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

APPENDIX A

Rule R2-35.1. Authorized Suspension of Operations

Any franchise may be suspended, in whole or in part, at the discretion of the Commission, upon application of the holder thereof. The application for authorized suspension may be in the form of a letter or formal motion and shall include the carrier's name, address, certificate number, the reason for the request for authorized suspension, and the length of time for which the authorized suspension is requested, up to one year per request. During an authorized suspension of operations, a carrier shall continue to file with the Commission an annual report and quarterly public utility regulatory fee reports and pay the applicable regulatory fees. If a carrier desires to commence operations while under an authorized suspension of operations, the carrier shall inform the Commission in writing and shall also comply with the filing requirements in Rule R2-22 prior to commencing operations.

DOCKET NO. T-100, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Preemption of Intrastate Motor Carrier Regulation	)	ORDER CANCELLING CERTIFICATES AND/OR PERMITS OF PREEMPTED MOTOR CARRIERS WITH RESPECT TO PREEMPTED AUTHORITY

BY THE COMMISSION: Prior to the January 1, 1995, effective date of the federal legislation preempting regulation of rates, routes, and services of motor carriers of property, other than household goods, (hereinafter, preempted motor carriers) approximately 1,050 motor carriers, excluding household goods carriers, held certificates and/or permits issued by the Commission.

The Conference Committee Report accompanying the preemptive legislation recognized the effect of preemption on the asset value of the certificates. It read:

During the hearing on preemption of state regulation held by the House Committee on Public Works and Transportation on July 20, 1994, concerns were raised regarding the devaluation of operating rights and its effect on motor carriers, as a result of preemption of state authority... Some motor carriers have purchased or paid to acquire the authority to operate trucks in many states. These operating rights for many motor carriers, especially small carriers, are an important part of their net business assets. The conferees recognize that this will eliminate the asset value of operating authority of those affected motor carriers.

The North Carolina Trucking Association and other commenters responding to the Commission's Order in Docket No. T-100, Sub 32, expressed the opinion that the Commission should issue an Order cancelling the certificates of preempted motor carriers effective January 1, 1995, rendering such authority null and void. Such formal cancellation will make it easier for preempted motor carriers to obtain tax write-offs for these assets.

The Commission concurs with this recommendation and concludes an Order should be issued incorporating the following:

1. That all certificates and/or permits of preempted motor carriers be cancelled effective January 1, 1995.

2. That, as to those household goods carriers who also hold other authority such as general commodities authority, amended certificates be issued reflecting authority to transport only household goods.

3. That all tariffs currently on file by preempted motor carriers be cancelled. This will alleviate the need for tariff bureaus or individual carriers to file cancellation notices.

IT IS, THEREFORE, ORDERED as follows:

1. That all certificates and/.or permits of preempted motor carriers with respect to preempted authority be cancelled effective January 1, 1995.

2. That, as to those household goods carriers also holding other preempted authority, their certificates be amended to reflect authority to transport only household goods.

3. That all tariffs regarding preempted services currently on file by preempted motor carriers be cancelled.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of February 1995.

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

DOCKET NO. T-100, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of Certain Rules in Chapter 1, Chapter 2, and	)	ORDER AMENDING
Chapter 4 of the Rules and Regulations of the North	)	RULES AND
Carolina Utilities Commission	)	REGULATIONS

BY THE COMMISSION: On January 1, 1995, Federal legislation became effective which preempted the intrastate regulation of prices, routes, and services for the transportation of all property except household goods and except the transportation of passengers.

On July 29, 1995, the General Assembly of North Carolina ratified House Bill 941 (Chapter 523) to make certain changes in Chapter 62 to comply with the Federal preemptive legislation. The enactment of the legislation by the General Assembly necessitates the revision by the Commission of certain of its Rules and Regulations as set forth in Chapter 1. Practice and Procedure, Chapter 2, Motor Carriers, and Chapter 4 Filing of Transportation Tariffs.

Upon consideration thereof, the Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations pursuant to G.S. 62-31, concludes that certain of its Rules and Regulations in Chapter 1, Chapter 2, and Chapter 4 should be amended in accordance with Appendix A attached hereto.

IT IS, THEREFORE, ORDERED:

1. That the Commission's Rules and Regulations set forth in Chapter 1, Chapter 2, and Chapter 4 be, and the same are hereby, revised/repealed in accordance with Appendix A attached hereto and made a part hereof, effective upon the date of this Order.

2. That a copy of this Order be published in the Commission's Truck Calendar of Hearings and a copy shall be mailed by the Chief Clerk to the following: all certificated movers of household goods holding authority from this Commission; North Carolina Trucking Association, Inc.; Motor Carriers Traffic Association, Inc.; Southern Motor Carriers Rate Conference; and North Carolina Movers Association, Inc.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of August 1995.

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

APPENDIX A

R1-10. Applications for motor carrier operating rights of household goods or passengers.

Applications for motor carrier operating rights of household goods and passengers (certificates) must be made on forms prescribed and published by the Commission. Such forms with instructions will be furnished upon request.

R1-11. Protests to motor carrier applications.

(a) Contents. - Any person or carrier without specific leave to intervene may protest any motor carrier application for operating rights to transport passengers or household goods, or to an application for approval of a sale, lease, or a merger of motor carrier operating rights of household goods or passengers, upon the filing of a protest, under oath, showing that the protestant has an interest in the subject matter of the application, which protest shall set forth, among other things:...

(a)(2) The particular way and manner and the probable extent to which the protestant will be adversely affected by the granting of the application, and if the application is for operating rights (for a certificate) to transport passengers or household goods, and the protestant is a carrier, the protest shall contain information of the kind and in substantially the form and detail shown by the following illustration:

ILLUSTRATION: That the granting of the application will authorize a transportation service in competition with the transportation service which the Commission has authorized the protestant to perform under (certificate number....), in that, transportation service of the same kind and class may be provided either by the applicant or by the protestant to, from, and between the following points and places:...

R1-12. Lease, sale, pledge, merger, or other transfer of motor carrier operating rights.

No lease, sale, pledge, merger, or other transfer of motor carrier operating rights under any certificate issued by the Commission shall become effective except after application to and written approval by the Commission, which application shall be verified, filed with the Commission (original and nine (9) copies), and shall set out, among other things, the following:...

(2) An accurate description of the operating rights involved in the proposed transaction and the certificate number of such operating rights.

R1-17. Filing of increased rates; application for authority to adjust rates.

(j) Repealed

R1-32. Filing of annual reports by public utilities.

(a) Pursuant to the provisions of G.S. 62-36 relating to annual reports by utilities, all public utilities doing business in the State of North Carolina and subject to regulation as to franchises, rates or services by the North Carolina Utilities Commission shall file annual reports of the operations of said public utility as soon as possible after the close of the calendar year, but in no event later than the 30th day of April of each year for the preceding calendar year. Such annual reports shall be under oath and shall be prepared on forms approved or furnished by the Utilities Commission for the respective utility services offered by such companies; to wit, the appropriate approved form respectively for electric service, telephone service, water service, natural gas service, motor carriers of household goods, motor carriers of passengers, railroads and common carriers by water.....

Rule R2-6. Use of rented or leased vehicles.

(a) No carrier authorized to operate as a common carrier of household goods shall use any vehicle of which such carrier is not the owner for the transportation of household goods for compensation, except under a bona fide written lease from the owner, subject to the following conditions:

(a)(2) The household goods transported shall be transported in the name of and under the responsibility of the said lessee, and under the direct supervision and control of the lessee.

(a)(4) The name, address, and certificate number assigned to the lessee shall be displayed on the leased vehicle as required by Rule R2-26.

(b) No common carrier of household goods shall lease its equipment for private use in the transportation of commodities which it is authorized to transport by authority of the Commission, and no common carrier of household goods shall lease equipment with drivers to private carriers or shippers under any circumstance.

(c) The rules and regulations relating to lease and interchange of vehicles, as prescribed in the Code of Federal Regulations, Title 49 - Transportation, Chapter X - Interstate Commerce Commission, Sub-Chapter A - General Rules and Regulations, Part 1057 - Lease and Interchange of Vehicles, to the extent that said regulations are not in conflict with the North Carolina Statutes, shall apply to all motor carriers of household goods authorized by the North Carolina Utilities Commission to operate in North Carolina. (NCUC Docket No. M-100, Sub 6, 10/15/65; NCUC Docket No. M-100, Sub 18, 6/4/69, 6/9/69.)

Rule R2-8. Applications for certificates and transfers; notice.

(a)(1) Application for authority to operate as a common carrier must be made on forms furnished by the Commission, and all the required exhibits must be attached to and made a part of the application. The original and five (5) complete copies of the application, including exhibits, must be

filed with the Commission with a copy to the Public Staff. The original and the copies shall be fastened separately. A filing fee as set forth in G.S. 62-300 must accompany the application before it is considered as being filed.

(b)(4) No sale of a certificate will be approved unless the seller complies with the provisions of G.S. 62-111 by filing a statement under oath, as therein required, with respect to debts and claims; a statement showing gross operating revenues and total number of miles traveled for the latest three months' period preceding the date of filing the application, or for the latest three months' period preceding the date of authority to suspend operations, if theretofore granted by this Commission; and no such sale will be approved unless the purchaser files with the Commission a statement under oath of his assets and liabilities from which it must appear that the purchaser is solvent and in financial condition to meet such reasonable demands as the business may require.

(c)(1) Upon receipt of an application for a certificate for the transportation of household goods, same shall be set for hearing and at least twenty (20) days' notice shall be given in the Commission's calendar of truck hearings, a copy of which shall be mailed to applicant and to any other person desiring it, upon payment of charges to be fixed by the Commission. If no protests are filed to the application within the time provided for in Rule R2-11, or as extended by order of the Commission, the hearing may be cancelled and the Commission may proceed to decide the application on the basis of information contained in the application and sworn affidavits.

(c)(2) Repealed

(c)(3) Upon receipt of an application to operate as a bus company over fixed routes or in charter operation, or both, the Commission, within ten (10) days after the filing of the application, shall cause notice thereof to be given by mail to the applicant, to other bus companies holding certificates to operate in the territory proposed to be served by the applicant, and to other bus companies who have pending applications to so operate. If no protests, raising material issues of fact to the granting of the application, are filed with the Commission within thirty (30) days after the notice is given, the Commission shall proceed to decide the application. If protests are filed raising material issues of fact to the granting of the application, the Commission shall set the application for hearing as soon as possible and cause notice thereof to be given to the applicant and all other parties of record.

Rule R2-9. Sale, lease or other transfer.

(a) Any carrier operating as a common carrier under any certificate issued by the Commission which proposes to sell, assign, pledge, lease or transfer any right or interest in such certificate or to change its name, or trade name, or enter into any merger, combination, or joint control with any other carrier through purchase of stock or otherwise, shall apply in writing to the Commission with a copy to the Public Staff and obtain its written approval. This rule includes the following:

(a)(4) Any pledge of a certificate for the purpose of securing a loan in the furtherance of the transportation business of the carrier or any change of control through stock transfer except as provided in example (7).

(a)(5) A lease of all or any part of the rights represented by a certificate.

(a)(6) A sale or assignment of rights represented by a certificate.

(c) In examples (5) through (7) notice shall be given and hearings held as in applications for certificates.

Rule R2-10. Granting authority.

(a) Unless the applicant elects to accept only the type of authority set out in the application, the Commission will grant such authority as the evidence shows the applicant is entitled to receive; that is to say, if the applicant has misconceived the nature of his proposed operation, or has misconstrued the meaning of terms used in his application, the Commission will disregard the form of the application and grant such authority within the scope of the application as the applicant is entitled to receive upon the facts.

(b) Repealed

(c) Repealed

(d) Repealed

Rule R2-11. Protests.

(a) Except for good cause shown, no party shall be heard in opposition to an application for a certificate unless such party shall have filed a protest to such application not less than ten (10) days prior to the date set for the hearing or within the time specified in the notice.

Rule R2-15. Proof required.

(a) If the application is for a certificate to operate as a common carrier of household goods, the applicant shall establish by proof (i) that a public demand and need exists for the proposed service in addition to existing authorized service, (ii) that the applicant is fit, willing and able to properly perform the proposed service, and (iii) that the applicant is solvent and financially able to furnish adequate service on a continuing basis. Uncorroborated testimony of the applicant is generally insufficient to establish public demand and need.

(b) Repealed

Rule R2-16. Rates and charges.

(a) Every common carrier of household goods by motor vehicle and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 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 freight and household goods 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) Repealed

(c) Repealed

(d) Repealed

(e) Repealed

(f) Repealed

Rule R2-17. Collection of charges by common carriers of household goods.

(a) Upon taking precautions deemed by them to be sufficient to assure payment of the tariff charges within the credit period herein specified, common carriers of household goods by motor vehicle may relinquish possession of household goods in advance of the payment of the tariff charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called shippers, for a period of fifteen (15) days. When the freight bill covering a shipment is presented to the shipper on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the household goods. When the freight bill is not presented to the shipper on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill.

(b) Where a common carrier by motor vehicle has relinquished possession of household goods and collected the amount of tariff charges represented in the freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the shipper, the carrier may extend credit in the amount of such additional charges for a period of thirty (30) calendar days, to be computed from the first 12 o'clock midnight following the presentation of the subsequently presented freight bill.

Rule R2-19. Repealed

Rule R2-20. Settlement of motor freight claims.

G.S. 62-203 specifically sets forth the carrier's liability for damaged property in transit. The carrier issuing a bill of lading for transportation of household goods in intrastate commerce and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any carrier participating in the haul and transporting it on a through bill of lading, and such carrier delivering said property so received and transported shall be liable to the lawful holder of said bill of lading or to any party entitled to recover thereon for such loss, damage or injury, notwithstanding any contract or agreement to the contrary; that is to say, that once the validity of a claim is established by the originating and/or delivering carrier, settlement of said valid claim shall be promptly made to the claimant. In the case of a claim where more than one carrier participated in the haul, either the originating or delivering carrier after establishing the validity of said claim shall make prompt settlement to the party in interest filing said claim, and the proration of any settlement thereof shall be a matter between the participating carriers and not between the shipper or receiver and each of said

participating carriers. THIS RULE DOES NOT APPLY TO MOTOR CARRIERS OF PASSENGERS.

Rule R2-22. Beginning operations under a certificate or certificate of exemption for the transportation of passengers.

(a) An order of the Commission, approving an application, or the issuance of a certificate does not within itself authorize the carrier to begin operations. Operations are unlawful until the carrier shall have complied with the following:

(a)(3) In the case of common carriers, filing tariffs to be made for the transportation service authorized, as provided by Rule R2-16.

(b) Unless a common carrier complies with the foregoing requirements and begins operating, as authorized, within a period of thirty (30) days after the Commission's order approving the application becomes final, unless the time is extended in writing by the Commission upon written request, the operating rights therein granted will cease and determine. (NCUC Docket No. M-100, Sub 14, 10/5/67; NCUC Docket No. M-100, Sub 109 5/20/86).

Rule R2-24. Unauthorized use of operating rights.

All motor carriers will be held to strict account for the use of their operating rights, and to permit the use of the same by others for the transportation of persons or household goods for compensation shall be deemed just cause for the revocation of such rights. This rule positively forbids the party to whom operating rights have been granted from permitting others to use the name or operating authority of such party. (NCUC Docket No. M-100, Sub 38, 12/1/70.)

Rule R2-25. Assignment of identification numbers.

(b) Repealed

(c) Repealed

Rule R2-26. Marking or identification of vehicles.

(a) No carrier shall operate any motor vehicle upon the highways in the transportation of household goods or passengers for compensation unless the name, or trade name, home address and the North Carolina number assigned to such carrier, as provided in Rule R2-25 appear on both sides of such vehicle in letters and figures not less that three (3) inches high.

Example: John Doe Trucking (Bus) Co.
Greensboro, N.C.
N.C. No. C-132(B-132)

Rule R2-28. Commercial zones of municipalities for motor carriers of household goods.

(b) Repealed

(c) Repealed

Rule R2-30. Repealed

Rule R2-31. Repealed

Rule R2-32. Repealed

Rule R2-33. Private carriage by regulated carriers.

A common carrier may conduct intrastate regulated and private carriage on a tandem or commingled basis provided that separate accounting records of regulated and proprietary transportation operations are maintained. (NCUC Docket No. M-100, Sub 111, 5/13/86; NCUC Docket No. M-100, Sub 111, 5/16/86.)

Rule R2-34. Motor freight carriers obligated.

When any regulated common carrier has been authorized by this Commission to transport household goods, such carrier is thereafter obligated to transport said household goods as authorized. Refusal of transportation offered or any discrimination or undue preference in the movement thereof is prohibited.

Rule R2-35. Interchange by motor freight carriers of intrastate traffic.

(a) Except under special conditions and for good cause shown, all regular route common carriers of general commodities by motor vehicle operating in intrastate commerce in North Carolina may establish through routes and joint rates with other regular route common carriers, and shall interchange intrastate traffic as a matter of course under interchange agreements.

Rule R2-36. Security for the protection of the public.

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

SCHEDULE OF LIMITS

Motor Carriers-Bodily Injury Liability-Property Damage Liability

(1) Kind of equipment - Freight Equipment: All motor vehicles used in the transportation of household goods.

(c) In addition to the foregoing insurance, all common carriers of household goods and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 shall provide cargo security to compensate shippers or consignees for loss of or damage to freight and household goods belonging to shippers or consignees and coming into the possession of motor common carriers in connection with their transportation service, in not less than the following amounts: (1) for loss of or damage to freight and household goods carried on any one motor vehicle - $2,500; (2) for loss of or damage to or aggregate of losses or damages of or to freight and household goods occurring at any one time and place - $5,000. The policy shall have attached thereto endorsement Form I or a facsimile thereof and as evidence of such insurance there shall be filed with the Division of Motor Vehicles certificate of insurance Form H or a facsimile thereof.

(d) No insurance policy, endorsement, rider or certificate of insurance issued by any insurance company, covering the liability of any motor carrier authorized to operate in North Carolina under a certificate issued by the North Carolina Utilities Commission or certificate of exemption issued by the Division of Motor Vehicles will be accepted by said Division of Motor Vehicles for filing, unless the same is signed by an officer of the insurance company or by a North Carolina resident agent of the insurance company duly licensed by the Insurance Commissioner of the State of North Carolina.

(f) A common carrier or exempt for-hire passenger carrier may qualify as self-insurer, or be permitted to post bond in lieu of insurance upon application to and written approval by the Commission, but no such application will be approved unless it shall appear to the satisfaction of the Commission that the applicant is in such financial condition as to be able to pay personal injury and property damage claims arising out of motor vehicle accidents from its own assets without seriously affecting its financial stability and the continuation of its operations. The Division of Motor Vehicles will accept only surety companies, authorized to do business in North Carolina, as surety on bonds referred to in this rule.

Rule R2-37. Commodity description.

(Repeal all parts of this rule except Group 18.)
Group 18. Household Goods. - This group includes personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods. This group does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants. (NCUC Docket No. M-100, Sub 1, 5/12/65; NCUC Docket No. M-100, Sub 31, 1/14/71; NCUC Docket No. M-100, Sub 87, 5/8/81; NCUC Docket No. M-100, Sub 106, 9/16/85; NCUC Docket No. T-100, Sub 14, 1/16/92; NCUC Docket No. T-100, Sub 18, 3/24/93.)

Rule R2-40. Bill of lading.

(a) Every common carrier of household goods by motor vehicle and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 receiving property for transportation shall issue a uniform bill of lading therefor, the form, terms, and conditions to be set out in tariffs and classifications on file with the Commission.

Rule R2-41. Load sheets.

The driver of any motor freight vehicle operated in the transportation of household goods for compensation, as a common carrier of household goods, shall have in his possession with the vehicle a load sheet, manifest or other written record, of every shipment in the vehicle showing the name of the shipper, the point of origin, the date of shipment, the description of the commodity, the rate and the charges assessed, the weight of shipment, the destination, and the name of the consignee, which said record shall be made available to the Commission or its agent upon request. Such records shall be retained by the carrier at its home office, or other office in North Carolina, for a period of three (3) years.

Rule R2-42. Inspection of vehicles, books, records, etc.

(a) Auditors, accountants, inspectors, examiners of the Public Staff or Commission Staff or their agents, upon demand and display of proper credentials, shall be permitted by any carrier transporting, or authorized to transport, household goods or passengers over the public highways of North Carolina for compensation to examine the books, records, accounts, bills of lading, load sheets or manifests, or other records of such carrier relating to the transportation of household goods or passengers and the terminals, building, and other facilities used by such carrier in such transportation business; and all such carriers shall instruct their drivers, agents and employees in charge of such records and facilities to permit such examination.

Rule R2-44. Process Agent.

(a) All motor carriers operating under certificates, or having pending applications to so operate, shall file with the Division of Motor Vehicles a designation in writing of the name and post-office address of a person residing in the State of North Carolina upon whom notice of applications, hearings and orders in proceedings under said Act may be made.

(b) In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier. (NCUC Docket No. M-100, Sub 109, 5/20/86.)

Rule R2-47. Discontinuance of service.

(a) No common carrier shall abandon or discontinue any service authorized by its certificate without first obtaining written authority from the Commission. The petition for such authority shall

be filed with the Commission at least thirty (30) days prior to any discontinuance, unless otherwise authorized by the Commission, and if petitioner is a motor carrier of passengers, shall show in support thereof the information set forth in paragraph (c) herein. The discontinuance or nonuse of a service authorized by a certificate for a period of thirty (30) days or longer without the written consent of the Commission shall be considered good cause for cancellation, seasonal service excepted. Upon receipt of a petition for authority to discontinue or abandon service, the Commission may designate a time and place for hearing on the petition. If a petitioning bus company proposes to discontinue service over any intrastate route or proposes to reduce its level of service to any points on a route to a level of service which is less than one trip per day, excluding Saturdays and Sundays, the Commission shall, within ten (10) days after the filing of the petition, require notice to be given to the public by posting notice of the petition in buses serving such routes and in bus stations or other prominent places along said routes. If no objections are filed to the petition by any person or the Public Staff within thirty (30) days after notice is given, the Commission may proceed to decide the petition based on the record and without a hearing.

Rule R2-48. Accounts; annual reports.

(a) The Uniform Systems of Accounts adopted by the Interstate Commerce Commission are hereby prescribed for use of Class I, Class II, and Class III Common Carriers of Passengers, who operate under the jurisdiction of this Commission pursuant to the Public Utilities Act or through the Commission's authority to fix rates and charges. (G.S. 62-260, subsection (b)).

For purposes of annual, other periodical and special reports commencing with the year beginning January 1, 1980, and thereafter until further ordered, common carriers of passengers subject to the North Carolina Utilities Commission's jurisdiction will assume their classification according to the most current dollar amounts in effect and prescribed by the Interstate Commerce Commission. Classifications in effect as of January 1, 1980, are as follows:

(b) The Uniform Systems of Accounts adopted by the Interstate Commerce Commission are hereby prescribed for use of Class I, Class II, and Class III Common Motor Carriers of household goods, who operate under the jurisdiction of this Commission pursuant to the Public Utilities Act or through the Commission's authority to fix rates and charges. (G.S. 62-260, Subsection (b)).

For purposes of accounting and reporting regulations, commencing with the year beginning January 1, 1980, common carriers of household goods subject to the North Carolina Utilities Commission's jurisdiction will assume their classification according to the most current dollar amounts in effect and prescribed by the Interstate Commerce Commission. Classifications in effect as of January 1, 1980, are as follows:

(c)(1) For purposes of accounting and reporting revenues and expenses, the revenues of common carriers of property that have household goods operations are categorized as follows:

Rule R2-49. Repealed

Rule R2-50. Repealed

Rule R2-51. Repealed

Rule R2-52. Repealed

Rule R2-53.1. Repealed

Rule R2-53.3. Repealed

Rule R2-53.4. Repealed

Rule R2-61. Transportation of property in buses.

The transportation of property by passenger carriers, as authorized by subsection (g) of G.S. 62-262.1, shall be so limited as not to interfere with the comfort and convenience of passengers. (NCUC Docket No. M-100, Sub 109, 5/20/86.)

Rule R2-70. Application of rules.

(a) Rules R2-54 through R2-60 shall not apply to common carriers whose operations are found by the Commission to be of such a local nature as not to require compliance with said rules.

Rule R4-1. Definition

(a) The term "tariff" as used herein means a publication containing rates, charters, classification ratings, rules and regulations of a common carrier of household goods or non-household goods motor freight carrier pertaining to joint-line rates or routes, classifications, and mileage guides, or the fares, charges, rules and regulations of a common carrier of persons and baggage, or the fares, charges, rules and regulations of intracity bus passenger carriers.

(b) The term "agent" or "issuing agent" as used herein means a party issuing or publishing tariff schedules for and on behalf of common carriers of household goods or non-household goods motor freight carriers pertaining to joint-line rates or routes, classifications, and mileage guides.

Rule R4-3. Filing and posting.

(a) Except as provided by 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.

(b) A carrier shall post and file in a place accessible to the public, at each of its stations or offices which is in charge of a person employed exclusively by such carrier or by it jointly with one or more other carriers and at which persons or property is received for transportation, all of the tariffs containing fares, rates, charges, classifications, and rules or other provisions applying from, or at, such station or office. Each carrier shall also maintain at its principal office in North Carolina a complete file of all tariffs issued by it or by its agents in a place accessible to the public, and employees of the carrier shall be required to give any desired information contained in such tariffs,

to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

(c) Repealed

(d) Repealed

(e) Repealed

(f) Repealed

Rule R4-7. Repealed

Rule R4-10. Computation of time.

Transportation tariffs received by and filed with the Transportation Rates Division not later than noon of a workday will be stamped as received on the last preceding workday provided such workday does not precede in time the issuance date of the publication. Such publications received by or filed with the Commission on an afternoon of a workday will be stamped as received the day on which filed. The date tariffs are stamped as received shall be counted as a day of notice but the effective date of said tariffs shall not be counted. G.S. 62-134 and such orders issued thereunder will be considered complied with when such publications are on file with the Commission for the authorized period of time.

Rule R4-12. Uniform rates, procedure for approval of joint rate agreements among carriers.

(f) Pursuant to G.S. 62-152.2, this rule applies to household goods movers and those non-regulated carriers choosing to file joint-line rates with the Commission.

Chapter 4. Appendix. Repealed

DOCKET NO. T-100, SUB 34

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking to Amend Commission Rule R2-28 -	)	ORDER
Commercial Zones of Municipalities for Motor	)	AMENDING
Carriers of Property	)	RULE R2-28 .

BY THE COMMISSION: Commission Rule R2-28 defines the mileages for commercial zones adjacent to base municipalities and towns for the transportation of freight by motor carriers. Subparagraphs (b) and (c) set forth the mileages for the transportation of freight other than household goods. Subparagraphs (d) and (e) include the mileages for the transportation of household goods.

On January 1, 1995, federal legislation became effective which preempted the intrastate regulation of prices, routes, and services for the transportation of all property except household goods and except for the transportation of passengers. Rule 2-28 should therefore be amended in accordance with the federal preemption by amending the title, deleting subsections (b), (c), and (f), and renumbering the remaining subsections.

G.S. 62-260(e) authorizes the Commission, in its discretion, to define the commercial zones of municipalities and towns in North Carolina. To that end, the Commission adopted Rule R2-28 to define the limits of commercial zones for motor carriers. The mileages of the commercial zones adjacent to base municipalities and towns are determined by the populations of the base municipalities and towns as set forth in Rule R2-28. The Public Staff has orally advised the Commission that questions of interpretation continue to arise regarding whether the rule is intended to authorize reciprocal moves when the mileages applicable to the base municipalities or towns would literally exempt moves in only one direction. The Public Staff favors an interpretation of Rule R2-28 which would authorize two-way transportation from the base municipality or town to a point in its commercial zone and from said point back to the base municipality or town.

After careful review and consideration of Rule R2-28, the Commission concludes that the two-way transportation described herein should be exempt from regulation and that the rule should be amended accordingly. A rule change is, in the opinion of the Commission, preferable to merely interpreting the existing rule to authorize an exemption for such two-way transportation. Therefore, Rule R2-28 will be amended to add a new subsection as follows:

> (g) If transportation is exempt from a base municipality or base town to a point in its commercial zone, transportation in the opposite direction is likewise exempt.

Accordingly, the Commission is of the opinion that Rule R2-28 should be amended as set forth in Appendix A attached hereto to reflect the federal preemption by deleting subsections (b) and (c), renumbering the remaining subsections, and adding a new subsection (h) to clearly provide that two-way transportation from a base municipality or town to a point in its commercial zone and from said point back to the base municipality or town is exempt.

IT IS, THEREFORE, ORDERED:

1. That Commission Rule R2-28 be, and the same is hereby, amended as set forth in Appendix A attached hereto effective the date of this Order.

2. That a copy of this Order shall be published in the Commission's Truck Calendar of Hearings, and the Chief Clerk shall also mail or provide a copy of this Order to all motor carriers holding household goods authority from this Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of July 1995.

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

APPENDIX A

Rule R2-28. Commercial zone of municipalities for motor carriers of household goods.

(a) For the purpose of this rule:

(1) "Municipality" means any collection of people incorporated pursuant to the provisions of Section 4, Article VIII, of the Constitution of North Carolina, and,

(2) "Town" means any unincorporated community, or collection of people having a geographical name by which it may be generally known and is so generally designated.

(b) For the purposes of transportation of household goods all municipalities shall include a commercial zone adjacent thereto as follows (unless otherwise determined by the Commission in specific cases):

(1) The municipality itself, herein called "base municipality";

(2) All municipalities which are contiguous to the base municipality;

(3) Any municipality and any town adjacent to the base municipality, any part of which is within the following distances of the corporate limits of the base municipality:

a. Two miles when the population of the base municipality is less than 2,500;
b. Three miles when the population of the base municipality is 2,500 but less than 25,000;
c. Four miles when the population of the base municipality is 25,000 but less than 100,000; and
d. Five miles when the population of the base municipality is 100,000 or more.

(4) All municipalities wholly surrounded, or so surrounded except for a water boundary, by the base municipality, by any municipality contiguous thereto, or by any North Carolina municipality adjacent thereto, which is included in the commercial zone of such base municipality under the provisions of (3) above.

(c) For the purposes of transportation of household goods, all towns shall include a commercial zone adjacent thereto as follows (unless otherwise determined by the Commission in specific cases):

(1) All towns, herein called base towns, located within the limits of the operating authority of the motor vehicle carrier, and within the following distances of the post offices [see subdivision (2) of this subsection] of said base towns:

a. 2 1/2 miles if the base town has a population of less than 2,500;
b. 4 miles if the base town has a population of 2,500 but less than 25,000; and
c. 5 1/2 miles if the base town has a population of 25,000 or more.

(2) In the event a town does not have a post office in the same name, the commercial zone shall be determined by using in lieu thereof the generally recognized business center.

(3) All points in any municipality any part of which is within the limits described in (e)(1) above.

(d) The population of any municipality or town for the purpose of this rule shall be determined by the latest U. S. Census.

(e) The distances referred to shall be airline distances.

(f) The overlapping of commercial zones shall not serve to extend the scope of operating authority of any carrier. Commercial zones as herein defined shall be only applicable to municipalities or towns which carrier is authorized to serve.

(g) If transportation is exempt from a base municipality or base town to a point in its commercial zone, transportation in the opposite direction is likewise exempt.

DOCKET NO. P-100, SUB 84
DOCKET NO. SC-62, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 84

In the Matter of Issuance of Special Certificates for Provision of Telephone Services by Means of Customer-Owned Pay Telephones	)	
DOCKET NO. SC-62, SUB 4	)	ORDER CONCERNING COCOT ENHANCED SERVICES AND AMENDING RULE R13-4
In the Matter of Petition of Pay-Tel Communications, Inc., for a Ruling With Respect to Provision of Enhanced Services Over Public Pay Telephones	)	

BY THE COMMISSION: On April 6, 1995, Pay-Tel Communications, Inc. (Pay-Tel), in Docket Nos. P-100, Sub 84, and SC-62, Sub 4, requested the Commission to issue an Order clarifying its payphone rules such that they are construed not to apply to enhanced or information services provided over pay telephone stations in North Carolina. Alternatively, Pay-Tel requested a waiver of the rules to the extent necessary to permit it to provide information services in connection with its payphone facilities.

Pay-Tel stated that it proposes to introduce a new category of "information service" over its payphones known as "Pay-Tel Ad-Vantage," which will be accessed through abbreviated two-digit "*X" dialing. These services include information services, voice messages, and certain free calling. Pay-Tel stated that in discussions with the Public Staff, questions had arisen concerning Rule R13-9(a) which limits the end-user charges to no more than $0.25 for a sent-paid local call. Another question related to equal access for other information providers.

Pay-Tel argued that all the services it proposes to offer are "enhanced" services as defined by the Federal Communications Commission (FCC), which Pay-Tel maintained the Commission has never purported to regulate. The existing rules concerning charges for local calls, therefore, should not be construed to apply to enhanced services provided by payphone providers. As to equal access, Pay-Tel said that it will make reasonable access available. However, equal access to information providers through "dialing in association with coin collection" is not practical since "*X" codes are limited. In any event, the Commission has no policy requiring equal access in this context at the present time.

Pay-Tel suggested that this matter be resolved through clarification or waiver, not a rulemaking.

On May 12, 1995, the Commission issued an Order Requesting Comments and propounded four specific questions for parties to address.

On June 20, 1995, the Public Staff filed comments, as follows:

1. **Are enhanced services offered through COCOTs subject to Commission jurisdiction?**

The Public Staff stated its belief that the information services and the voice messaging service proposed by Pay-Tel are not public utility services and therefore are not subject to the Commission's jurisdiction.

2. **Even if enhanced services are not subject to Commission jurisdiction, is Rule R13-9(a) limiting local sent-paid calls to $0.25 applicable? If so, should Rule R13-9 be revised to authorize higher charges for enhanced service-type calls from COCOTs?**

The $0.25 per minute and $1.00 per voice message proposed by Pay-Tel are unregulated charges which are collected by the COCOT provider on behalf of the enhanced service provider (ESP). They are charges for enhanced service, not for utility service and they should not be included in the Commission's Rule.

Pay-Tel's proposal does not address charges to other parties for the utility portion of the service, i.e., the access service including completion of the call, the abbreviated dialing function and the collection function. This service is being provided by Pay-Tel to itself as an unregulated enhanced service provider. The Public Staff stated that it does not believe that a revision of Rule R13-9 is required under these circumstances.

3. **Should COCOTs be required to provide equal access to other enhanced service providers by way of abbreviated dialing? If not, what sort of guaranteed access, if any, is reasonable?**

Pay-Tel and other COCOT providers should not be required to provide other parties with the same access which they offer to themselves as ESPs. The Public Staff does not believe that it is unreasonably discriminatory for a COCOT provider to deny access arrangements similar to those described by Pay-Tel to other ESPs.

4. **Should this matter be resolved through clarification or waiver or through rulemaking? If through rulemaking, specific rule amendments should be presented.**

The Public Staff recommended that, before Pay-Tel is allowed to proceed as requested, Rule R13-4(a) be amended by adding the following notice requirement:

(8) Clear operating instructions and the charges for any enhanced services offered by the COCOT provider from the PTAS instrument.

The Public Staff stated that further consideration by the Commission would be necessary if Pay-Tel or another COCOT provider desires to offer similar access arrangements to other ESPs.

On July 6, 1995, Pay-Tel filed reply comments. Pay-Tel noted that the Public Staff is supportive of Pay-Tel's petition. However, Pay-Tel questioned the need for the proposed amendment to Rule

R13-9 providing for clear operating instructions and notification of rates charged for enhanced services offered using the PTAS instrument. Pay-Tel suggested that, if the Commission chooses to proceed with the rule, it should do so on an interim basis and Pay-Tel should be permitted to offer the service pending final adoption of a rule.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes the following:

1. That the information services and the voice messaging services proposed by Pay-Tel are not public utility services and are not subject to Commission jurisdiction.

2. That charges for such services are unregulated charges collected by the COCOT provider on behalf of the enhanced service providers.

3. That Pay-Tel and other COCOT providers should not be required to provide other parties with the same access they offer to themselves as enhanced service providers. Such a practice is not unreasonably discriminatory. However, if Pay-Tel or another COCOT desires to provide similar access arrangements to an ESP other than to itself, the Commission will consider the proposal at that time.

4. That Rule R13-4(a) should be amended by adding the language proposed by the Public Staff concerning clear operating instructions and charges for enhanced services. The Commission concludes that this be promulgated as a permanent, not an interim, rule. Enhanced services from a COCOT are new services and would be relatively unfamiliar to payphone end users. It is important that an end user be informed of both the nature and charges for these new services. This requirement should not be unduly burdensome to the COCOT since notification of the availability of enhanced services will need to be posted in any event.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission finds the following:

a. That the information services and the voice messaging services proposed by Pay-Tel in these dockets are not public utility services and are not subject to Commission jurisdiction.

b. That the charges for such services are unregulated charges collected by the COCOT provider on behalf of the enhanced service providers.

c. That Pay-Tel and other COCOT providers not be required to provide other parties with the same access they offer to themselves as enhanced service providers.

2. That Rule R13-4(a) be amended by adding a new subsection (8) to read as follows:

"(8) Clear operating instructions and the charges for any enhanced services offered by the COCOT provider from the PTAS instrument."

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of August 1995.

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

DOCKET NO. P-100, SUB 84
DOCKET NO. P-55, SUB 1000

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 84

In the Matter of	
Issuance of Special Certificates for Providers of Telephone Service by Means of Customer-Owned Pay Telephone Instruments	) ORDER PROMULGATING) FINAL RULE R13-5(r)) CONCERNING
DOCKET NO. P-55, SUB 1000	) RESTRICTIONS ON PAY-) PHONES, REQUIRING) LOCAL EXCHANGE
In the Matter of Incoming Call Blocking at Public Telephones Operated By Southern Bell Telephone and Telegraph Company	) COMPANY TARIFF) CHANGES AND DENYING) CEASE AND DESIST) MOTION AGAINST) SOUTHERN BELL

BY THE COMMISSION: This Order concerns two closely interrelated dockets. The first is the generic proceeding considering the appropriate permanent rule to apply to customer-owned coin operated telephone (COCOT) restrictions as well as the restrictions policy that may apply to local exchange company (LEC) phones. The second deals with the Public Staff's cease and desist motion against Southern Bell Telephone and Telegraph Company (Southern Bell) concerning its current payphone restriction policy under its tariff.

I. Generic Proceeding

By letter dated June 29, 1994, Southeastern Telecom (Southeastern), a certified COCOT provider, requested permission from the Commission to waive certain portions of Rule R13 for two of its payphones at a Raleigh location. Southeastern specifically requested permission to block all incoming calls, to block all local outgoing calls to cellular phones and pagers, and to allow completion of only 911 calls during the hours of 7:00 p.m. and 5:00 a.m.

These modifications have been requested by the owner of the property upon which the payphones are located, the Bragg Street Neighborhood Organization, and the Raleigh Police Department in order to alleviate loitering and suspected drug trafficking.

Subsequent to the filing of its June 29, 1994, request, Southeastern removed one of the payphones from the adjacent business informing the public of the intention of the Commission to address this issue and requesting interested parties to appear before the Commission to voice their concerns.

This matter came before the Regular Commission Conference on July 18, 1994. The Public Staff recommended that the Commission institute a rulemaking to consider the adoption of a procedure for the restriction of service at particular PTAS locations in the interest of public safety and welfare. The Public Staff made a proposal requiring the COCOT providers seek prior approval from the Commission for phone restrictions requested by local government or law enforcement officials and recommended that this proposal be promulgated for comment and adopted as an interim rule. The Public Staff further recommended that the restrictions on service requested by Southeastern Telecom be permitted under the interim rule.

Mr. Todd Faw, President of Southeastern Telecom, appeared before the Commission. Mr. Melvin Whitley, Chairman of the Bragg Street Community Association, also appeared before the Commission and spoke strongly in favor of allowing payphone restrictions.

Comments

On July 20, 1994, the Commission issued an Order Promulgating Interim Rule R13-5(r) and seeking comments. The interim rule is as follows:

Rule R13-5. General Requirements - Service and equipment.

(r) Notwithstanding any other rules in this chapter, a COCOT provider may restrict operation or types of calls allowed to and from any specific PTAS instrument in the interest of public safety and welfare under the following conditions.

(1) Such restrictions have been requested in writing as to the specific PTAS instrument from the city manager, the city council, the sheriff, the chief of police, or their designees stating that the specific restrictions requested are needed in the interest of public safety and welfare. The COCOT provider shall keep a copy of such requests from local government or law enforcement on file for inspection upon request by the Commission or Public Staff.

(2) A notice of the restrictions applicable to a PTAS instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

The Commission stated that it was persuaded that the authority to restrict payphone access is necessary to the public interest in order to fight crime, especially crime related to illegal drug-dealing. The Commission further was of the opinion that the better approach is probably one which does not require the COCOT provider to come to the Commission for each payphone every time restrictions are proposed. Not requiring prior approval will allow restrictions to be implemented on a timely basis without unnecessary regulatory delay. The Commission also stated that the COCOT providers' desire for revenues will arguably tend to prevent overly onerous restrictions which frustrate the communications needs of ordinary citizens. Moreover, the requirement that payphones may be restricted only upon request of appropriate local government or law enforcement authority and that the request be kept on file will also tend to ensure that the restrictions are reasonable responses to actual conditions.

In addition to comments regarding the advisability of the proposed rule for COCOT providers, the Commission asked those commenting to state whether local exchange companies should be able to modify their tariffs to allow restrictions on a similar basis.

The Commission also stated that it agrees with the recommendation that Southeastern be permitted to continue to restrict the phones in question.

On October 6, 1994, the Public Staff filed comments.

The Public Staff agreed that Rule R13 should be amended so as to permit the restriction of telephone service at PTAS locations. The Public Staff, however, proposed certain changes to the Commission's proposed Rule R13-5(r). Specifically the Public Staff recommended that restrictions be permitted only when the request is made by the sheriff or chief of police,[2] rather than "the city manager, the county manager, the board of county commissioners, the city council, the sheriff, chief of police, or their designees" as proposed in the Commission's Order. Since the restrictions are being made on the basis of public safety and welfare, the Public Staff argued that a local sheriff or chief of police is the appropriate party to determine if restrictions are needed. Also, the Public Staff added a paragraph (4) in which it recommended that the Commission require all COCOT providers that have restricted any of their PTAS instruments to file quarterly reports with the Public Staff - Communications Division identifying the restricted instruments and listing the restrictions.

The Public Staff recommended the following language:

Rule R13-5. General requirements - Service and equipment

(r) Notwithstanding any other rules in this chapter, a COCOT provider may restrict incoming and/or outgoing calls at any specific PTAS instrument in the interest of public safety and welfare under the following conditions:

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[2] On November 3, 1994, the Public Staff filed amended comments stating that the phrase "chief local law enforcement officer" should be substituted for the phrase "sheriff or the chief of police" in its recommended language for Rule R13-5(r) and LEC tariffs.

(1) Such restrictions have been requested in writing as to the specific PTAS instrument from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The COCOT provider shall keep a copy of such requests from the chief local law enforcement officer on file for inspection and upon request by the Commission or the Public Staff shall provide copies of the requests for restrictions. The COCOT provider shall retain copies of the requests for restrictions so long as the pay phones remain restricted.

(2) A notice of the restrictions applicable to a PTAS instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

(4) Each COCOT provider that restricts PTAS instruments in accordance with Rule R13-5(r) shall file quarterly reports with the Public Staff - Communications Division that identify all PTAS instruments so restricted. Each quarterly report shall list the telephone number, address, and all restrictions for each PTAS instrument. Reports for each quarter shall be due 20 days after the end of that quarter.

GTE filed comments on October 6, 1994, generally supporting proposed Rule R13-5(r) and suggesting that it should apply in its substance to local exchange carriers as well as COCOTs. GTE applauded the fact that the rule does not require prior approval of restrictions by the Commission but suggested that the site owner also sign any written requests from local government or law enforcement to restrict payphones. The site owners should also be able to initiate restrictions without the involvement of local government or law enforcement by requesting such from the payphone provider. GTE said that it was its experience that sometimes law enforcement agencies were reluctant to suggest restrictions.

Southern Bell filed comments on October 7, 1994. Southern Bell maintained that it currently has the authority to impose restrictions as to "the extent, character and location of its coin telephone service," pursuant to GSST Sec. A7.1.2(A) and A2.2.9., concerning payphone use for illegal purposes, but that it favors the interim rule with modifications. Southern Bell stated that it does restrict a percentage of its payphones to outgoing calls only. These are generally located in penal institutions, health care facilities, educational facilities, factories and retail locations where crime is prevalent.

Southern Bell stated that it supports parity between COCOT requirements and LEC tariffs in this regard. Southern Bell further argued that the interim rule should be amended as follows:

1. To allow only an outgoing calls restriction. Other restrictions, such as the ability to retrieve messages from a telephone answering service, should not be allowed generically but could be granted by the Commission if warranted at a particular location.

2. Other locations should be allowed to be restricted to outgoing calls only, such as health care and educational facilities, upon request.

The North Carolina Payphone Association (NCPA) filed comments on October 7, 1994. The NCPA supported the interim rule and recommended that it be adopted permanently. The NCPA does not oppose allowing the local exchange companies to modify their tariffs on a similar basis. As to the notice provision in Rule R13-5(r)(2), the NCPA suggested that a statement such as "incoming and certain outgoing calls restricted" would be preferable to a comprehensive listing of specific kinds of restricted calls. Since space is limited, more detailed information would undercut the Commission's directive that notice be printed sufficiently large as to be easily readable.

Reply Comments

Public Staff. Referring to the October 7, 1994, Petition for Cease and Desist Order Against Southern Bell, the Public Staff stated that the proper interpretation of the disputed tariff provision, A7.1.2(A), should be considered within that docket.

However, since Southern Bell had endorsed parity and GTE had suggested that similar rules should apply to both LECs and COCOTs, the Public Staff recommended that the following language, which is almost identical to the Rule R13-5(r) language suggested by the Public Staff for COCOTs, be incorporated into LEC tariffs.

7.1.2 Public Telephone Locations and Requirements

Notwithstanding any other provisions of this Tariff, the company may restrict incoming and/or outgoing calls at any specific public telephone in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific public telephone from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The company shall keep a copy of such requests from the chief local law enforcement officer on file for inspection, and upon request by the Commission or Public Staff, shall provide copies of the requests for restrictions. The company shall retain copies of the requests for restrictions so long as the public telephones remain restricted.

(2) A notice of the restrictions applicable to a public telephone must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

(4) The company shall file quarterly reports with the Public Staff - Communications Division that identify all public telephones restricted in accordance with this Tariff. Each quarterly report shall list the telephone number, address, and all restrictions for each public telephone. Reports for each quarter shall be due 20 days after the end of that quarter.

The Public Staff reiterated its view that the discretionary authority claimed by Southern Bell is inconsistent with equal treatment for payphone operators. The Public Staff further disagreed with the recommendation that service restrictions be allowed solely on the basis of the site or location owner's request. A written request by law enforcement is appropriate. The Public Staff also took exception to the NCPA's suggestion that providers not be required to post specific types of calls that are blocked. The Public Staff maintained that it is highly desirable that the end-user be so informed.

Southern Bell. Southern Bell reiterated its support for parity, but it also maintained that the public interest would be best served by placing the least amount of restrictions possible on payphone providers. Southern Bell also supported GTE's suggestion that payphone providers be allowed to restrict payphones at the written request of location providers. As such, Southern Bell disagreed with the Public Staff suggestions that restrictions only be allowed at the request of law enforcement and that quarterly reports be made. (An annual report would be sufficient). However, Southern Bell does support the Public Staff recommendation that payphone providers retain the written requests for restrictions that they receive.

Carolina and Central. Carolina and Central stated that requests for outward-only payphone service should be restricted to requests from property owners who have the concurrence of law enforcement. This will tend to limit requests to "problem" locations. They also agreed with parity in the rules as between COCOTs and LECs.

II. Cease and Desist Motion Against Southern Bell

On October 7, 1994, the Public Staff filed a petition requesting the Commission order Southern Bell to cease and desist from blocking calls to its public payphones, except those in confinement facilities, grandfathered in Docket No. P-100, Sub 84, of March 28, 1986, and those blocked upon written request of a law enforcement agency.

In its petition, the Public Staff said it had received an anonymous complaint on July 19, 1994, alleging that incoming calls were being blocked at Southern Bell payphones at the RDU Airport. Public Staff investigators confirmed this complaint as to any of Southern Bell's coinless public telephones.

Upon discussions with the Public Staff, Southern Bell cited Sections A7.1.1 and A7.1.2(a) of its General Subscribers Services Tariff (GSST) as conferring discretionary authority to block such calls.

These provisions read as follows:

A7.1.1 Definition and Purpose of Public Telephones

A public telephone is an exchange station installed at the Company's initiative or at its option, at a location chosen or accepted by the Company as suitable and necessary for furnishing service to the general public. Public Telephones are installed for the use of the general public and their use by any occupants of the premises in which they are located is only incidental to their principal purpose.

A7.1.2 Public Telephone Locations and Requirements

A. The Company recognizes its responsibility for providing adequate telephone facilities to meet all reasonable public requirements, and the decision as to the extent, character and location of the public telephone facilities rests with the Company.

The Public Staff disagrees with Southern Bell's construction of these provisions. The Public Staff's analysis is as follows:

1. Section A7.1.2(A) states that "the decision as to the extent, character and location of the public telephone facilities rests with the Company." The Public Staff agrees that this tariff section gives the Company discretionary authority in regards to public telephone facilities but not public telephone service. Service is not mentioned in paragraph A. The Public Staff concludes that: "extent" means the number of telephone facilities; "character" means the type of telephone facilities (type of paystation); "location" means where.

2. Section A7.1.1 identifies "a public telephone as an exchange station. . ." The tariff defines an exchange station as "a station which is used for exchange service and is directly or indirectly concerned with a central office." A station is defined as "a unit of service . . . so arranged as to permit sending and receiving messages through the exchange and long distance network." Thus, the Public Staff concludes that a public telephone must be capable of sending and receiving messages. While Section A7.1.1 indicates that the public telephone is installed at the Company's initiative or its option, that tariff provision does not give the Company authority to restrict the service.

3. The tariff defines "Exchange Service" as "a general term describing as a whole the facilities provided for local intercommunication, together with the right to originate and receive a specified or an unlimited number of local messages . . .(emphasis added)." From this, the Public Staff concludes that "exchange service" includes both facilities and the origination and termination of messages.

The Public Staff further noted that in Southern Bell's October 7, 1994, comments in Docket No. P-100, Sub 84, concerning calling restrictions at COCOTs, Southern Bell supported parity among all payphone providers regarding those rules and an amended Rule R13-5(r). The Public Staff submitted that the unlimited discretionary authority claimed by Southern Bell is inconsistent with its support for even an amended Rule R13-5(r).

Lastly, the Public Staff noted certain discrete circumstances where Southern Bell does have the authority to restrict payphones. They are:

1. For public telephones located in confinement facilities, Section A7.1.2.C of the GSST gives the company the authority to arrange those public telephones for outward-only calling if specifically requested by the administration of the confinement facility.

2. The Commission issued an Order in Docket No. P-100, Sub 84, on March 28, 1986, in which it addressed, among other points, blocking incoming calls at public telephones. In that docket, several LEC witnesses expressed the view that the public telephone operator should have discretionary authority to restrict inward calling. The Commission disagreed with the position and stated in its Order ". . . that the option of 'outward-only' calling could adversely affect the public interest and should not be allowed." The Commission did, however, grandfather incoming call restrictions at LEC public telephones that had been placed in service prior to the issuance of the Order. Thus, any Southern Bell public telephones limited to outward-only calling before issuance of that Order may remain restricted.

3. Section A2.2.9 of the GSST gives the company the authority to discontinue service if any law enforcement agency advises the company in writing that the service is being used in an unlawful manner. Thus, Southern Bell is permitted to block incoming calls at a public telephone if done so at the written request of a law enforcement agency.

The Public Staff noted that, currently, 2,632 of Southern Bell's 16,316 telephones in North Carolina are arranged to provide outgoing service only. Of the 2,632, 360 are located in confinement facilities where incoming call restriction is permitted under Section A7.1.2.C. of Southern Bell's GSST. Another 1,116 were installed prior to the Commission's March 28, 1986, Order in Docket No. P-100, Sub 84. Of the remaining categories of public telephones--coinless (69), hospitals and educational facilities (138), and others (949)--any not blocked at the written request of a law enforcement agency are blocking incoming calls in violation of the Commission's Order.

Thus, the Public Staff contends that Southern Bell may only block incoming calls in confinement facilities, at grandfathered phones, and at the written request of law enforcement.

On October 27, 1994, Southern Bell filed an answer and motion to dismiss in which it made the following points:

1. Southern Bell had advised the Public Staff of its position regarding Section A7 by letter dated October 5, 1992, without objection from the Public Staff.

2. While admitting that it has restricted payphones at the RDU Airport and elsewhere, Southern Bell argues that it has tariff authority under GSST Section A.7.1.2.A. Southern Bell maintained that the Public Staff's distinction between facilities and service is untenable. The Public Staff's position appears to be that Southern Bell does not have the authority to block incoming calls to a paystation by restricting the line to the paystation at the central office, but Southern Bell could block calls by placing a set at that location which cannot receive calls because they are part of

the facilities. Indeed, the paystations at issue, which are coinless, do not have ringers. It is Southern Bell's position that the discretion regarding "extent" and "character" allows Southern Bell to determine what use may be made of the paystations. Thus, an outgoing restriction may be imposed either through equipment or service.

3. Southern Bell further denied that its restricted paystations violated the Commission's March 28, 1986, Order in Docket No. P-100, Sub 84. This Order applied by its terms only to COCOTs. Southern Bell filed tariffs complying with this Order in the Public Telephone Access Service Section A.7.4.2.C.7., which applies to COCOTs.

4. Southern Bell reiterated its support for parity as between LECs and COCOTs, but by giving COCOT providers the same discretion to restrict phones as Southern Bell now enjoys.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

There are two separate but related questions regarding calling restrictions which may be placed on payphones. The first is what restrictions policy should apply to COCOT payphones and, by extension, on LEC payphones. The second is whether a cease and desist Order should be issued against Southern Bell for restricting its payphones allegedly without tariff authority.

The Commission concludes that the best way to proceed is to settle on the appropriate policy for payphone restrictions and apply this policy on a go-forward basis to LEC payphones.

There was general support for the interim rule and the principle of parity as between COCOTs and LEC payphones. The Commission agrees that the phrase "chief law enforcement officer" suggested by the Public Staff should be used in the rule instead of the current list of "city manager, the city council, or their designees." However, the Commission does not support the Public Staff's proposed Subsection R13-5(r)(4) requiring the filing of quarterly reports. The Commission doubts the usefulness or necessity of such reports. The Commission notes that the interim rule and the proposed final rule already contain a provision requiring COCOT providers to keep requests for restrictions on file. The Commission considers that it is a corollary to this requirement that the payphone providers also retain records as to which payphones have been restricted and which restrictions apply. COCOT providers and, by extension, the LECs are admonished to comply diligently with these requirements should the Commission or Public Staff seek such information in the future.

On other matters, the Commission concurs with the Public Staff as, for example, regarding the notice to customers. The Commission also agrees that provisions comparable to those enacted regarding COCOTs should apply to LEC payphones.

With respect to the cease and desist motion, the Commission concludes that both Southern Bell and the Public Staff have made strong arguments regarding their respective interpretations. The Commission concludes that the best way to resolve this dispute is to grandfather existing LEC payphone restrictions and apply the proposed restrictions policy outlined in Rule R13-5(r) to LEC payphones on a go-forward basis.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R13-5 be amended by adding a new subsection (r) as set out in Appendix A.

2. That all LECs file such tariff changes as are necessary to comply with the tariff language set out in Appendix B within 45 days of the issuance of this Order.

3. That the Public Staff's cease and desist motion against Southern Bell be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1994.

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

APPENDIX A

Rule R13-5. General requirements - Service and equipment

(r) Notwithstanding any other rules in this chapter, a COCOT provider may restrict incoming and/or outgoing calls at any specific PTAS instrument in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific PTAS instrument from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The COCOT provider shall keep a copy of such requests from the chief local law enforcement officer on file for inspection and upon request by the Commission or the Public Staff shall provide copies of the requests for restrictions. The COCOT provider shall retain copies of the requests for restrictions so long as the pay phones remain restricted.

(2) A notice of the restrictions applicable to a PTAS instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 emergency service may not be prevented.

APPENDIX B

7.1.2 Public Telephone Locations and Requirements

Notwithstanding any other provisions of this tariff, the company may restrict incoming and/or outgoing calls at any specific public telephone in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific public telephone from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The company shall keep a copy of such requests from the chief local law enforcement officer on file for inspection, and upon request by the Commission or Public Staff, shall provide copies of the requests for restrictions. The company shall retain copies of the requests for restrictions so long as the public telephones remain restricted.

(2) A notice of the restrictions applicable to a public telephone must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 Emergency Service may not be prevented.

DOCKET NO. P-100, Sub 103

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rule R9-9, Financial and Operating	)	Order
Reporting Requirements for Telephone	)	Amending
Companies	)	Rule

BY THE CHAIRMAN: Commission Rule R9-9 now provides that quarterly surveillance reports (Commission Form TS-1)be submitted to "...the North Carolina Utilities Commission – Finance, Statistics, and Planning Division and the Public Staff - Accounting Division." Recently, the responsibility for maintaining the Commission's surveillance program relating to the financial conditions of certain utilities has been transferred to the Commission's Operations Division. The Chairman, therefore, concludes that Rule R9-9 should be amended to reflect the aforesaid transfer of responsibility.

IT IS, THEREFORE, ORDERED that the last sentence of Paragraph (C) of Commission Rule R9-9 shall be, and hereby is, amended to read as follows:

"The telephone companies shall file these statements with the North Carolina Utilities Commission – Operations Division and the Public Staff – Accounting Division."

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of April 1995.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 111
DOCKET NO. P-140, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 111

In the Matter of An Investigation of Billing and Collection Services for 700, 900, and 976 Services	)	
DOCKET NO. P-140, SUB 28	)	ORDER MAKING 900 RULES PERMANENT
In the Matter of Tariff Filing by AT&T Communications of the Southern States, Inc., to Offer MultiQuest Service	)	

BY THE COMMISSION: On September 7, 1990, the Commission in Docket No. P-100, Sub 111, issued an Order Forbidding Cut-Off and Authorizing Blocking for Nonpayment of 900 and 900-Like Charges. Ordering Paragraph No. 1 of that Order made the status of prohibition on cut off subject to the final outcome of the docket. Similarly, on July 3, 1991, in Docket No. P-140, Sub 28, the Commission allowed AT&T's MultiQuest tariff to offer intrastate 900 service on a provisional basis for two years, subject to certain modifications. Ordering Paragraph No. 4 of the July 3, 1991, Order provided that Ordering Paragraphs Nos. 1, 2, and 3 of the September 7, 1990, Order in Docket No. P-100, Sub 111, should remain in effect pending further Order. On March 10, 1992, in Docket Nos. P-100, Sub 111, and P-140, Sub 28, the Commission issued an Order Delaying Consideration of First Rules related to the provision of 900 service. The Ordering Paragraph stated that "first rules concerning the provision of 900 services and other services in these dockets be held in abeyance pending further Order." On September 3, 1993, the Commission allowed AT&T's MultiQuest service to become permanent.

WHEREUPON, the Commission makes the following

FINDINGS AND CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to make 900 services and other services in these dockets, including billing and collection services, permanent. The Commission finds that the rules have worked well over the past years and there have been no substantial complaints regarding 900 service under this regulatory regime.

IT IS, THEREFORE, ORDERED that the rules concerning the provision of 900 services and other services in these dockets be made permanent.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of March 1995.

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

DOCKET NO. P-100, SUB 124
DOCKET NO. P-100, SUB 131

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 124

In the Matter of
Investigation of Scope of Jurisdiction and Appropriate Regulation of Wireless Communications Providers

DOCKET NO. P-100, SUB 131

In the Matter of
Petition of Dial Page, Inc., for a Declaratory Ruling That Commission Jurisdiction and Regulatory Authority Over Assignment of RCC Certificates is Preempted by Federal Law

) SECOND ORDER CONCERNING FURTHER DEREGULATION OF WIRELESS COMMUNICATIONS PROVIDERS

BY THE COMMISSION: On December 8, 1994, the Commission issued an Order Concerning Further Deregulation of Wireless Communications Providers and Seeking Comments. In that Order, the Commission analyzed the preemption impact of Section 332(c)(3)(A) of the Omnibus Budget Reconciliation Act (OBRA) of 1993 which deprived states of regulatory jurisdiction over rates and entry of most wireless providers, while at the same time indicating that states could continue to regulate "other terms and conditions" of service.

The Commission had already almost completely deregulated cellular services pursuant to G.S. 62-125 and had indicated that it would not exercise complaint jurisdiction over cellular resellers. However, the regulatory status of Commission jurisdiction over "other terms and conditions" for other wireless services, such as radio common carriers (RCCs) and personal communications systems (PCS), remained unsettled.

In its December 8, 1994, Order, the Commission relieved regulated wireless companies of compliance with requirements deemed purely discretionary with the Commission. These included annual reports, complaint jurisdiction, and mobile and paging services furnished by local exchange companies. However, the Commission concluded that changes to authority over affiliated contracts, mergers and acquisitions, and the regulatory fee would require legislative action. While detariffing could be accomplished without statutory change, the Commission concluded that such a process would be an extended one. Accordingly, the Commission stated its intent to support legislation to deregulate all wireless providers and solicited comments and support from interested parties.

On December 16, 1994, Dial Page, Inc. (Dial Page), filed a Petition for Declaratory Relief in this docket and Docket No. P-100, Sub 131. Dial Page is considering a sale of its paging assets and, in view of OBRA and the Commission's December 8, 1994, Order, seeks a "clarifying Order" stating that it will not be required to obtain prior approval from the Commission. Dial Page pointed out the anomaly that a new entrant to the market, who need not obtain a certificate, would not need to seek approval from the Commission for a transfer of assets but an entity like Dial Page, which is certified, would.

Comments

The following parties filed comments in response to the Commission's December 8, 1994, Order: GTE Mobile Communications, Inc. (GTEM), Sprint Cellular, GTE South (GTE), ALLTEL Mobile Communications (ALLTEL Mobile), BellSouth Personal Communications, Inc., Mobile Communications Nationwide Operations, Inc., BellSouth Cellular Corporation, United States Cellular Corporation (USCC), BellAtlantic Mobile Systems, Inc., and the Public Staff. All these parties supported the Commission's action to further deregulate mobile services. Those who addressed the issued supported legislation to complete the process.

Sprint Cellular suggested that G.S. 62-3(23) should be amended to add a new subsection i to read:

> i. The term "public utility" shall not include a wireless communications service provider that has not obtained the protection of a territorial monopoly franchise from the State of North Carolina or which, even if it has received such a franchise, is subject to competition, within its service territory, from other wireless communications service providers.

The Public Staff suggested the following language:

> i. The term "public utility" shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications

service. Mobile radio communications services include one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies.

The Public Staff also proposed that Article 6A of Chapter 62, G.S. 62-119 through G.S. 62-125, which deals with RCCs, be repealed.

Reply Comments

The following parties filed reply comments: ALLTEL Mobile, USCC, and MCI Telecommunications Corporation (MCI).

ALLTEL Mobile stated that it generally agreed with the Public Staff's statutory language but suggested that the proposal to amend G.S. 62-3(23) could be improved by using the same terminology used in OBRA. G.S. 62-3(23)(i) would then read:

> The term "public utility" shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by a commercial mobile service as that term is defined in 47 U.S.C. 153(n). As used herein, the term commercial mobile service shall include one-way or two-way radio communication service provided to mobile or fixed stations or receivers using mobile radio service frequencies.

USCC's reply comments were similar and suggested the same language.

MCI was supportive of the Commission's movement toward wireless deregulation and urged the Commission to expand the deregulation of mobile and paging services to include such services provided by interexchange carriers (IXCs). MCI generally supported the Public Staff's proposed language but suggested striking the words "not otherwise a public utility" to avoid the mistaken interpretation that IXCs or LECs remain regulated with regard to wireless services. The Commission should establish policies on mutual compensation and interconnection for wireless providers that foster and encourage competition.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration of the filings in these dockets, the Commission Staff concludes the following:

1. That the Commission support the changes to the law suggested by the Public Staff regarding adding G.S. 62-3(23)(i) and repealing Article 6A of Chapter 62.

2. That Dial Page's Petition for Declaratory Relief should be denied.

3. That MCI's request that mobile and paging services provided by IXCs be deregulated should be granted.

Statutory changes. Several commenters suggested language changes or variations to the language proposed by the Public Staff. The Commission concludes that the language proposed by the Public Staff expresses in a succinct and adequate fashion what the Commission wishes to do. The Commission does not believe it is necessarily wise to reference federal statutes in our State law because these federal statutory references may change and it would require the General Assembly to act to accommodate the change. The last sentence stating what mobile radio communications services include is sufficiently broad to take in what OBRA references. The purpose of the term "not otherwise a public utility" is to ensure that a regulated utility, such as an IXC, is not inadvertently deregulated by virtue of providing a wireless service.

Dial Page petition. Dial Page's arguments, while provocative, are not convincing. The Commission specifically concluded in its December 8, 1994, Order that jurisdiction over mergers and acquisitions and the like was not discretionary with the Commission. While Dial Page has identified anomalies in treatment between old certificate holders and new entrants, this result is unavoidable due to the fit or lack thereof between federal preemption and state law. If the General Assembly passes the proposed legislation, then Dial Page's program will be solved in relatively short order.

MCI Request. Although the language of the MCI request for relief was somewhat unclear, the context of the request was that there should be equal treatment as between LECs and IXCs in the offering of mobile and paging services. Ordering Paragraph No. 3 of the Commission's December 8, 1994, Order stated that "mobile and paging services provided by LECs shall be regarded as deregulated and associated expenses shall be treated 'below the line.'" MCI did not state that it or any other IXC was in fact offering mobile or paging services. Nevertheless, the Commission is not aware of any principled distinction that should prohibit an IXC offering mobile or paging services from being treated in the same way as a LEC offering mobile or paging services with respect to such services. Accordingly, the Commission concludes that mobile or paging services provided by IXCs should be regarded as deregulated and associated expenses should be treated as "below the line."

IT IS, THEREFORE, ORDERED as follows:

1. That Dial Page's Petition for a Declaratory Ruling be denied.

2. That mobile and paging services provided by IXCs be regarded as deregulated and associated expenses and revenues be treated "below the line."

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of February 1995.

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

DOCKET NO. P-100, SUB 126
DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 126

In the Matter of
Investigation Into Defined-Radius Discount Calling Plans)
)
DOCKET NO. P-100, SUB 65)
) ORDER CONTINUING
In the Matter of) STIPULATION
Investigation to Consider Implementation of a Plan for)
Intrastate Access Charges for All Telephone Companies)
Under the Jurisdiction of the North Carolina Utilities)
Commission)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 2, 1995

BEFORE: Chairman Hugh A. Wells, Commissioner William W. Redman, Jr., Commissioner Charles H. Hughes, Commissioner Laurence A Cobb, Commissioner Allyson K. Duncan, Commissioner Ralph A. Hunt, and Commissioner Judy Hunt

APPEARANCES:

For BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company:

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For Carolina Telephone and Telegraph Company and Central Telephone Company:

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For GTE South, Incorporated:

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For the Attorney General:

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

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This matter oringiated in the Commission's May 17, 1994, Order Allowing Defined-Radius and Defined-Area Calling Plans Subject to Certain Requirements in which the Commission concluded that local exchange companies (LECs) offering defined-radius (DRPs) or defined-area plans (DAPs) should be required to impute access charges applicable to DRP/DAP areas. Ordering Paragraph No. 2 of that Order directed the LECs and interexchange carriers (IXCs) to form an industry task force "to meet to consider appropriate access charges and the imputation thereof" to be applicable to DRP/DAP areas and present their findings to the Commission for review and approval. On September 9, 1994, MCI Telecommunications Corporation (MCI); Sprint Communications Company, L.P. (Sprint); BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell); Carolina Telephone and Telegraph Company and Central Telephone Company (Carolina Telephone); GTE South, Incorporated and Contel of North Carolina, Inc. (GTE); North State Telephone Company (North State); Concord Telephone Company (Concord Telephone); and ALLTEL Carolina, Inc. (ALLTEL); collectively known as the Joint Movants, moved the Commission to enter an Order approving a "Proposed Stipulation and Agreement" entered into and executed by the Joint Movants on that same date. On September 14, 1994, AT&T Communications of the Southern States, Inc. (AT&T), filed an objection to the Joint Motion. On November 23, 1994, the Commission approved the Proposed Stipulation and Agreement on an interim basis in an Order on Reconsideration with respect to the defined-radius and defined area calling plans. At that time, the Commission scheduled the matter for hearing on February 14, 1995. Subsequently, the Commission on January 4, 1995, rescheduled the hearing to begin on March 15, 1995; and finally, on January 18, 1995, the Commission rescheduled the hearing to commence on April 25, 1995.

The parties prefiled testimony, and subsequently, both Southern Bell and Carolina Telephone filed Motions to Strike certain testimony filed by MCI, LDDS, AT&T and Sprint. On April 21, 1995, the Commission entered an Order striking portions of the testimony of AT&T witnesses John W. Mayo and L. G. Sather, MCI witness Randy Klaus, LDDS witness John Gillan, and Sprint witness Tony Key. In addition, the Commission struck in its entirety the testimony of AT&T witness Wayne A. King and MCI witness Rose Matz.

At the hearing, Carolina Telephone introduced testimony from Dr. Charles L. Jackson. LDDS introduced testimony from Joseph Gillan. GTE introduced testimony from Dr. Edward C. Beauvais. MCI offered testimony from company employees Randy R. Klaus and Rose Matz; however, Ms. Matz's testimony was reproduced in the record as an offer of proof only. Southern Bell introduced testimony from company employee Jerry D. Hendrix. Sprint introduced testimony from company employee Tony H. Key. Lastly, AT&T offered testimony from John W. Mayo, and company employees L. G. Sather and Wayne A. King; however, Mr. King's testimony was reproduced in the record only as an offer of proof.

Based upon the entire record in this docket, including all testimony and exhibits introduced into evidence, the Commission makes the following

FINDINGS OF FACT

1. The Stipulation is in the public interest and should be continued on an interim basis pending further Order. LECs accruing access charge reductions in a deferred account pursuant to the Commission's January 4, 1995, Order in these dockets should immediately disburse such funds to their recipients with interest of 10% from September 1, 1994 until the date the refund is made.

2. Resale of defined-radius plan/defined-area plans (DRP/DAP) services is a complex issue that the Commission should, and will, consider in the greater context of the resale of local services, generally, arising out of the passage of Ratified House Bill 161 by the General Assembly during the 1995 legislative session.

3. The IXCs should not be mandated to flow through access charge reductions to their customers but are strongly encouraged to do so.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

After careful consideration, the Commission concludes that the Stipulation is in the public interest and should be continued on an interim basis pending further Order. The primary reason the Commission is choosing to continue the Stipulation on an interim basis rather than to cause it to be made permanent is the extremely dynamic and unsettled situation in the regulation of telecommunications at the present time. The Commission concludes that such flexibility is necessary not to be "locked in" to a solution which may be overtaken by events or otherwise be in need of modification. Nevertheless, the Commission recognizes the usefulness of the Stipulation in meeting present needs and finds it in the public interest.

The Stipulation was the industry response to the Commission's Order of May 17, 1994, in Docket No. P-100, Sub 126, relating to the imputation of access charges within the DRP/DAP areas. The Stipulation sets forth a detailed imputation standard involving the use of a credit mechanism that is invoked whenever LEC toll rates, in the aggregate, are lower than the applicable switched access charges plus $0.005 per minute. AT&T objected to the Stipulation, contending that the credit would not permit AT&T to compete within the DRP/DAP areas, that the aggregation of services would permit LECs to pick and choose the services priced below the level of access and, thus, effectively foreclose competition, and finally, that the $0.005 per minute factor representing non-access costs was arbitrary and incomplete.

With respect to the first contention, the Commission is not persuaded that AT&T will be unable to compete with the LECs for intraLATA services in the DRP/DAP areas. The IXCs enjoy, and will continue to enjoy, a number of competitive advantages over the local exchange companies in the intraLATA market. First, AT&T and other IXCs can provide complete toll services--intraLATA,

interLATA, interstate, and international--while the LECs are limited to the provision of toll services within the LATA. The provision, therefore, of "one stop shopping" for toll services is a benefit that AT&T and the other IXCs enjoy that is not available to the LECs.

Moreover, the record is clear that IXCs use "melded" access rates, blending both intrastate and interstate rates as a basis for establishing their toll rate floor. Given the pricing flexibility that the IXCs have with respect to the use of "melded" intrastate and interstate access rates, it is clear that IXCs can effectively compete on an intraLATA basis with the implementation of the imputation formula included in the Stipulation. In addition, IXCs combine switched access and special access services to target certain customer segments, such as high volume toll customers. By combining the use of switched and special access services, the effective access rates paid by the IXCs can be as much as 40% lower than the composite switched access rates.

Finally, the Commission is persuaded that the IXCs can effectively compete within the DRP/DAP areas by the fact that both Sprint and MCI have signed the Stipulation, have moved its entry and approval by the Commission, and supported its approval at the hearing. The fact that these two IXCs--both smaller than AT&T--support the Stipulation, persuades the Commission that AT&T's argument that it--the largest telecommunications company in the world--will be unable to compete effectively, is without merit.

The crediting process, while not perfect, does ensure that the effective rate paid by IXCs for switched access is not higher than the aggregated rates that the LECs charge for intraLATA toll services. That is, after all, what the Commission has sought in these proceedings. For, as we stated in our Order of May 17, 1994, in Docket No. P-100, Sub 126:

> The Commission does not believe that a perfectly level playing field is required as between IXCs and LECs in this context, only a reasonably level one. This the Commission is providing by allowing the IXCs both a legal and economic opportunity to compete. This is not a guarantee of success; that task is up to the IXCs. (p. 22) (emphasis in original)

The Commission concludes that the crediting mechanism will provide a reasonably level playing field and that the IXCs will have both the legal and economic opportunity to compete with the LECs. The Commission concludes, therefore, that the crediting mechanism is not an impediment to that competition and will, indeed, facilitate competition within the DRP/DAP areas.

AT&T objected to the aggregation of various LEC toll services as a part of the imputation standard; however, the Commission is not persuaded by AT&T's argument or the evidence that it put forth in this regard. First, the services aggregated are functionally equivalent. The LECs provide those services in the same manner, and it seems logical, therefore, to aggregate those services for purposes of applying the imputation standard. Second, the Commission finds persuasive the fact that all of the LECs and IXCs agreed to the appropriateness of this methodology. Again, no party received in this Stipulation everything that it wanted. The Stipulation represented the compromise, and as such, the methodology, while perhaps imperfect, is workable, and we believe, accomplishes the Commission's goals for the time being.

Finally, AT&T complained that the $0.005 per-minute charge for non-access costs is arbitrary and incomplete. The Commission finds, however, that the $0.005 per minute charge represented a compromise between the LECs and the interexchange carriers; in other words, this was another case in which no party received all that it wanted. For example, there was evidence that Southern Bell's non-access costs are lower than the $0.005 per minute additive; other parties, including AT&T, may have higher non-access costs. The record, however, is not clear in this regard. Nevertheless, the parties, including two IXCs, negotiated this amount to cover non-access costs, an amount that the Commission finds to be reasonable.

Based, therefore, upon the record as a whole, the Commission concludes that AT&T's concerns with respect to the Stipulation are unfounded and that the Proposed Stipulation and Agreement is in the public interest and should be approved as set out above.

Accordingly, LECs accruing access charge reductions in a deferred account pursuant to the Commission's January 4, 1995, Order in these dockets should immediately disburse such funds to their recipients with interest of 10% from September 1, 1994 until the date refund is made.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

All of the parties addressed the resale issue, and from the prefiled testimony, as well as the additional testimony adduced at the hearing, it is clear that there is no uniformity or clarity in even defining resale, much less in developing the terms and conditions that would govern such resale. For example, at one end of the continuum, MCI's witness discussed resale in the context of a retailer such as MCI purchasing service from a wholesaler, such as an LEC, adding billing and collection service, and then selling directly to the consumer. AT&T's witness, on the other hand, described resale as an IXC "utilizing the flat rate option (of an LEC) to terminate traffic of their own services . . . ." What emerges from this discussion is that there is no easy answer with respect to resale of DRP/DAP services. The Commission is aware, of course, that the General Assembly recently enacted House Bill 161, authorizing local exchange and exchange access competition, and that one of the issues that the Commission is to address is the resale of local service. That consideration necessarily subsumes the resale of DRP/DAP services and provides a better vehicle for making the determinations necessary to adequately address this complex issue. Accordingly, the Commission concludes that, based upon the record now before it, the better course with respect to the issue of resale of DRP/DAP services is to defer consideration of this issue until the implementation of local exchange and exchange access competition and the development of rules concerning that competition.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The record reflects that the Stipulation provides for a $21.4 million annual access revenue reduction by the LECs signing the Stipulation. In return, the signatory interexchange companies agreed not to initiate additional proceedings asking for a general switched access reduction with regard to the LECs contributing to the aforementioned access revenue reductions before January 1, 1996.

Theoretically, a flow through of these reductions will occur depending upon the extent of competition and the choice an IXC makes in flowing the access charge reduction through in terms

of charging end users lower prices for existing services, introducing new services, investing in switching capacity, upgraded technology or expanded transmission capacity, or some combination thereof.

Competitive market pressures, which exist in all aspects of the telecommunications industry, should sufficiently guide the IXCs in determining the best combination of investments, prices and innovations. While the Commission will not mandate that the IXCs flow through the access charge reductions to consumers, the Commission certainly expects and strongly urges that the IXCs flow through the access charge reductions, or a significant part thereof, to their customers.

IT IS, THEREFORE, ORDERED as follows:

1. That the Proposed Stipulation and Agreement be found to be in the public interest and be continued on an interim basis pending further Order.

2. That LECs accruing access charge reductions in a deferred account pursuant to the Commission's January 4, 1995, Order in these dockets disburse such funds to their recipients with interest of 10% from September 1, 1994, until the date the refund is made.

3 That the issue of resale of DRP/DAP services be deferred pending proceedings including the larger issue of resale of local exchange and exchange access services arising out of the passage of Ratified House Bill 161 by the General Assembly during the 1995 legislative session.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of June 1995.

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

Errata Order (6-30-95)

DOCKET NO. P-100, SUB 127

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of MEBTEL, Inc., for	)	ORDER AMENDING
Revision of Commission Rule R9-4(d)	)	RULE R9-4(d)

BY THE COMMISSION: On February 10, 1994, MEBTEL Inc. (formerly Mebane Home Telephone Company) petitioned the Commission for revision of Commission Rule R9-4(d) to replace outdated terminology and to revise the standard of eligibility for application of that rule. Specifically, MEBTEL requested that the Commission revise Rule R9-4(d) to provide that any telephone utility with up to 12,500 total access lines (instead of 4,000 total stations in service as the rule presently

provides) may either submit cost data regarding new or changed rates or adopt a rate already filed by another local exchange company in North Carolina. The current Rule R9-4(d) reads as follows:

> (d) Cost Study Data. -- Full cost data (2 copies) shall be submitted for each new or changed rate by any telephone utility with total stations in service in excess of 4,000. If full cost data is not available, explanation should be given including the available data, the reason full data is not available and on what information the proposed rates are based.
>
> Any telephone utility with less than 4,000 total stations in service shall submit cost data or file a rate already on file by some other company in North Carolina. Should the latter choice be made, explanation shall be included as to the name of the company from whom the rates were copied and the tariff section, sheet and item number of the other company's tariff.
>
> Supporting data and/or explanations of how dollar amounts appearing on cost studies were obtained shall be included.

In its Petition, MEBTEL stated that it believed that the purpose for which Rule R9-4 was apparently drafted is no longer being served. MEBTEL suggested that by revising this rule to utilize an access line standard and increasing the company size criteria to a point that will spare small local exchange companies (LECs) the expense of preparing cost studies, the Commission can effectively streamline a small facet of the regulatory process in a fashion which benefits the small LECs, their customers and the regulatory authorities.

MEBTEL stated that, without the requested revision of Rule R9-4(d), small LECs will face customer demand for increased service offerings while continuing to be burdened by the demands of supplying cost data each time a new service feature or option is offered. As an example, MEBTEL stated it will be installing a new switch in the near future which will allow the Company to offer a number of new service features and options to its customers. MEBTEL's consultant, Arthur Anderson & Company, has informed MEBTEL that the cost of preparing the cost study for providing just one of the service options, Centrex, will be between $40,000 and $50,000. MEBTEL stated the cost savings which it would realize if it could adopt rates already approved by this Commission for other LECs for new features and options would benefit both the Company and its customers.

MEBTEL requested that the Commission revise its Rule R9-4(d) to provide as follows:

On February 23, 1994, an Order was issued making all LECs regulated by this Commission, the Public Staff, and the Attorney General parties to this docket and requiring all parties desiring to comment on MEBTEL's petition to do so no later than Friday, March 25, 1994.

On March 15, 1994, the Carolina Utility Customers Association, Inc. (CUCA) requested an order permitting it to intervene and participate in this proceeding.

Comments were received from: Ellerbe Telephone Company (Ellerbe); GTE South Incorporated and Contel of North Carolina d/b/a GTE North Carolina (GTE); Lexington Telephone Company (Lexington); North State Telephone Company (North State); Randolph Telephone Company (Randolph) and AT&T Communications of the Southern States, Inc. (AT&T).

The Public Staff, Attorney General and CUCA did not file comments.

Summary of Comments

Ellerbe/Randolph.: Supports MEBTEL's Petition.

GTE. Believes that the intent of MEBTEL's proposed changes are clearly in the public interest but encourages the Commission to view the changes to Rule R9-4(d) in the context of all LECs within North Carolina, not just those companies that have under 12,500 access lines. Also, GTE suggested that the intent of Rule R9-4(d) can be developed in order to differentiate between cost studies for new products and cost studies for existing products while recognizing the dynamics of the technological evolution and its impact on the regulatory process. GTE submitted a proposed Rule R9-4(d) which incorporated its suggestions.

Lexington. Supports MEBTEL's request but believes the total access line standard of eligibility in Rule R9-4(d) should be increased to 40,000 access lines, a mid-point difference between the access line count of the largest and smallest independently-owned commercial telephone companies in North Carolina. Lexington believes that this change would return Rule R9-4(d) to its original intent of sparing small local exchange companies the enormous expenses of submitting full cost data for each new or changed tariff rate.

North State. Recommends the Commission offer relaxation of the tariffing requirements as requested by MEBTEL and further explore the possibilities of developing a similar form of relief for certain new and advanced services for all LECs. The Commission should have the authority to grant approval of "streamlined" tariff filings to expedite new services and/or permit the LECs to meet critical time frames in competitive situations.

AT&T. Stated it does not oppose modifying the Rule to apply the exemption to LECs whose access lines do not exceed 12,500, provided this change does not extend the exemption to companies not covered under the existing "4,000 stations" standard. Moreover, if a LEC is a subsidiary or affiliate of a holding company that has other subsidiaries or affiliates operating in North Carolina, then the total access lines of all such subsidiaries or affiliates should be counted in determining whether the 12,500 threshold has been exceeded. AT&T stated that this procedure assures that the exemption is limited in its application to "small" LECs. In the event the Commission allows a LEC to exercise the option under the Rule to adopt a cost-supported rate of another LEC (other than for access lines, basic local service rates and other non-cost based rates), the adopting LEC should be required to provide the range of rates other LECs charge for the service and an explanation of why a particular rate was chosen instead of the others. According to AT&T, this requirement achieves two important goals. First, it supports the smaller LECs' objective of avoiding the expense of developing specific full cost data, and second, the Commission assures itself and North Carolina consumers that a sound rationale has been employed by every LEC prior to submitting a request for new or changed rates.

On April 7, 1994 Reply Comments of MEBTEL were filed in response to comments filed by AT&T. MEBTEL contended that access rates are not at issue in this docket and that the linkage AT&T proposed between reduced access rates and the availability of the streamlined regulatory exemption which MEBTEL seeks for small companies is totally inappropriate. MEBTEL also

pointed that as a practical matter all of the small LECs who would be entitled to the optional exemption contemplated by MEBTEL's proposed revision of Rule R9-4 do not have cost based access rates. The small LECs either concur in an average schedule tariff for access rates or their access rates are residually priced based on depooling.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Rule R9-4 is the Commission Rule under which telephone companies operating in North Carolina file telephone tariffs and maps. Rule 9-4(d) is the subsection of that Rule which addresses cost study data. MEBTEL's Petition requested only two changes to the Rule: 1) that the current language of "total stations" be changed to "access lines," and, 2) that the "4,000 stations in service" be changed to "12,500 access lines.

After careful consideration of the filings in this docket, the Commission believes that MEBTEL's proposed changes in Rule R9-4(d) have merit. The "station count" language is certainly outdated; and, given that this Rule was adopted in the 1970s, the standard of eligibility for application of that rule is also unrealistic. MEBTEL is very convincing in its Petition that such changes would be in both the company's and the customers' best interests.

The Commission further agrees with MEBTEL that companies with access lines of 12,500 or less is the appropriate standard. The Commission disagrees with Lexington's proposed "40,000" access line number because a company with 40,000 access lines should not be considered a "small" company in this context.

Moreover, the Commission does not believe it would be appropriate at this time to promulgate an "expansion" of the Rule suggested by GTE, North State and AT&T.

The Commission therefore believes that Rule R9-4(d) should be amended essentially as proposed by MEBTEL in Rule R9-4(d) as MEBTEL has proposed.

IT IS, THEREFORE, ORDERED that Commission Rule R9-4(d) be amended to read as follows:

(d) Cost Study Data. -- Full cost data (2 copies) shall be submitted for each new or changed rate by any telephone utility with more than 12,500 access lines. If full cost data is not available, explanation should be given including the available data, the reason full data is not available and on what information the proposed rates are based.

Any telephone utility with 12,500 or fewer access lines in service shall submit cost data or file a rate already on file by some other company in North Carolina. Should the latter choice be made, explanation shall be included as to the name of the company from whom the rates were copied and the tariff section, sheet and item number of the other company's tariff.

Supporting data and/or explanations of how dollar amounts appearing on cost studies were obtained shall be included.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of April 1994.

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

DOCKET NO. P-100, SUB 129

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tariff Filings Concerning the North Carolina Information Highway	))	ORDER ALLOWING PERMANENT TARIFFS

HEARD IN: Dobbs Building, Raleigh, North Carolina 27626-0520 on January 10, 1995, at 9:30 a.m.

BEFORE: Judge Hugh A. Wells, Presiding; Commissioners William W. Redman, Charles H. Hughes, Laurence A. Cobb, Allyson K. Duncan, Judy Hunt, and Ralph Hunt

APPEARANCES:

For Southern Bell Telephone & Telegraph Company:

A. S. Povall, Jr., and Leon H. Lee, Jr., Southern Bell Telephone and Telegraph Company, 1012 Southern National Center, Post Office Box 30188, Charlotte, North Carolina 28230

Jerry W. Amos, 230 Elm Street, Post Office Box 787, Greensboro, North Carolina 27402

For Carolina Telephone and Telegraph Company and Central Telephone Company:

Jack H. Derrick, Senior Attorney, Carolina Telephone and Telegraph Company, Central Telephone Company, 14111 Capital Boulevard, Wake Forest, North Carolina 27587

For GTE South, Inc.:

Joe W. Foster, GTE South Incorporated, Post Office Box 110, MC 7, Tampa, Florida 33601

For Carolina Utility Customers Association:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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

BY THE COMMISSION: This matter arose with the filing by Southern Bell Telephone and Telegraph Company (Southern Bell), Carolina Telephone and Telegraph Company (Carolina), and GTE South (GTE) (collectively, the LECs) of certain special service arrangements (SSAs) relating to the North Carolina Information Highway (NCIH). Central Telephone Company (Central) filed tariffs concurring in Carolina's rates, and North State Telephone Company (North State) filed tariffs concurring in Southern Bell's rates. On August 16, 1994, the Commission entered an order allowing these SSAs to become effective pursuant to G.S. 62-134(b) on an interim basis. AT&T Communications of the Southern States, Inc. (AT&T), also filed an SSA relating to the NCIH, and on August 22, 1994, the Commission issued an order allowing this tariff to become effective on an interim basis. By order issued August 23, 1994, the Commission scheduled a hearing to consider the rates contained in the tariffs and other issues related to the NCIH. By further order issued October 18, 1994, the hearing was rescheduled to the time and place shown above.

The parties presented the testimony of the following witnesses:

Southern Bell - Mark E. Williams, M.D., a physician at the University of North Carolina School of Medicine; Robert S. Brinson, Assistant Secretary for Management, the North Carolina Department of Correction; Donita Robinson, mathematics instructor at the North Carolina School of Science and Mathematics; William L. Smith, Vice President of a Broadband Business Unit, BellSouth Telecommunications, Inc.; F. Robert Flood, Jr., Staff Manager in the Pricing Organization, BellSouth Telecommunications, Inc.; and Robert G. McKnight, Manager - Economic Analysis, BellSouth Telecommunications, Inc. In addition, Southern Bell offered as a late-filed exhibit a copy of the *Vendor Cost Review* of the NCIH conducted by Deloitte & Touche.

Carolina/Central - Marcus H. Potter, III, Regulatory Affairs Manager, Sprint Mid-Atlantic Telecom, and Jon R. Hamm, Manager of Broadband Networks, Sprint Mid-Atlantic Telecom.

GTE South - Douglas E. Wellemeyer, Manager - South Area Pricing and Tariffs for GTE Telephone Operations.

Public Staff - Millard N. Carpenter, III, Engineer, Communications Division, Public Staff.

Based on the evidence adduced at the hearing and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. The NCIH is a broadband network that uses fiber optic cable, Synchronous Optical Network (SONET) transmission equipment, and Asynchronous Transfer Mode (ATM) switching equipment deployed by the LECs to provide data, video, and imaging communications among multiple sites throughout the state. The technology used in providing the NCIH is not generally deployed in the public network today.

2. The SSAs that are the subject of this proceeding are offered pursuant to agreements between the NCIH providers and the North Carolina State Government - Office of State Controller (NCSG - OSC). The service periods begin in the third quarter of 1994 and last approximately ten years. More than 3,000 sites may be installed during this period. Each party has the right to renegotiate the rates and charges contained in the SSAs during the third quarter of 1996 and every two years thereafter.

3. The SSAs are restricted to the use of NCSG and authorized users as defined by state law. The LECs have committed to file general tariff offerings as early as possible in 1995.

4. Costs associated with providing the NCIH to NCSG were determined through the use of the same cost methodology that is used by the LECs for other SSAs and general tariff offerings. These costs depend upon equipment prices in later years as well as on numbers and locations of sites, usage levels, and the demand for similar services from a growing variety of users.

5. Because the NCIH is new, there is limited experience upon which to base a judgment about the demand for the service over the ten-year contract period.

6. The LECs have made reasonable assumptions about future costs and forecasts of demand in developing the costs of providing the NCIH.

7. Pricing for the portion of the NCIH provided by the LECS uses an "A + (B * X) rate structure. "A" is the network access rate element, which covers the loop fiber between the sites and the ATM switches and the associated switch terminations; it is both distance and usage insensitive. "B" is the network usage rate element, which covers the intraLATA facilities, switching, and network control functions; it is also distance insensitive. "X" is total amount of usage to be billed. All of the rates were developed to recover the costs for NCSG's portion of the NCIH over the ten-year contract period and provide some contribution.

8. InterLATA facilities for NCSG's portion of the NCIH are provided by AT&T. Pricing these facilities is based on a fixed monthly rate for each site.

9. The pricing for the SSAs is reasonably structured to minimize negative impacts of demand fluctuations, protect the general body of ratepayers, promote parity between urban and rural sites, and encourage the development of new applications.

10. The cost and pricing methodologies used in developing the SSAs for the NCIH have been reviewed independently by the Public Staff and the accounting firm of Deloitte & Touche and found to be reasonable.

Whereupon, the Commission reaches the following

CONCLUSIONS

Given the uncertainties associated with providing a service as innovative and potentially far-reaching as the NCIH, the Commission concludes that the LECs have done a reasonable job of determining the costs and developing the prices for the SSAs. The Commission therefore concludes that it is reasonable to allow their SSAs to continue in effect as permanent offerings until the third quarter of 1996, when the rates are subject to renegotiation under the agreements with NCSG - OSC. The local exchange companies should be required to make filings at least 90 days before September 1, 1996, either supporting continuation of the existing rates or justifying any changes.

AT&T's rates are also subject to renegotiation every two years. Because AT&T is not required to justify its rates, however, the Commission concludes that its tariffs should be allowed to continue in effect as permanent offerings until a change is requested by AT&T.

IT IS, THEREFORE, ORDERED as follows:

1. That the interim status of the LECs' tariffs for the provision of the NCIH be removed, and the tariffs be allowed to continue in effect as permanent offerings until further order of the Commission.

2. That the LECs make filings at least 90 days before September 1, 1996, either supporting the continuation of the existing rates or justifying any changes.

3. That the interim status of AT&T's tariffs for the provision of the NCIH be removed, and the tariffs be allowed to continue in effect on a permanent basis until a change is requested by AT&T.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of March 1995.

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

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of An Act to Modify the Bond Requirements for a Public Utility Providing Water or Sewer Services	))))	ORDER AMENDING BOND RULES R7-37 AND R10-24 AND ADOPTING THEM AS INTERIM RULES

BY THE COMMISSION: On April 10, 1995, the General Assembly of North Carolina, during the 1995 Session, ratified Chapter 28--Senate Bill 207 entitled--An Act to Modify the Bond Requirements for Public Utilities Providing Water or Sewer Services as Recommended by the Joint Legislative Utility Review Committee. Senate Bill 207 addresses, through changes in G. S. 62-110.3, three essential issues:

(1) Removal of the cap on the maximum amount that can be required for a bond;
(2) Requires that the Commission consider and make specific findings in setting the amount of the bond; and
(3) Addresses the extension of service into contiguous territory and how the requirements are affected by such an extension.

G. S. 62-110.3 governs the bond requirements for water and sewer companies. Subsection (a) of this statute has been modified by Senate Bill 207, to remove the $200,000 cap on the maximum amount water or sewer utility companies can provide as sufficient surety when approved by the North Carolina Utilities Commission (NCUC or Commission) for the issuance of a Certificate of Public Convenience and Necessity. Further modification of subsection (a) requires the Commission to consider and make appropriate findings as to the following:

(1) Whether the applicant holds other water or sewer franchises in this State, and if so, its record of operation,
(2) The number of customers the applicant now serves and proposes to serve,
(3) The likelihood of future expansion needs of the service,
(4) If the applicant is acquiring an existing company, the condition and type of the equipment, and
(5) Any other relevant factors, including the design of the system.

Subsection (b) of G. S. 62-110.3 has been completely modified to read as follows:

(b) Notwithstanding the provisions of G.S. 62-110(a) and subsection (a) of this section, no water or sewer utility shall extend service into territory contiguous to that already occupied without first having advised the Commission of such proposed extension. Upon notification, the Commission shall require the utility to furnish an appropriate bond, taking into consideration both the original service area and the proposed extension. This subsection shall apply to all service areas of water and sewer utilities without regard to the daily issuance of the franchise.

The remainder of G. S. 62-110.3, to wit: subsections (c), (d) and (e) remain unchanged.

WHEREUPON, the Commission reaches the following:

CONCLUSIONS

The Commission concludes that its bond rules, R7-37 and R10-24, should be amended in accordance with the changes brought about as a result of the General Assembly of North Carolina's ratification of Senate Bill 207 entitled an Act to Modify the Bond Requirements for Public Utilities Providing Water or Sewer Services as Recommended by the Joint Legislative Utility Review Committee. An outline of the proposed changes to bond rules R7-37 and R10-24, as recommended by the Commission's Legal Staff, is appended hereto as Attachment A.

In subsection (a) of these rules, language has been added covering a water or sewer utility company's extension of service into territory contiguous to that already occupied. Subsection (c) of the rules now has additional language which addresses a requirement for the Commission to consider and make appropriate findings in six (6) specific areas when setting the amount of the bond.

Finally, the last paragraph of subsection (c) of Rules R7-37 and R10-34 reflects a change in the language by deleting all reference to the maximum amount of $200,000 for the bond. In order to provide the necessary financial responsibility acceptable to the Commission, a bond for a water or sewer utility company cannot be less than $10,000. Consequently, as a result of the $200,000 cap on the maximum amount allowed for a bond having been removed by the modification to G. S. 62-110.3, there is no maximum amount for such a bond. The remainder of the subsections in bond rules R7-37 and R10-24, to wit: subsections (d), (e), (f) and (g) remain unchanged.

The Commission finds good cause to enter an Order amending bond rules R7-37 and R10-24 and adopting the changes as Interim rules. The Commission shall allow thirty (30) days from the date of the issuance of this Order for comments from water and sewer companies to be filed, in this docket, concerning the modification of these rules. If there are no adverse comments, as determined by the Commission, within thirty (30) days of the issuance of this Order, the Interim rules as adopted will become the Commission's final formal rules for R7-37 and R10-24.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R7-37 and R10-24, Bonds, appended hereto as Attachment A, are hereby adopted by the Commission as Interim rules, effective as of the date of this Order.

2. That the Chief Clerk of the Commission shall cause this Order to be mailed to all water and sewer services having Certificates of Public Convenience and Necessity granted by the Commission.

3. That all water and sewer companies who have been granted Certificates of Public Convenience and Necessity and who are in receipt of this Order may file comments with the Chief Clerk of the Commission within thirty (30) days following the issuance of this Order.

4. That the revised rules, appended hereto as Attachment A, shall become the final formal rules of the Commission regarding Bond rules R7-37 and R10-24 immediately upon the expiration of thirty (30) days following the issuance of this Order, unless there are adverse comments, deemed as such by the Commission, filed with the Chief Clerk of the Commission prior to the conclusion of the thirty (30) day period.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of May 1995.

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

APPENDIX A

BOND RULEMAKING

Rule R7-37. Bonds.
Rule R10-24. Bonds.

(a) Except as provided in paragraph ~~(g)~~ (f), before a temporary operating authority, or a certificate of convenience and necessity is granted to a water or sewer utility company, or before a water or sewer utility company extends service into territory contiguous to that already occupied, without regard to the date of the issuance of the existing franchise, the company must furnish a bond to the Commission as required by G.S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

(b) The form of the bond shall be as in the Appendix to this Chapter.

(c) The amount of the bond shall be set by the Commission on the basis of evidence presented during the application proceeding. In the case of a no-protest application proceeding, the amount of the bond shall be based on information in the application. In the event that the parties cannot agree on the appropriate amount, the issue shall be referred to the Commission for final decision. In setting the amount of a bond, the Commission shall consider and make appropriate findings as to the following:

(1) Whether the applicant holds other water or sewer franchises in this State, and if so its record of operation;

(2) The number of customers the applicant now serves and proposes to serve;

(3) The likelihood of future expansion needs of the service;

(4) If the applicant is acquiring an existing company, the age, condition and type of the equipment;

(5) Any other relevant factors, including the design of the system, and.

(6) In the case of a contiguous extension, both the original service area and the proposed extension.

~~The amount of~~ The bond shall be ~~at least ten thousand dollars ($10,000), or in an amount above ten thousand dollars ($10,000), but not more than two hundred thousand dollars ($200,000)~~ in an amount, not less than ten thousand dollars ($10,000), sufficient to provide financial responsibility in a manner acceptable to the Commission.

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars ($500.000), whichever is less. The net worth of proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement.

(e) The bond may also be secured by posting with the Commission cash or securities acceptable to the Commission at least equal in value to the amount of bond. If the aggregate value of the securities posted declines below the amount required to guarantee the full bond, the utility shall make any additional deposits necessary to guarantee the bond, If the aggregate value of the securities posted increases above the amount required to guarantee the bond, the utility may withdraw securities as long as the aggregate value remains at least equal to the amount required.

Acceptable securities are:

(1) Obligations of the United States of America
(2) Obligations of the State of North Carolina
(3) Certificates of deposit drawn on and accepted by commercial banks and savings and loan associations incorporated in the state of North Carolina.
(4) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in (1), (2), and (3) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing the burden of proof will be on the utility to show that the proposed security under subparagraph (4) and the proposed amount of the bond will be in the public interest.

(f) If a utility subject to the Commission's jurisdiction is operating without a franchise and either
(1) it applies for a franchise, or
(2) the Commission asserts jurisdiction over it, the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

(g) The company shall attach a separate notarized statement to its annual report which is due on or before April 30th of each year stating the amount of the bond, whether the bond is still in effect, and the date of next renewal,

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
An Act to Modify the Bond Requirements	)	ERRATA ORDER AMENDING BOND
for a Public Utility Providing Water or	)	RULES R7-37 AND R10-24 AND
Sewer Services	)	ADOPTING THEM AS INTERIM RULES

BY THE COMMISSION: On May 3, 1995, an Order was issued in this docket amending bond rules R7-37 and R10-24 and adopting them as interim rules. Attached to this Order was Appendix A which set out rules R7-37 and R10-24 in their entirety.

It should be noted, in this docket, that an Order Promulgating Rules Changes and Forms for Water or Sewer Bonds Secured by Nonperpetual Irrevocable Letters of Credits or Nonperpetual Commercial Surety Bonds, was issued by the Commission on July 19, 1994, which previously amended Subsection (d) of rules R7-37 and R10-24 as well as Subsection (e)(4) of Rules R7-37 and R10-24. Subsection (d) of bond rules R7-37 and R-24, contained in Appendix A, which was attached to the May 3, 1995, Order Amending Bond Rules R7-37 and R10-24 and Adopting Them as Interim Rules should have read as follows:

> (d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars ($500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement. Where a utility proposes to secure its bond by means of a commercial surety bond of nonperpetual duration issued by a corporate surety, the bond and commercial surety bond must specify that (a) if, for any reason, the surety bond is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the surety bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the surety bond will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the surety bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the surety bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted surety bond shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

Subsection (e)(4) of bond rules R7-37 and R10-24, contained in Appendix A, of the above-referenced Order issued on May 3, 1995, has been amended as well and should have read as follows:

> (e)(4) Irrevocable letters of credit issued by financial institutions acceptable to the Commission. If the irrevocable letter of credit is nonperpetual in duration, the bond and

letter of credit must specify that (a) if, for any reason, the irrevocable letter of credit is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the irrevocable letter of credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0520, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the irrevocable letter of credit will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the irrevocable letter of credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the irrevocable letter of credit to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted irrevocable letter of credit shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

The Commission finds good cause to enter an Errata Order correcting Appendix A and indicating amendments previously made to Subsections (d) and (e)(4) of Rules R7-37 and R10-24 by the Commission Order Promulgating Rule Changes dated July 19, 1994. (See Attached).

IT IS, THEREFORE, ORDERED as follows:

1. That the Chief Clerk of the Commission shall cause this Order to be mailed to all water and sewer companies having Certificates of Public Convenience and Necessity as granted by the Commission.

2. That this Errata Order correcting Appendix A and indicating previous amendments to Subsections (d) and (e)(4) of bond rules R7-37 and R10-24, contained in attached Appendix A of the Order Amending Bond Rules R7-37 and R10-24 and Adopting Them as Interim Rules dated May 3, 1995, does not effect any of the decretal paragraphs as set out in said Order of May 3, 1995, in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of May 1995.

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

APPENDIX A

BOND RULEMAKING

Rule R7-37. Bonds.
Rule R10-24. Bonds.

(a) Except as provided in paragraph (g) (f), before a temporary operating authority or a certificate of convenience and necessity is granted to a water or sewer utility company, or before a water or sewer utility company extends service into territory contiguous to that already occupied, without regard to the date of the issuance of the existing franchise, the company must furnish a bond to the

Commission as required by G.S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

(b) The form of the bond shall be as in the Appendix to this Chapter.

(c) The amount of the bond shall be set by the Commission on the basis of evidence presented during the application proceeding. In the case of a no-protest application proceeding, the amount of the bond shall be based on information in the application. In the event that the parties cannot agree on the appropriate amount, the issue shall be referred to the Commission for final decision. In setting the amount of a bond, the Commission shall consider and make appropriate findings as to the following:

(1) Whether the applicant holds other water or sewer franchises in this State, and if so its record of operation;

(2) The number of customers the applicant now serves and proposes to serve;

(3) The likelihood of future expansion needs of the service;

(4) If the applicant is acquiring an existing company, the age, condition and type of the equipment;

(5) Any other relevant factors, including the design of the system; and

(6) In the case of a contiguous extension, both the original service area and the proposed extension.

~~The amount of~~ The bond shall be ~~at least ten thousand dollars ($10,000), or in an amount above ten thousand dollars ($10,000), but not more than two hundred thousand dollars ($200,000)~~ in an amount, not less than ten thousand dollars ($10,000), sufficient to provide financial responsibility in a manner acceptable to the Commission.
Rules should have read as follows:

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars ($500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement. Where a utility proposes to secure its bond by means of a commercial surety bond of nonperpetual duration issued by a corporate surety, the bond and commercial surety bond must specify that (a) if, for any reason, the surety bond is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the surety bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the surety bond will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the

surety bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the surety bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted surety bond shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

(e) The bond may also be secured by posting with the Commission cash or securities acceptable to the Commission at least equal in value to the amount of bond. If the aggregate value of the securities posted declines below the amount required to guarantee the full bond, the utility shall make any additional deposits necessary to guarantee the bond, If the aggregate value of the securities posted increases above the amount required to guarantee the bond, the utility may withdraw securities as long as the aggregate value remains at least equal to the amount required.

Acceptable securities are:

(1) Obligations of the United States of America
(2) Obligations of the State of North Carolina
(3) Certificates of deposit drawn on and accepted by commercial banks and savings and loan associations incorporated in the state of North Carolina.
(4) Irrevocable letters of credit issued by financial institutions acceptable to the Commission. If the irrevocable letter of credit is nonperpetual in duration, the bond and letter of credit must specify that (a) if, for any reason, the irrevocable letter of credit is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the irrevocable letter of credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0520, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the irrevocable letter of credit will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the irrevocable letter of credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the irrevocable letter of credit to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted irrevocable letter of credit shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.
(5) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in (1), (2), and (3) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing the burden of proof will be on the utility to show that the proposed security under subparagraph (4) and the proposed amount of the bond will be in the public interest.

(f) If a utility subject to the Commission's jurisdiction is operating without a franchise and either (1) it applies for a franchise, or
(2) the Commission asserts jurisdiction over it, the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility

temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

(g) The company shall attach a separate notarized statement to its annual report which is due on or before April 30th of each year stating the amount of the bond, whether the bond is still in effect, and the date of next renewal.

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of An Act to Modify the Bond Requirements for a Public Utility Providing Water or Sewer Services	)))	ORDER AMENDING RULES R7-37(e)(5) AND R10-24(e)(5)

BY THE COMMISSION: On July 19, 1994, the Commission entered an Order in this docket promulgating certain rule changes and forms for water or sewer bonds secured by nonperpetual irrevocable letters of credit or nonperpetual commercial surety bonds. In addition, certain other amendments to Rules R7-37 and R10-24 have been adopted by the Commission subsequent to the Order of July 19, 1994. In reviewing the rules in question, the Commission has discovered that additional rule changes are necessary in order to conform subsections (e)(5) of the two rules in question to the changes previously adopted by the Order of July 19, 1994. That being the case, the Commission finds good cause to amend Rules R7-37(e)(5) and R10-24(e)(5) to read as follows:

(5) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in (1), (2), ~~and~~ (3), and (4) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing, the burden of proof will be on the utility to show that the proposed security under subparagraph ~~(4)~~ (5) and the proposed amount of the bond will be in the public interest.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R7-37(e)(5) and R10-24(e)(5) be, and the same are hereby, amended as set forth above and that current versions of Rules R7-37 and R10-24 reflecting all amendments adopted by the Commission to date are attached hereto as Appendix A.

2. That the Chief Clerk shall mail a copy of this Order to each water and sewer public utility certificated in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of May 1995.

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

APPENDIX A

BOND RULEMAKING

Rule R7-37. Bonds.
Rule R10-24. Bonds.

(a) Except as provided in paragraph (f), before temporary operating authority, or a certificate of convenience and necessity is granted to a water or sewer utility company, or before a water or sewer utility company extends service into territory contiguous to that already occupied, without regard to the date of the issuance of the existing franchise, the company must furnish a bond to the Commission as required by G.S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

(b) The form of the bond shall be as in the Appendix to this Chapter.

(c) The amount of the bond shall be set by the Commission on the basis of evidence presented during the application proceeding. In the case of a no-protest application proceeding, the amount of the bond shall be based on information in the application. In the event that the parties cannot agree on the appropriate amount, the issue shall be referred to the Commission for final decision. In setting the amount of a bond, the Commission shall consider and make appropriate findings as to the following:

(1) Whether the applicant holds other water or sewer franchises in this State, and if so its record of operation,

(2) The number of customers the applicant now serves and proposes to serve;

(3) The likelihood of future expansion needs of the service,

(4) If the applicant is acquiring an existing company, the age, condition and type of the equipment,

(5) Any other relevant factors, including the design of the system, and

(6) In the case of a contiguous extension, both the original service area and the proposed extension.

The bond shall be in an amount, not less than ten thousand dollars ($10,000), sufficient to provide financial responsibility in a manner acceptable to the Commission.

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars ($500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement. Where a utility proposes to secure its bond by means of a commercial surety bond of nonperpetual duration issued by a corporate surety, the bond and commercial surety bond must specify that (a) if, for any reason, the surety bond is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the surety bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the surety bond will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the surety bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the surety bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted surety bond shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

(e) The bond may also be secured by posting with the Commission cash or securities acceptable to the Commission at least equal in value to the amount of bond. If the aggregate value of the securities posted declines below the amount required to guarantee the full bond, the utility shall make any additional deposits necessary to guarantee the bond. If the aggregate value of the securities posted increases above the amount required to guarantee the bond, the utility may withdraw securities as long as the aggregate value remains at least equal to the amount required.

Acceptable securities are:

(1) Obligations of the United States of America
(2) Obligations of the State of North Carolina
(3) Certificates of deposit drawn on and accepted by commercial banks and savings and loan associations incorporated in the State of North Carolina
(4) Irrevocable letters of credit issued by financial institutions acceptable to the Commission. If the irrevocable letter of credit is nonperpetual in duration, the bond and letter of credit must specify that (a) if, for any reason, the irrevocable letter of credit is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the irrevocable letter of credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0520, and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936, that the irrevocable letter of credit will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the irrevocable letter of credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the irrevocable letter of credit

to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted irrevocable letter of credit shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

(5) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in (1), (2), (3), and (4) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing, the burden of proof will be on the utility to show that the proposed security under subparagraph (5) and the proposed amount of the bond will be in the public interest.

(f) If a utility subject to the Commission's jurisdiction is operating without a franchise and either (1) it applies for a franchise, or
(2) the Commission asserts jurisdiction over it, the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

(g) The company shall attach a separate notarized statement to its annual report which is due on or before April 30th of each year stating the amount of the bond, whether the bond is still in effect, and the date of next renewal.

DOCKET NO. W-100, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement Rules	)	
Governing Applications and Procedures	)	ORDER ADOPTING RULES
for Water and Sewer Certificates and	)	R7-38 AND R10-25 AND
Transfers and Extension into Contiguous	)	NEW AND REVISED
Areas	)	APPLICATION FORMS

BY THE COMMISSION: On September 18, 1991, the Public Staff petitioned the Commission to institute a rulemaking proceeding to require the filing of notice by water and sewer companies prior to the acquisition, construction or operation of water and sewer facilities in areas contiguous to existing service areas, to modify the present form, Application for Certificate of Public Convenience and Necessity and for Approval of Rates, for water and sewer companies to require original cost information of all applicants, and to otherwise clarify and simplify that form.

In support of its petition, the Public Staff stated the following:

1. Utilities are able to expand operations into contiguous territories without notification to the Commission and Public Staff.

2. Regulatory oversight is hampered by lack of notification.

3. Potential contributions in aid of construction (CIAC) associated with the extension and the amount of bond posted by the utility are items of concern.

4. G.S. 62-22 mandates coordination between the Commission and the Department of Revenue for the purpose of furnishing "advice and information as to the value of properties of public utilities..."

5. Accurate and current information regarding the utility's service area would be valuable in resolving complaints and investigations.

The Public Staff recommended changes to several of the Commission's applications and annual reports and proposed new rules and forms for contiguous extensions.

G.S. 62-110(a) specifies that "... no public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation."

On October 18, 1991, the Commission issued a Notice of Rulemaking in this docket. The Commission stated that it was of the opinion that it should institute a rulemaking proceeding to adopt rules for the orderly and timely handling and resolution of applications for water and sewer certificates and transfers pursuant to G.S. 62-110 and G.S. 62-111. Other matters to be considered in the rulemaking were the requirements of the applications, data, exhibits, the time periods for investigation and recommendation by the Public Staff, and the service of public notice and the scheduling of the hearings.

The Commission stated in its Order that a major policy consideration in this rulemaking is to balance the needs of the Commission and the Public Staff for adequate information and investigation with the utilities' need for a timely resolution of the application. Another policy consideration noted in the Order was to more fully conform the Commission's procedures with the procedures and regulations of other State agencies that regulate water and sewer companies.

The Order also stated that the parties to this proceeding could suggest additional matters to be addressed in this rulemaking. The Public Staff, Attorney General, other State agencies and interested persons, and all water and sewer companies regulated by the Commission were invited to file a proposed rule or rules and/or comments addressing the manner in which applications filed under G.S. 62-110 and G.S. 62-111 should be processed by the Commission.

On December 20, 1991, Wally Venrick with the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) sent a memo to Andy Lee of the Public Staff requesting that a statement reflecting the statutory requirements of various Articles of the North Carolina General Statutes be included in Proposed Rules R7-38(a) and R10-25(a).

On December 20, 1991, the Attorney General filed comments in regard to the rulemaking proceeding. The Attorney General concurred with the Public Staff in the view that with respect to contiguous extensions, prior notification is imperative if the Commission is to continue its supervision of these regulated water and sewer utilities. The Attorney General suggested that "written notice in a form approved by the Commission" be added to both Proposed Rules R7-38(a) and R10-25(a) as shown in its comments, Items Nos. 5 and 5(a).

On December 23, 1991, the Commission granted Carolina Water Service, Inc. of North Carolina (CWS) an extension of time to and including Friday, January 17, 1992, in which to file a proposed rule or rules in this docket. Other parties desiring to file comments to the proposed rules of CWS were allowed to do so on or before Friday, February 14, 1992.

On January 22, 1992, the Commission issued an Order Granting Further Extension of Time to the parties.

On February 5, 1992, Heater Utilities, Inc. (Heater) filed its comments. With regard to proposed contiguous extension Rules R7-38 and R10-25, Heater commented that a 30-day advance notice requirement is unnecessary in addressing the concerns expressed by the Public Staff, and that more complete and accurate information can be provided after the extension is made. Heater also attached a proposed notification form which was significantly simplified from the Public Staff's proposed form. Heater stated that its proposed form should provide the information necessary to satisfy the Public Staff's expressed concerns regarding the amount of bond, CIAC, tax value of property, and current information regarding the extent of the service area.

On February 19, 1992, the Commission granted CWS a further extension of time to and including Wednesday, February 26, 1992, in which to file a proposed rule or rules in this docket. Other parties desiring to file comments to the proposed rules of CWS were allowed to do so on or before March 13, 1992.

On February 28, 1992, CWS filed its comments in response to the Commission's Notice of Rulemaking in this docket. CWS commented on the procedures to reduce the discriminatory and unreasonable time delays that are experienced under the existing procedures. Comments included standard timetables, provision of all necessary information, and the establishment of guidelines as to what constitutes a significant protest. Applications for rate increases, significance of documents attached to applications, temporary operating authority, CIAC tax, bond requirements, Commission Agenda Conferences, the use of transfer proceedings to punish the seller, and many other areas were commented upon by CWS. CWS stated in its comments that there is currently no clear definition of the term "contiguous." A proposal to define contiguous as two or more areas that will be provided the same service(s) and either share a common boundary or are separated by a non-serviceable area (i.e., road, park, etc.) was offered by CWS.

On March 13, 1992, Mid South Water Systems, Inc. (Mid South) filed its comments on proposed contiguous extension rules and on comments of other parties. Mid South stated that it generally agrees with the substantive comments filed herein by Heater insofar as they go. Mid South feels that the Commission should focus its energies and attention upon (1) any underlying policy questions which may arise with respect to a given franchise application, (2) questions of the fitness of the applicant to provide the services for which application is made and (3) whatever conflicts may arise between competing utility companies with respect to a given proposed service area.

On November 24, 1992, the Attorney General filed a Motion Inviting Proposed Rules. The Attorney General stated that the comments of the parties did not make specific proposals to address all the issues raised. According to the Attorney General, the issues to be addressed in this rulemaking fall into four categories: rules proposed by the Public Staff to monitor contiguous extensions of service and forms for various filings; the need for coordination with other state and local agencies; the need for procedural timetables in franchise and transfer proceedings; and the need to study and develop requirements for contractual arrangements between utilities and developers, customers, or transferees. The Attorney General asked the Commission to request proposed rules concerning applications and proceedings for water and sewer certificates and transfers and extensions into contiguous areas. WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission concludes that rules should be adopted to deal with extensions of water and sewer systems into contiguous territories pursuant to the "contiguous" proviso of G.S. 62-110. In the past, such extensions have often been made without notice to, or review by, the Commission. Defining the scope of the "contiguous" proviso is not easy since the circumstances and geography of each situation will differ. However, the Commission can provide certain guidelines. All extensions of utility plant into new areas not covered by the utility's present franchise should be brought to the Commission's attention by either an application for a certificate of public convenience and necessity or a notification of contiguous extension. Since the purpose of G.S. 62-110 is to provide for an orderly extension of utility plant, the "contiguous" proviso, which is an exception to the certificate requirement, should be narrowly and conservatively interpreted. A contiguous extension should be into territory immediately adjacent to territory already occupied by the utility. In order to be immediately adjacent, the territory of the contiguous extension should share a significant common boundary line. There may be a geographic feature such as a roadway or stream along this boundary, but there must not be intervening land or a substantial body of water. The territory of the contiguous extension must be immediately adjacent to territory that is already occupied by the utility. A water or sewer company occupies a territory by the presence of its plant in the territory. A contiguous extension may not be made across unoccupied territory that will not be served by the extension, whether franchised to the utility or not.

In addition to adopting Rules R7-38 and R10-25 regarding contiguous extensions, which are appended hereto as Attachment A, the Commission has also adopted a new application form entitled "Notification of Intention to Begin Operations in Area Contiguous to Present Service Area". A copy

of this new application form is appended hereto as Attachment B. Furthermore, in an effort to reflect current procedures, the Commission has also included as part of this docket other revised forms. These forms include the revised applications for rate increases, certificates, transfers, and discontinuances for water and sewer companies. These forms are attached to this Order as Attachments C, D, E, and F, respectively.

There have been comments filed in this docket that the Commission procedures for certificates and transfers are subject to unreasonable delay and are cumbersome. The Commission has carefully reviewed its practices related to the processing of certificate and transfer applications and has determined that the Commission and Public Staff have streamlined their procedures in these matters. Consequently, the Commission finds no need at this time to adopt formal rules establishing timetables for the processing of applications.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R7-38 and R10-25, Notification of Contiguous Extension, attached hereto as Attachment A, are hereby adopted by this Commission, effective with the date of this Order.

2. That the new application form for Notification of Intention to Begin Operations in Area Contiguous to Present Service Area, attached hereto as Attachment B, is hereby adopted by this Commission, effective with the date of this Order.

3. That the revised application forms are hereby adopted by this Commission, effective with the date of this Order. These forms include the following:

Application for Rate Increase

- Application for Certificate of Public Convenience and Necessity and for Approval of Rates

- Application for Transfer of Public Utility Franchise and for Approval of Rates

- Application for Authority to Discontinue Public Utility Service

These forms are shown as Attachments C, D, E, and F, respectively.

4. That all parties to this proceeding shall receive a copy of the Order and all accompanying attachments. Utilities who are not party to this proceeding shall receive a copy of the Order along with Attachments A and B. Other Attachments C, D, E, and F shall be mailed to interested parties upon request.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of February 1995.

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

(For a Copy of Attachment B see Official Copy of Order in Chief Clerk's Office.)

ATTACHMENT A

Rule R7-38. Notification of Contiguous Extension.

(a) At least 30 days prior to constructing, acquiring, or beginning the operation of any public utility plant or equipment capable of providing water utility service to customers in territory contiguous to that already occupied, for which, by virtue of its contiguity, no certificate of public convenience and necessity is required, a public utility shall provide written notice to the Commission of its intention to construct, acquire, or begin operation of such plant. The notice shall be in a form approved by the Commission and shall identify the area to be served by the extension.

(b) For purposes of this Rule, the phrase "territory contiguous to that already occupied" shall mean territory that is immediately adjacent. In order to be immediately adjacent, the territory must share a significant common boundary line with that already occupied. There may be a geographic feature such as a roadway or stream along this boundary line, but there must not be any intervening land or any substantial body of water. The territory must be immediately adjacent to territory that is already occupied by the water utility. A water utility occupies a territory by the presence of its plant in the territory. A contiguous extension may not be made across unoccupied territory that will not be served by the extension, whether franchised to the utility or not.

Rule R10-25. Notification of Contiguous Extension.

(a) At least 30 days prior to constructing, acquiring, or beginning the operation of any public utility plant or equipment capable of providing sewer utility service to customers in territory contiguous to that already occupied, for which, by virtue of its contiguity, no certificate of public convenience and necessity is required, a public utility shall provide written notice to the Commission of its intention to construct, acquire, or begin operation of such plant. The notice shall be in a form approved by the Commission and shall identify the area to be served by the extension.

(b) For purpose of this Rule, the phrase "territory contiguous to that already occupied" shall mean territory that is immediately adjacent. In order to be immediately adjacent, the territory must share a significant common boundary line with that already occupied. There may be a geographic feature such as a roadway or stream along this boundary line, but there must not be any intervening land or any substanial body of water. The territory must be immediately adjacent to territory that is already occupied by the sewer utility. A sewer utility occupies a territory by the presence of its plant in the territory. A contiguous extension may not be made across unoccupied territory that will not be served by the extension, whether franchised to the utility or not.

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 Complainants v. Duke Power Company and Haywood Electric Membership Corporation, Respondents and Mrs. Carmeletta Moses, Route 68, Box 326, Tuckasegee, North Carolina 28783, Complainant v. Duke Power Company and Haywood Electric Membership Corporation, Respondents	ORDER DEFERRING FINAL DECISION AND REQUIRING ADDITIONAL PROGRESS REPORTS

HEARD IN: Brevard College Auditorium, 400 North Broad Street, Brevard, North Carolina, on April 18, 1995, and in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 19, 1995

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

APPEARANCES:

For Haywood Electric Membership Corporation:

Jerry W. Amos, Attorney at Law, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For North Carolina 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:

William Larry Porter, Deputy General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001

For Nantahala Power & Light Company:

Edward S. Finley, Jr., Attorney at Law, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27612-0109

For the Complainants, Delora Dennis, Thomas W. McGohey, and Other Customers Of Haywood Electric Membership Corporation:

Sam J. Ervin IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., One Northsquare, Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Public Staff:

Victoria O. Hauser, and A.W. Turner, Staff Attorneys, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On October 4, 1992, the North Carolina Utilities Commission entered an Order in these dockets ruling on formal complaints filed against Haywood Electric Membership Corporation (Haywood or Cooperative) by certain customers. As a part of that Order, the Commission concluded that these dockets 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. The Commission stated that it would schedule another public hearing in Brevard approximately one year after the date of the Order to receive testimony from Haywood and its customers as to the effectiveness of Haywood's efforts to resolve customer complaints.

By Order dated September 21, 1993, the Commission scheduled a public hearing on October 28 and 29, 1993, in Brevard, North Carolina.

On February 22, 1994, the Commission issued its Order Providing Further Time to Resolve Customer Complaints and Requiring Additional Progress Reports, in which it stated that further public hearings would be scheduled in Brevard approximately one year after the date of the Order to receive testimony from Haywood and from Haywood's customers regarding the Construction Work Plan and service improvements as well as other issues raised therein.

On February 23, 1995, the Commission issued an Order scheduling a public hearing on April 18, 1995, in Brevard, North Carolina. The February 23, 1995 Order directed Haywood and other formal parties to file direct testimony on March 31, 1995, and directed Haywood to file rebuttal testimony on April 7, 1995.

By Order dated March 28, 1995, the Commission granted an extension of time to file direct and rebuttal testimony to April 4, 1995, and April 11, 1995, respectively, upon motion of Complainants Delora Dennis and Thomas McGohey.

North Carolina Electric Membership Corporation (NCEMC) prefiled the testimony of Gregory L. Booth, P.E., the President of Booth & Associates, Inc., regarding the economic impact on Haywood and the NCEMC and its other members of any potential reassignment of portions of Haywood's service territory. On April 12, 1995, and April 17, 1995, the Public Staff and the Complainants, respectively, filed motions to strike the prefiled testimony of Mr. Booth for being irrelevant and immaterial to any issue legitimately before the Commission at the current hearing. On April 13, 1995, the NCEMC filed a response in opposition to the Public Staff's motion. At the hearing on April 18, 1995, in Brevard, the Commission granted the motions to strike the prefiled testimony of NCEMC witness Booth for the reasons generally given by the Public Staff and the Complainants.

On April 10, 1995, Haywood filed a motion to strike certain specified portions of the testimony prefiled by Complainant Thomas W. McGohey. In the alternative, Haywood requested an extension of time to prefile rebuttal testimony if its motion to strike should be denied by the Commission. The Complainants filed a response in opposition to Haywood's motion on April 17, 1995. At the hearing on April 18, 1995, in Brevard, the Commission found good cause to strike only the portion of Complainant McGohey's testimony that was hearsay and consists of the two sentences set forth between lines 2 and 6 on page 3 of that testimony. The remainder of Haywood's motion was denied, and the testimony in question was to be given the appropriate weight by the Commission.

In Haywood's April 10, 1995 motion to strike, it also requested that the testimony of E.L. Ayers be stricken. Due to the fact that the Complainants withdrew this testimony, this matter became moot.

The matter came on for public hearing at the appointed time and place. At the outset of the hearing, the NCEMC made an offer of proof of the testimony of Gregory L. Booth in order to preserve its position that the transfer of any Haywood customers would violate the Supremacy Clause of the United States Constitution. Haywood joined in the motion. The offer of proof was accepted without objection.

Public witness testimony was presented by A. L. Juergens, Joe W. Midkiff, and Arthur J. Weber. In addition, testimony was presented by Complainant Thomas H. McGohey and by Mr. Thomas Henry, a member of Haywood's Board of Directors. This testimony is summarized below.

Following the lunch recess of the April 18, 1995 hearing, Haywood and the NCEMC made an oral motion to continue the hearing and reconvene it in Raleigh at a later date in order to provide Haywood time to address certain issues raised in the hearing. The Commission found good cause to continue the hearing and to reconvene the hearing in Raleigh on May 19, 1995.

By Order of April 20, 1995, Haywood was required to file rebuttal testimony on May 4, 1995.

The hearing reconvened at the scheduled time and place. Larry Clark, a member of Haywood's Board of Directors, and Jack Goodman, Executive Vice President and General Manager of Haywood, testified on behalf of Haywood. This testimony is also summarized below.

Based upon the evidence introduced at the hearings and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. Haywood is an electric membership corporation established pursuant to Chapter 117 of the General Statues of North Carolina. Haywood provides electric service in portions of Buncombe, Haywood, Jackson, Macon, and Transylvania Counties in North Carolina; portions of Rabun County, Georgia; and portions of Oconee County, South Carolina. The bulk of Haywood's electric service is provided in Haywood and Transylvania Counties.

2. Haywood is subject to the jurisdiction of the North Carolina Utilities Commission pursuant to G.S. 62-110.2(d)(2), which gives the Commission the authority to reassign electric service territories from one supplier to another upon a finding that the electric service provided by that supplier to one or more of its customers is or will be inadequate or undependable or that the rates, conditions of service, or service regulations, as applied to that consumer, are unreasonably discriminatory.

3. CP&L, Duke, and Nantahala 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 in G.S. 62-110.2(a)(3). The Commission has jurisdiction over the provision of electric power service by these utilities in order to meet the reasonable needs of electric consumers and has jurisdiction over the subject matter of the complaints.

4. The Complainants are Haywood member-owners who reside in Transylvania County, North Carolina, and other portions of Haywood's service territory. As Haywood member-owners, the Complainants have standing under G.S. 62-110.2(d)(2) to seek reassignment to another electric supplier in the event that the service which they receive from Haywood is inadequate or undependable or that Haywood's rates, conditions of service or service regulations, as applied to them, are unreasonably discriminatory.

5. This proceeding is properly before the Commission on the petition of certain Haywood member-owners for reassignment to another electric supplier on the grounds that the electric service they receive from Haywood is inadequate and undependable and that Haywood's conditions of service and service regulations, as applied to them, are unreasonably discriminatory.

6. The Commission found in the Order entered in these dockets on October 5, 1992, that the service which the Complainants received from Haywood was inadequate, undependable, and unreasonably discriminatory. The Commission also found that transferral of the M-B Industries plants from Haywood to Duke would relieve the load on the "troubled Quebec substation." For that reason, the Commission held that responsibility for providing electric utility service to M-B Industries, Haywood's largest customer, should be transferred from Haywood to Duke Power Company. The Commission further held that no other customers or service territory should be reassigned at that time in order to allow Haywood the opportunity to undertake the improvements to its facilities outlined in its revised Construction Work Plan. Therefore, the Commission decided in the October 5, 1992 Order to retain jurisdiction over the above-captioned proceeding and to periodically review of the quality of the service received by Haywood's member-owners before entering a final Order deciding the issues raised in the initial complaints. On appeal, the North Carolina Court of Appeals held that the Commission erred in transferring the facilities of M-B Industries from Haywood to Duke and remanded the case for entry of an Order vacating that portion of the October 5, 1992 Order. In re Dennis v. Duke Power Company 114 N.C. App. 272 (1994). M-B Industries, Duke, Nantahala, and the Public Staff subsequently filed certiorari petitions seeking review of the Court of Appeals' decision by the North Carolina Supreme Court. The Supreme Court allowed those certiorari petitions and heard oral arguments on April 13, 1995, but, to date, has not entered an opinion in the matter.

7. The Commission found in the Order entered in these dockets on February 22, 1994, that the quality of the service which Haywood provided to its member-owners in Transylvania County had improved, but not to the extent necessary to cause the Commission to cease its overnight duties. The Commission also found that a number of Haywood's corporate

practices, including its refusal to release its membership list to interested member-owners, limitations upon the ability of member-owners to obtain copies of the minutes of meetings of Haywood's Board of Directors, limitations upon the ability of member-owners to attend meetings of Haywood's Board of Directors, and the under representation of Transylvania County on Haywood's Board of Directors, were "troubling." The Commission decided in the Order of February 22, 1994, to retain jurisdiction over the above-captioned proceeding, to require Haywood to continue to make improvements in the quality of electric service provided to its Transylvania County member-owners, and to schedule a further hearing to receive additional testimony concerning the quality of service rendered to Haywood's member-owners before terminating its supervision of Haywood's operations.

8. Haywood reported voltage readings in reports to the Commission filed on April 5, 1994, July 5, 1994, October 5, 1994 and January 5, 1995. Haywood's readings show that subsequent to the Commission's February 22, 1994 Order, no primary line voltage exceeded 126 volts. Haywood is now operating its voltage regulators on a narrow band width of 123 to 125 volts. The voltage levels recorded at various locations on the Haywood system have generally been within appropriate limits since the entry of the February 22, 1994 Order. The level of outages across the Haywood system has also improved on a system wide basis.

9. Haywood asserted in prior hearings that its power suppliers, primarily Duke and Nantahala, were responsible for the level of outages experienced by its Transylvania County member-owners. These complaints were determined not to be well-founded in the October 5, 1992 Order. However, Haywood's bulk power suppliers have acted to improve the facilities used to serve Haywood's member-owners since the entry of the October 5, 1992 Order.

10. Haywood completed the bulk of the work to be performed under the revised 1991-1993 Construction Work Plan by late-1993, subject to modifications that accommodated Duke's new Rich Mountain substation.

11. Haywood's Construction Work Plan provides for 11 major construction projects at a total projected cost of approximately $1.4 million. The status of these projects is as follows:

    a. An additional source of power to the Cashiers Metering Point has been completed and is in service;

    b. The project to replace 4.4 miles of copper distribution system in the Bald Creek area of Haywood County is scheduled to begin in the Fall of 1995 after the farmers gather their crops;

    c. The conversion of 1.4 miles of copper single-phase distribution lines to three-phase aluminum distribution lines in the North Hominy Area of Haywood County has been completed and is in service;

d. The replacement of .6 miles of copper distribution system in the Oak Park Development in Haywood County has been completed and is in service;

e. The backfeed from the Rosman Metering Point to Connestee Falls was rendered unnecessary as a result of the construction of a substation at Rich Mountain by Duke;

f. The replacement of a three-phase copper distribution line with a three-phase aluminum line in the Rosman area of Transylvania County has been completed and is in service;

g. The proposed backfeed to the Frozen Creek area of Transylvania County has been rendered unnecessary as a result of another circuit being used for that purpose; and

h. The replacement of approximately 3 miles of underground cable in Connestee Falls has been completed and is in service.

12. Although not a part of the original Construction Work Plan, Haywood is currently replacing another 3.5 miles of underground cable in the Connestee Falls area.

13. Several of the projects listed in Haywood's Construction Work Plan were undertaken specifically to address the past disparity in service between Transylvania County and Haywood's other service areas. These projects include the replacement of a three-phase copper distribution line with a three-phase aluminum line in the Rosman area, the connection with the Duke Rich Mountain Substation to improve service to Connestee Falls, and the replacement of underground cable in Connestee Falls. In addition, Haywood installed SCADA (supervisory control and data acquisition) in the Quebec Substation allowing Haywood to continuously monitor the Quebec Substation and immediately respond to any problems. Haywood has changed its procedures to enable it to provide quicker connections to new members. Haywood has implemented procedures to provide better grounding of its system and, therefore, better protection to consumers from damages caused by lightning.

14. The Commission commented adversely upon Haywood's decentralized management philosophy in the October 5, 1992 Order. After the initial hearings held in this proceeding, Haywood replaced its Executive Vice President and General Manager and employed Mr. Ayers to fill that position. Mr. Ayers implemented a top-down management style which he contended would produce improvements in the service rendered to Haywood's Transylvania County member-owners. After Mr. Ayers retired in 1994, the Cooperative employed Mr. Goodman as interim Executive Vice President and General Manager. At the hearing on May 19, 1995, Mr. Goodman testified that he had accepted permanent employment with Haywood. Mr. Goodman prefers a decentralized management style which places responsibility for Haywood's operations at the lowest possible level. The management style favored by Mr. Goodman is similar to the approach which was in place at the time the deficiencies in the quality of Haywood's service became an issue herein.

15. Haywood's Board of Directors refused to release the Cooperative's membership list to Ms. Dennis and Mr. McGohey prior to the 1994 directors' election. Although Haywood said it is reconsidering its policy concerning the release of its membership list to member-owners such as Ms. Dennis and Mr. McGohey, Haywood has not adopted any resolution expressing an intent to change its existing information release policy or agreed to release a copy of its membership list to Ms. Dennis and Mr. McGohey without being ordered to do so by the Superior Court of Haywood County.

16. Haywood currently has a written policy that limits attendance at meetings of its Board of Directors to three member-owners. Haywood has indicated that it will act to facilitate more communication between the Board of Directors and the Cooperative's member-owners.

17. Since the February 22, 1994 Order, Haywood has changed the districts from which members of its Board of Directors are elected. Approximately one-third of Haywood's member-owners live in Transylvania County. Prior to the adoption of this redistricting proposal, only one Transylvania County resident was eligible for election to Haywood's Board of Directors. The redistricting proposal adopted by Haywood's Board of Directors placed a portion of the Cooperative's Transylvania County service territory in a district consisting of part of Haywood's Transylvania County service territory and all of Haywood's Jackson County service territory and placed the remainder of its Transylvania County member-owners in a district consisting of a portion of the Cooperative's Transylvania County service territory. Haywood's Board of Directors rejected a proposal to increase the size of the Board in order to ensure that Haywood's Transylvania County member-owners represented one-third of the Board. Six of Haywood's nine directors have been replaced since the filing of the original complaints in this proceeding.

DISCUSSION OF EVIDENCE

The Commission has previously summarized the testimony received at the hearings held prior to the Orders entered in these dockets on October 5, 1992, and February 22, 1994. The testimony received at the hearings held in the above-captioned proceeding on April 18, 1995, and May 19, 1995, is summarized as follows:

1. A.L. Juergens. Witness Juergens testified that he had been a Haywood customer for seventeen years; that his "experience regarding electric service has been very satisfactory;" and that he did not believe that CP&L or Duke could "improve on the service provided by Haywood" given "the unusual storms and difficult area . . . served by" Haywood. According to witness Juergens, "[o]ur power company is administered by good management" and "[t]he staff is always showing an interest in supplying good service." After describing a number of measures which he had taken to ensure that he did not waste electricity, witness Juergens reaffirmed his support for Haywood's management.

2. Joe W. Midkiff. Witness Midkiff has been a customer of Haywood since purchasing a house in Rosman in 1986. According to witness Midkiff, "at that time, even at the

tracking station, we had these power surges where the" electricity "would just drop off." According to witness Midkiff, he was "always constantly resetting the clocks." Witness Midkiff's "biggest problem right now is all these power surges." Witness Midkiff testified that "[e]very time you go out and come home or get up in the mornings," "you have these blinking lights on your clocks." Witness Midkiff testified that he had "had a lot of problems with . . . power surges concerning [his] appliances," that he has sustained damage to a Zenith television, that he currently kept his television unplugged, and that he had "power surge protectors on most all [the] appliances that" he had. Witness Midkiff testified that he owned a computer and that "as soon as [he got] finished" using his computer, he unplugged "it even though [he had] a power surge protector on it." Witness Midkiff presented the Commission with a detailed history of the power surges and outages which he had experienced at various times since October, 1993. Although witness Midkiff felt that the deficiencies in his electric service had been fixed for some period of time, his problems began to recur in April, 1995. Although Haywood had attempted to check out his complaints, "they said they found nothing wrong."

3. Arthur J. Weber. Witness Weber has been a Haywood member-owner for the past five years. According to witness Weber, "[t]here have been major changes in so far as service is concerned since Haywood Electric put in some new lines in Connestee Falls last year." Witness Weber experienced "an enormous number of outages" prior to that time. Witness Weber was a member of Haywood's nominating committee in 1994, having served in that capacity at the recommendation of Mr. Henry.

4. Thomas W. McGohey. Witness McGohey testified that he had been a Haywood member-owner since moving "to the Connestee Falls community outside Brevard on January 7, 1988." Prior to his retirement, witness McGohey spent 35 years in the employment of Scott Paper Company and retired as a Regional Operating Director. Witness McGohey became "aware that there were serious difficulties with Haywood's operations after moving to the Connestee Falls community" and had, at that time, "joined with a number of other persons, including Delora Dennis, in an effort to obtain relief from Haywood's poor service and high rates." Witness McGohey testified that, in his opinion, the Haywood system should be sold to an investor-owned utility because "Haywood's rates are unlikely to ever become competitive with those of any investor-owned utility regardless of the quality of Haywood's management."

The service which witness McGohey had "received from Haywood since the October 28-29, 1993, hearing [had] declined." "Since October 29, 1993, [witness McGohey and his wife had] experienced a number of service outages at [their] residence." Although witness McGohey had not "kept detailed records concerning the times when [his] electric service [had] 'gone out' during the last eighteen months," he believed "that the number of outages at [his] residence [had] increased." In addition, witness McGohey testified that he continued "to experience 'blips,' 'blinks,' and other momentary service interruptions." Witness McGohey did not "believe that the service which [he received] from Haywood [was] adequate, particularly in view of the high rates which [he is] compelled to pay for Haywood's services."

Witness McGohey also testified that he and Ms. Dennis had "submitted a written request . . for a copy of Haywood's membership list to Mr. Ayers using the form specified in Haywood's information release policy" on June 9, 1994. Witness McGohey "specifically stated in [his] written submission that [he] planned to use the list to solicit votes for candidates for election to the Board of Directors - now and in the future and to communicate with members on issues concerning Haywood EMC." Witness McGohey "received a one sentence letter from Mr. Ayers denying [his] request dated June 22, 1994." According to witness McGohey, "the Board refused to grant [his] request for a copy of the membership list for the purpose of reducing the risk that candidates which [he and Ms. Dennis] supported would defeat . . . incumbent directors" in the 1994 directors' elections and because "the Board intended to force [him] to go to court to get a copy of Haywood's membership list, effectively requiring [him] to incur substantial legal expenses and to experience significant delays" before obtaining a copy of the membership list.

Witness McGohey testified that he had not "made any attempt in the past eighteen months to obtain copies of Haywood's minutes." However, witness McGohey testified that "[t]he information release policy which Haywood adopted last year provides that "Board, Board committee and staff committee meeting minutes will not be furnished as a whole;" however, the Cooperative will research and furnish copies of excerpts that contain or substantially relate to the information specifically requested." According to witness McGohey, "Haywood's information release policy provides that 'no portion of such minutes shall be made available if it contains matters of a confidential nature, the release of which might subject the Cooperative to unwarranted claims or litigation or might invade the privacy of any person.'"

Witness McGohey testified that he and Ms. Dennis had "attended a meeting of Haywood's Board which was held in the Board meeting room in the corporate offices at Waynesville." Witness McGohey and Ms. Dennis were allowed to attend this Board meeting, during which time witness McGohey "observed that there was plenty of room for more than three visitors." Witness McGohey believed that, "with careful planning, at least three and perhaps six, additional member-owners could be seated in the Board meeting room." Witness McGohey "saw utterly no space justification for the" Cooperative's existing meeting attendance policy, which provides that "no member could attend a Board meeting without advance approval" and states "that no more than three members could attend any Board meeting." Witness McGohey was denied an opportunity to speak at the Board of Directors meeting which he attended "because [he] had not obtained permission to speak before the meeting."

Witness McGohey testified that, during the meeting which he and Ms. Dennis attended, Kenneth Israel, a Haywood director who represents a district located in Haywood County (hereinafter "Mr. Israel"), stated that "he was sick and tired of complaints from Transylvania County, that Haywood had spent eighty percent of its maintenance resources in Transylvania County in recent years, and that he was fed up with dealing with Transylvania County problems." According to witness McGohey, "Mr. Israel delivered these comments in an angry tone of voice, leading [witness McGohey] to believe that [Mr. Israel] had no intention of supporting meaningful action to alleviate the legitimate complaints of Haywood's Transylvania County member-owners."

Witness McGohey had, in the past, expressed concern about Transylvania County's underrepresentation on Haywood's Board of Directors. As a result, he and Ms. Dennis "proposed

that three directors be elected at large from Transylvania County; that five directors be elected at large from Haywood County; and that the remaining directors' districts remain intact." Witness McGohey claimed that "[t]he effect of the adoption of this proposal would be to expand the total size of Haywood's board, increasing Transylvania County's representation while eliminating any risk that the other portion of Haywood's service territory would lose representation as a result of this redistricting." Before considering the suggestion advanced by Ms. Dennis and witness McGohey, "Haywood adopted a different representation system," under which "a portion of Transylvania County [was moved] into the Jackson County district." Witness McGohey did not believe that the Board's redistricting proposal adequately alleviated his concerns about the underrepresentation of Transylvania County because "giving Transylvania County the opportunity to elect two directors is not the same as guaranteeing that [two] Board members will come from Transylvania County" and because "Transylvania County has approximately one-third of Haywood's member-owners [but] is not guaranteed proportional representation on the Board."

Witness McGohey testified that he had been active in the election of Haywood directors during 1994. In the past, "the election of directors [had] typically occurred in connection with the annual membership meeting," which was generally held in late August or early September. "Under Haywood's nomination procedures, an official 'slate' of nominees is proposed by a nominating committee chosen by incumbent Board members." As a result of their "persistent inability to obtain a hearing by the nominating committee," Ms. Dennis and witness McGohey had "typically been forced to resort to the nomination of candidates by petition." In the late spring or early summer of 1994, witness McGohey "received a notice that Haywood's Board had voted to advance the nomination deadline and election dates by approximately 30 days." At the time that witness McGohey first learned of this change in Haywood's election procedures, he and Ms. Dennis "had less than two weeks to present nominating petitions in support of our candidates instead of the six weeks which we had understood would be available to us." Although the new election procedures have been defended on the grounds that they "would increase member participation," witness McGohey doubted the validity of this justification.

Witness McGohey testified that, after one of the candidates whom he and Ms. Dennis supported had filed a nominating petition, that candidate had "received substantial pressure from a number of individuals, including [the chairman of Haywood's Board], to withdraw his candidacy." Moreover, witness McGohey testified that "Mr. Stamey sent out a letter which promised the member-owners that they would receive a significant near-term rate reduction as the result of cost saving measures instituted by NCEMC;" according to witness McGohey, "no such rate reduction [had] ever been put into effect."

5. Thomas Henry Jr Witness Henry testified that he had "served on Haywood's Board for almost two years." At the time of his initial election to Haywood's Board of Directors, witness Henry "was a member of a group which wished to force the sale of Haywood to an investor-owned utility" and believed "that the Lake Toxaway District had insufficient representation on the board considering the number of customers residing in the Toxaway District."

At the time that witness Henry joined Haywood's Board of Directors, he "found that all members of the board were determined to improve Haywood's service." "After serving on the board for some

four or five months," witness Henry "began to believe that we could make more progress in improving service to our member/customers from the inside than we could by selling Haywood to an outsider." Witness Henry testified that, after the approval of changes in the boundaries of the districts from which directors were elected, he represented only 2,500 member-owners instead of the 4,000 member-owners contained in his old district. Witness Henry admitted that the Connestee Falls area had "experienced difficulties with its electric service" in the past. However, witness Henry testified that Haywood had "replaced three miles of cable in the Connestee Falls area with state of the art cable and associated equipment." Witness Henry claimed that, "[a]s a result of the improvement in service resulting from the replacement of the first three miles of underground cable," Haywood's Board of Directors planned "to begin [and had] started replacing another three miles around April 15."

After witness Henry began his service on the Cooperative's Board of Directors, Mr. Ayers retired and Mr. Goodman was employed to take his place. According to witness Henry, Mr. Goodman believed, "and the board agrees, that responsibility should be assumed at the lowest level of supervision for such things as safety, care of equipment, attention to job, discipline, and so forth." Witness Henry testified that there had been an "improvement in employee morale and participation in decision making" which had "resulted in significant improvements throughout our organization and in our ability to provide quality service to our member/customers." As a result of his belief "that Haywood has done a commendable job of improving both its service and its relationship with its member/customers," witness Henry believed that the Commission should discontinue its existing supervision of Haywood's operations.

6. Larry Clark. Witness Clark testified that he had "served on Haywood's board for approximately four years." At the time that he was initially elected as a Haywood director, witness Clark was dissatisfied with the response which Haywood had made to numerous customer complaints. Witness Clark had "run for the board to see if [he] could find out what the problem was and help to resolve it." At the time of his initial election, Ms. Dennis and Mr. McGohey supported witness Clark's candidacy. Witness Clark testified that "Haywood has been working extremely hard since [he had] been on the board to improve service to and relations with our member/customers" and "that Haywood's board of directors very much wants to improve relationships with all of [its] members," including Mr. McGohey.

According to witness Clark, Haywood's Board of Directors had "held two lengthy meetings to address questions raised at" the April 18, 1995, hearing. Although witness Clark recognized the Commission's duty to "ask tough questions," he testified that the members of Haywood's Board of Directors "were both hurt and angry" to have their "mindset" questioned and felt that "the questions largely ignored the substantial actions that [Haywood had] taken and the substantial results that [it had] obtained."

Witness Clark said that the Cooperative's Board of Directors had adopted a resolution after the April 18, 1995, hearing intended to address the concerns which the Commission had expressed at that time. In this resolution, the Board of Directors initially expressed its "appreciation to [Haywood's] employees who have worked so hard to improve service to our member/customers" and reiterated its intention "to continue our commitment to take whatever reasonable action may be necessary to provide safe, reliable and non-discriminatory service to all of our members."

Witness Clark testified that, "[d]uring the four years that [he had] been on the board, no member has ever been refused permission to attend a board meeting." Although Haywood had "a written policy that no more than three members [could] attend any board meeting," "no one on the board can ever remember that policy being applied to deny anyone the right to attend a board meeting." Even so, Haywood's Board of Directors "decided to hold at least two meetings during the year at various locations in its service territory" in order to "make it easier for some of our members to attend board meetings if they desire to do so" and suggested that the limitation on the number of member-owners who could attend Board of Directors' meetings would be modified. In addition, the Board of Directors restated its "present policy of each member of the board having an advisory committee of members for the purpose of keeping informed on the viewpoints and concerns of the members."

Witness Clark admitted that Mr. Israel had complained about the amount of money which Haywood had spent on service improvements in Transylvania County. Even so, witness Clark testified that "Dr. Israel was simply expressing the views of several members on his advisory committee who are bitterly opposed to Mr. McGohey's efforts to force the sale of the company and who object to the time and money being expended to address the complaint of a single member." Witness Clark testified that Haywood had "expended more time and money improving service in Transylvania County than in other areas of [Haywood's] service area" and believed "that service in Transylvania County is, or soon will be, up to par with other sections of our service area."

Witness Clark testified that, in an effort to remedy the under representation of Transylvania County member-owners on Haywood's Board of Directors, "we instructed our staff to propose a redistricting of directors that would provide as nearly equal representation as possible." The redistricting scheme ultimately adopted by the Board of Directors used "natural breaking points on our electric distribution facilities" "to design the districts." The new directors' districts averaged "approximately 1,700 members per district;" "the two directors' districts in which portions of Transylvania County are located each have approximately 2,200 members." The Board of Directors rejected the alternate redistricting proposal advanced by Ms. Dennis and Mr. McGohey because "[w]e already have nine members on our board."

According to witness Clark, the Board of Directors had "directed management to develop a procedure relating to the use of and access to our membership list that will protect the privacy of our members and comply with all applicable laws." Witness Clark denied that the Board of Directors had refused to provide Mr. McGohey with a copy of the membership list "based on [a] fear that he would be able to elect directors who would force the sale of the company to an investor [owned] utility."

Witness Clark testified that the "mindset" of Haywood's management and Board was "to provide the best service at the lowest cost to each and every one of our member/customers;" "to have the best possible relationships with our members at all times;" "to represent all of our member/customers;" "to make decisions based on our best judgment as to what is best for all of our member/customers;" and "to listen to and carry on a dialogue with all of our members." As a result, witness Clark asked "the Commission to recognize the substantial progress that we have made in addressing . . . service

issues and to express that recognition in a way that will encourage our employees to continue their efforts to provide even better service;" "to recognize that the only issue that remains in this proceeding is truly an individual issue relating to Mr. McGohey's desire to force a sale of our company;" "to dismiss the complaints against our company in recognition of the substantial response we have made to the Commission's previous request;" and "to recognize that since 1991 the board has worked very hard to improve Haywood as a whole."

7. Jack D. Goodman. Witness Goodman testified that he is the Executive Vice President and General Manager of Haywood. According to witness Goodman, Haywood has continued to report voltage readings to the Commission and "that subsequent to the Commission's Order of February 22, 1994, there has not been a single instance in which the primary line voltage exceeded 126 volts." According to witness Goodman, "Haywood operates its voltage regulators on a very narrow band width of 123 to 125 volts."

Witness Goodman testified that the revised 1991-1993 Construction Work Plan provided for eleven major construction projects at a total projected cost of approximately $1.4 million. A number of the projects included in the revised 1991-1993 Construction Work Plan involved the construction of or the making of improvements to facilities used to serve Haywood's Transylvania County member-owners. Although the revised 1991-1993 Construction Work Plan "provided for the construction of a tie-line from our Quebec Substation to Cashiers," Haywood ultimately concluded that "a better approach was to construct a tie-line from our Scaley Mountain Substation to Cashiers." Even though Haywood had initially "proposed to build a backfeed from our Rosman Metering Point" "[t]o improve the reliability of service to the Connestee Falls area," "Duke advised us that they would construct a substation at Rich Mountain" which enabled "Duke to provide more reliable service to the Connestee Falls area" and obviated the necessity for the construction of the proposed backfeed. The new substation went into operation on December 8, 1992. Haywood completed the replacement of a "three-phase copper distribution line with a three-phase aluminum line in the Rosman area of Transylvania County" on December 11, 1993. Although Haywood had originally planned to "provide a backfeed to the Frozen Creek area of Transylvania County," it ultimately "dedicated an additional circuit that was already in place and used rather than build the new substation" and began using this alternate circuit in July 1993. Finally, Haywood completed the replacement of "approximately three miles of underground cable in Connestee Falls" in December 1994.

Witness Goodman described other improvements which Haywood had made since 1993 in addition to the projects contained in the revised 1991-1993 Construction Work Plan. Haywood installed SCADA at the Quebec substation in November 1993. In addition, Haywood had "engaged Southern Engineering of Atlanta, Georgia to prepare a complete cost of service study to help us be more responsive to our customers' needs," was "in the early stages of developing a capital management program for financing present and future facilities," and had "joined with the [NCEMC] in a [benchmarking] program." Finally, the Cooperative had "contracted with Haywood Community College for a series of training programs."

Although witness Goodman testified that, "[f]or calendar year 1994, the average outage time was 3.09 hours per customer," he admitted on cross-examination that this figure was based on Haywood's

entire system rather than focused on Transylvania County. The "five-year average of 6.0 hours per customer" recited in witness Goodman's prefiled testimony was also a system wide figure.

Witness Goodman testified that he was attempting to change "Haywood EMC from a company-driven, top-down, [dictatorial] style of management to a customer-driven, bottom-up management that empowers employees at all levels to make decisions, particularly those decisions involving our customers," but he admitted that he had not finished transforming Haywood's management style. Even so, witness Goodman testified "that Haywood has addressed all of the remaining concerns that were set forth in the Commission's Order of February 22, 1994," and urged the Commission to "find that Haywood has made sufficient progress in improving service to its customers and in its relationship with its customers" to "conclude its overview of Haywood EMC."

Public Staff

The Public Staff argued in its brief that the major issues in the current hearings were: (1) the continued service problems, (2) Transylvania County's representation on the Haywood EMC Board, (3) the "mindset" of the Board, and (4) Board policies on the number of members who can attend meetings and on release of a membership list to members.

The Public Staff pointed out that some testimony indicated that service in Connestee Falls has improved while Mr. McGohey testified that his service has worsened. The Public Staff contended that outage figures show Transylvania County to still have a worse problem than the rest of Haywood.

The Public Staff expressed concern with the attitude of a Board member who objected to so much of Haywood's resources continuing to be devoted to improving service in Transylvania County, and pointed out that the reason so much money and work has been devoted to Transylvania County is to attempt to correct years of discriminatory treatment. The Public Staff was also troubled by the continued written policy of no more than three members at a regular Board meeting, and by the Board's refusal to provide a membership list to its members.

The Public Staff recommended that the Commission continue to monitor the service issues herein for at least one more year, and solicit written comments from Haywood's customers after one year regarding any continuing problems.

The Public Staff did not offer any testimony or evidence at the April 18 or the May 19, 1995 hearings.

Haywood EMC

Haywood contended in its brief that its service is now adequate, dependable and nondiscriminatory; that it has substantially completed its Construction Work Plan, including a number of projects to specifically address service in Transylvania County; and that it has substantially reduced its average outage time.

Haywood also pointed out that it now has new management; that six of the nine present board members were elected for the first time after the filing of the original complaints; and that three of the Board members ran for election with the express purpose of improving service.

Haywood recommends that the Commission dismiss all complaints against Haywood and close the docket.

Complainants

Complainants contended in their brief that service in Transylvania County continues to be inadequate, undependable and unreliable; that the level of outages in the Connestee, Quebec, and Rosman areas is still excessive; that Haywood has now abandoned the management approach under which the improvements were made as described in the Order of February 22, 1994; and that the Haywood Board continues to exhibit hostility to Transylvania County members.

Complainants cite the refusal of the Board to give its membership list to Ms. Dennis and Mr. McGohey as evidence of its discriminatory treatment of the complainants.

North Carolina Electric Membership Corporation

NCEMC pointed out in its proposed findings of fact that it is a generation and transmission cooperative organized in accordance with Chapter 117 of the North Carolina General Statutes; that it is both corporately and physically sited within North Carolina; and that it serves the wholesale power supply needs of its 27 members, one of which is Haywood EMC.

NCEMC also pointed out that as security for a loan to NCEMC of over one billion dollars, which was guaranteed by the Rural Electrification Administration and was used to purchase an interest in the Catawba Nuclear Station, Haywood and other members of NCEMC signed long term contracts recognizing NCEMC as their sole power supplier.

NCEMC contended that the relationship between NCEMC and Haywood reflects the intent, as expressed in the Rural Electrification Act, of the federal government to provide electricity to rural areas, and that any action by a state agency which tends to frustrate that purpose is inappropriate.

General Discussion of Evidence

The Commission recited substantial testimony in the Orders of October 5, 1992, and February 22, 1994, concerning deficiencies in the voltages at which Haywood provided service to its Transylvania County member-owners. The only evidence in the record at the hearings on April 18, 1995, and May 19, 1995, tending to show significant voltage problems was contained in the testimony of Mr. Midkiff. The results of the voltage monitoring program which Haywood instituted show no excessive voltage readings since the entry of the February 22, 1994 Order.

The Commission recognized in its February 22, 1994 Order that the outage levels for Haywood's overall service area had improved. The testimony in this proceeding also indicates that Haywood's outage levels have improved on a system wide basis, even though the testimony of Mr. Midkiff and Mr. McGohey suggested that Haywood's Transylvania County member-owners continue to experience "blips" and "blinks."

The principal reason for the Commission's decision to give Haywood an opportunity for self-improvement in the Orders of October 5, 1992, and February 22, 1994, stemmed from a hope that Haywood would, acting under appropriate supervision, substantially improve the quality of its service. At a number of points in the proceedings leading up to the entry of the October 5, 1992, and February 22, 1994 Orders, Haywood emphasized the improvements which would result from the implementation of its revised 1991-1993 Construction Work Plan and suggested that the implementation of this service improvement program would resolve the service-related problems revealed in the prior hearings held in this proceeding.

The present record demonstrates that Haywood has completely implemented its revised 1991-1993 Construction Work Plan, subject to modifications that accommodated Duke's new Rich Mountain substation. The bulk of the work performed under the revised 1991-1993 Construction Work Plan in Transylvania County was completed by the end of 1993.

The evidence received at earlier hearings in this proceeding establishes that Haywood receives bulk power from Duke and Nantahala for sale in Transylvania County at distribution level voltages and receives bulk power from CP&L for sale in Buncombe and Haywood Counties at transmission level voltages. The Commission has already found in previous proceedings that the receipt of bulk power at transmission level voltages is more conducive to reliable service than the receipt of power at distribution level voltages. Haywood has continued to receive bulk power at distribution level voltages for use in its Transylvania County service territory while receiving bulk power at transmission level voltages for use in its Buncombe and Haywood County service territories.

The Commission expressed considerable concern in the October 5, 1992 Order about the lack of adequate management supervision over the operation of the Lake Toxaway District office. The record developed prior to the entry of the October 5, 1992 Order indicated that, as a result of this inadequate management supervision, Haywood's Transylvania County member-owners were subjected to widely different treatment concerning such matters as customer deposits, billing practices, and other similar matters. After assuming the position of Executive Vice President and General Manager, Mr. Ayers implemented a "top down" management policy under which he directed Haywood's Transylvania County operations from the central office in Waynesville. The Commission noted in the February 22, 1994 Order that the changes introduced by Mr. Ayers had, in many ways, improved the treatment of individual customers in the Lake Toxaway District. After the entry of the February 22, 1994 Order, Mr. Ayers retired. Haywood hired Mr. Goodman as Executive Vice President and General Manager on an interim basis and has recently employed him in that capacity on a permanent basis. As a result of Mr. Goodman's employment, Haywood is attempting to move from a centralized to a decentralized management philosophy under which responsibility for the Cooperative's activities is delegated to the lowest possible level. The Commission has no intention of attempting to control Haywood's management philosophy, but there is a concern that the use of a decentralized management might undermine the progress which Haywood has made in providing

uniform treatment to all of its member-owners. To put it simply, the Commission has misgivings that Haywood has reverted to the same management style which it contended had been one of the causes of the very problems which led to the institution of this proceeding.

The Commission also expressed substantial concerns about a number of Haywood's policies which reduced the ability of member-owners to actively participate in the Cooperative's governance in the February 22, 1994 Order. The governing structure employed by most rural electric membership corporations, including Haywood, vests ultimate authority for the Cooperative's operations in its member-owners. As a result, the extent to which the management of a rural electric cooperative adopts and implements policies which inhibit the ability of member-owners to actively participate in Haywood's governance is a matter of significance.

The evidence concerning the corporate governance issues raised by the Complainants is relatively undisputed. A written Haywood policy limits the number of member-owners able to attend meetings of the Cooperative's Board of Directors and prohibits member-owners from attending or speaking at a Board meeting without prior approval. Although Mr. Clark indicated that Haywood intended to change this meeting attendance policy and to take other steps to increase the amount of communication between the Board of Directors and the Cooperatives' member-owners, it has not yet voted to adopt a revised written meeting attendance policy. Moreover, Haywood has strenuously resisted providing Ms. Dennis and Mr. McGohey with a copy of its membership list. After Haywood adopted an information release policy which delineates the procedures which must be followed in order to obtain a copy of its membership list, Mr. McGohey unsuccessfully requested a copy of Haywood's membership list in order to facilitate his efforts to communicate with other member-owners concerning the election of directors and other matters of interest to member-owners.

Mr. Clark testified that Haywood was reassessing its refusal to provide Mr. McGohey with a copy of its membership list, but he admitted that Haywood had not yet drafted a specific revised policy concerning this issue and would not say whether Haywood would require Mr. McGohey to obtain a court order before giving him a copy of the membership list. Although approximately one-third of Haywood's member-owners live in Transylvania County, the districts from which the Cooperative's directors are elected did not, until relatively recently, permit the election of more than one Transylvania County resident to Haywood's Board of Directors. After the Commission expressed concern about the under-representation of its Transylvania County member-owners in the February 22, 1994 Order, Haywood adopted a redistricting proposal under which a portion of Transylvania County was placed in a district with Haywood's Jackson County service territory, effectively creating the possibility that two Transylvania County citizens could be elected to the Board of Directors.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission is of the opinion that the Board of Directors of Haywood is to be congratulated for the progress that the Cooperative has made in improving its service. Such progress has come as a result of the effort and sacrifice of many people, especially the rank and file employees of Haywood.

Nevertheless, the Commission still has lingering concerns about some aspects of the corporate governance and management decentralization of Haywood, and hopes that its concerns about the effect such corporate governance and management decentralization might have on Haywood's service to its customers will prove to be groundless.

Haywood's refusal to divulge its membership list to members in general, while its Directors and their appointees (nominating committee, etc.) have access to the list, is troublesome. Haywood's desire to avoid assisting members to nominate or elect Directors who might favor "selling the company" is understandable, but its attempts to avoid that outcome may also cause it to withhold assistance to members who seek to nominate or elect Directors who might demand improved service.

Haywood's Board of Directors is still ultimately responsible for ensuring that Haywood's resources are allocated in a way that will achieve a reasonably comparable quality of service in the different parts of its service territory. It is also responsible for ensuring that management of operations is achieving a reasonably comparable quality of service in the different parts of its service territory, whether such management is centralized or decentralized.

The Supreme Court of North Carolina has not yet filed an opinion on its review of the Commission's earlier requirement for Haywood to divest itself of M-B Industries. The removal of the M-B Industries load from Haywood's Quebec distribution area has certainly contributed to the improved service in that area. It is unclear what effect a return of the M-B Industries load to the Quebec distribution area would have on the service in the area.

At this stage of the proceedings, transfer of Haywood's remaining customers in Transylvania County seems unlikely. Nevertheless, the Commission concludes that a final decision on the complaints at issue in this proceeding should be deferred at least six more months pending resolution of the status of the transfer of M-B Industries. Further, the Commission concludes that Haywood should continue to submit periodic progress reports on the status of its ongoing improvement program, including the corporate governance and management decentralization issues described herein.

IT IS, THEREFORE, ORDERED as follows:

1. That a final decision on the complaints in this proceeding shall be deferred at least six more months after the date of this Order pending resolution of the status of the transfer of M-B Industries, and in order to provide Haywood further opportunity to complete its ongoing improvement program.

2. That Haywood shall continue to file with the Commission written progress reports describing: (1) the status of ongoing improvements to the facilities, the customer services, the management decentralization, and the corporate governance of the Haywood system; and (2) the status of customer responses to the improvements.

3. That the next progress report shall be filed not later than January 5, 1996, and every six months thereafter until terminated by the Commission. Copies of the progress reports shall be served on the Public Staff and all other parties of record.

4. That the Commission shall continue to monitor these dockets and will determine after a period of not less than six months from the date of this Order whether or not to hold further hearings, or to solicit further written comments from customers, or to take any other action that might be appropriate.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of June 1995.

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

DOCKET NO. E-7, SUB 545

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter Of:	)	
	)	
NOAH CORPORATION,	)	
POST OFFICE BOX 903	)	
GATLINBURG, TENNESSEE 37738,	)	
	)	RECOMMENDED ORDER
Complainant,	)	DENYING COMPLAINT
	)	
v.	)	
	)	
DUKE POWER COMPANY,	)	
	)	
Respondent.	)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, December 1, 1994, at 9:30 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Complainant Noah Corporation:

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

For the Respondent Duke Power Company:

Jeffrey M. Trepel, Associate General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001 Robert W. Kaylor, Bode, Call & Green; Attorneys at Law, Post Office Box 6338, Raleigh, North Carolina 27628-6338

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

BENNINK, HEARING EXAMINER: On July 8, 1994, the Noah Corporation ("Noah" or "Complainant"), filed a Complaint with the North Carolina Utilities Commission ("Commission") against Duke Power Company ("Duke" or "Respondent") requesting that the Commission require Duke to offer Duke's Schedule PP(NC) and standard Purchased Power Agreement ("PPA") to Noah. By Order dated July 12, 1994, the Commission served the Complaint upon Duke. The Complaint alleged that Noah has contracted with the Town of Summersville, West Virginia, to develop and operate a hydroelectric project at the Summersville Dam located on the Gauley River in West Virginia. Noah further alleged that the Federal Energy Regulatory Commission ("FERC") certified the Summersville hydroelectric project as a qualifying facility under the Public Utility Regulatory Policies Act of 1978 and issued a license for the construction of the hydroelectric facility. Noah alleged that, in February 1993, Noah applied to Duke for a long-term contract to purchase electricity from the project, with the electricity to be delivered to Duke by transmission through the Appalachian Power Company ("Appalachian Power") system. Noah alleged that, after more than six months of discussions, Duke advised Noah in November 1993, that Schedule PP(NC) and Duke's standard PPA were not available to Noah because the Summersville project is not located in Duke's North Carolina service territory, and that Duke raised no other questions regarding Noah's fitness or ability to develop and operate the project or to deliver power to Duke through Appalachian Power. Finally, Noah alleged that it is a "small power producer" within the definition of G.S. 62-3(27a) and that therefore Duke is required by G.S. 62-156 to purchase the output of the Summersville hydroelectric project under Schedule PP(NC) and the standard PPA.

On August 3, 1994, Duke filed its Answer and Motion to Dismiss. By Order dated August 4, 1994, the Commission served Duke's Answer and Motion to Dismiss on the Complainant. In its Answer, Duke asserted that Noah first contacted Duke regarding the Summersville Project in May 1993, and that Duke advised Noah at least as early as July 1993, that Schedule PP(NC) and the standard PPA would not be available to Noah, in part because the Summersville Project is not located in Respondent's North Carolina service territory. Duke asserted that it also questioned Noah's ability to deliver the output of the project to Duke over the Appalachian Power system. Duke further responded that Noah is not a "small power producer" under G.S. 62-3(27a) and is not entitled to Schedule PP(NC) or the standard PPA.

On August 23, 1994, the Complainant filed a request for a hearing. The Commission, by Order dated September 1, 1994, initially scheduled this matter for hearing on Thursday, November 3, 1994.

By Commission Order dated September 28, 1994, the hearing was rescheduled for December 1, 1994. Upon call of the matter for hearing at the appointed place, both the Complainant and the Respondent were present and represented by counsel. Noah presented the testimony of James B. Price, its President, in support of the Complaint. Duke presented the testimony of Kenneth B. Keels, Jr., Non-Utility Generation Manager for Duke, Steven K. Young, Manager of the Rate Department for Duke, and Y. Walter Campbell, Senior Consultant in the System Planning and Operating Department of Duke.

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits in this proceeding, and the entire record of the proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

a. Complainant Noah Corporation is a Tennessee corporation headquartered in Gatlinburg, Tennessee.

b. Respondent Duke Power Company is a public utility headquartered in Charlotte, North Carolina, and is subject to the jurisdiction of this Commission pursuant to the Public Utilities Act, G.S. 62-1, et seq.

c. By Order issued September 25, 1992, the FERC granted a license to the Town of Summersville, West Virginia, to construct, operate and maintain a hydroelectric project at the Summersville Dam on the Gauley River in West Virginia (the "Summersville Project"). The FERC also certified the Summersville Project as a qualifying facility.

d. The Public Utility Regulatory Policies Act of 1978 ("PURPA") delegated to the state regulatory authorities the authority to determine rates for transactions between electric utilities and qualifying facilities on a case-by-case basis or by any other reasonable means consistent with PURPA and the FERC rules. The Commission has consistently exercised this delegated authority in biennial proceedings by setting standard rates, charges and conditions for transactions between electric utilities within its jurisdiction and qualifying facilities located in North Carolina and interconnected with such utilities.

e. Duke's Schedule PP(NC) and standard PPA, in their current forms, have been approved by the Commission in biennial avoided cost proceedings. Both Schedule PP(NC) and the standard PPA contain numerous material terms that are applicable only to qualifying facilities located in North Carolina and interconnected to Duke.

f. The Summersville Project is not located in North Carolina and cannot be interconnected with Duke's transmission system or distribution system. The term "interconnection" as used in Duke's Schedule PP(NC) and standard PPA means a direct physical connection that permits the flow of electricity directly from one entity to another and does not involve scheduling of power flows through an intervening utility.

g. In determining rates for transactions between electric utilities and interconnected qualifying facilities in North Carolina, FERC rules and the North Carolina statutes require the Commission to consider the availability, reliability and value of the qualifying facility's power, as well as the utility's alternative sources of power. Power wheeled to Duke from a non-interconnected qualifying facility such as the Summersville Project may be less reliable, less available and less valuable to Duke than power received directly from an interconnected qualifying facility. Duke will incur additional costs in purchasing wheeled power from the Summersville Project, including special metering, telemetry and communications equipment, additional coordination and scheduling requirements, and additional accounting procedures. The avoided cost rates in Schedule PP(NC) do not reflect these differences or additional costs.

h. G.S. 62-3(27a) and 62-156 require the Commission to set rates and encourage long-term contracts for "small power producers" in order to encourage the development of hydroelectric generation in North Carolina. The language of G.S. 62-3(27a) and 62-156, the legislative history, and the circumstances surrounding the adoption of those statutes establish that the special category of "small power producer" created by the North Carolina General Assembly is available solely to hydroelectric facilities of 80 megawatts or less located in North Carolina.

WHEREUPON, the Hearing Examiner reaches the following

CONCLUSIONS OF LAW

I.

Noah is not entitled to sell power from the Summersville Project to Duke under Schedule PP(NC) and Duke's standard Purchased Power Agreement.

II.

Noah is not a "small power producer" under North Carolina law.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

I. Biennial PURPA Proceedings.

Noah has brought this action seeking to require Duke to purchase power under Duke's standard PPA and Schedule PP(NC). For the Commission to order the relief requested by Noah, Noah must establish that the standard PPA and Schedule PP(NC) are available to a West Virginia qualifying facility that proposes to wheel power to Duke. The Hearing Examiner concludes that Noah is not entitled to the Schedule PP(NC) rates or the terms of the standard PPA for the following reasons:

- In the biennial avoided cost proceedings, the Commission expressly limited the exercise of its ratemaking authority under PURPA and the FERC rules to transactions between electric utilities within its jurisdiction, on the one hand, and qualifying facilities located in North Carolina and interconnected to such utilities, on the other hand.
- In the numerous biennial avoided cost proceedings to establish rates for such transactions, the Commission approved the specific language of Schedule PP(NC) and Duke's PPA.

Both documents contain numerous material terms and provisions applicable only to qualifying facilities located in North Carolina and interconnected with Duke's system. Schedule PP(NC) and the standard PPA thus reflect the Commission's intent in the biennial proceedings to approve rates and contract terms only for this specific class of qualifying facilities.

- The term "interconnected" as used in Duke's Schedule PP(NC) and standard PPA means a direct, physical connection permitting a direct flow of power. The Summersville Project cannot be "interconnected" to Duke.
- In determining Schedule PP(NC) rates, the Commission considered the reliability, availability and value of power purchased from facilities interconnected with Duke and Duke's alternative sources of power. Power wheeled to Duke from the Summersville Project may be less reliable, less available and less valuable to Duke than power from an interconnected facility and will impose additional costs. Schedule PP(NC) rates do not reflect these differences or additional costs.

The evidence on which the Hearing Examiner bases each of these conclusions is discussed below.

8. Commission Intent.

Section 210 of PURPA requires the FERC to prescribe rules requiring electric utilities to purchase electric power from, and to sell electric power to, cogeneration and small power production facilities. These rules are to include, among other things, (i) standards for "qualifying" cogeneration facilities and "qualifying" small power production facilities, the power from which is eligible for favorable treatment under PURPA and (ii) standards for determining the rates at which power would be sold by the qualifying facilities to the electric facilities.

The implementation of the FERC rules on determining the rates and terms of sale was delegated to the state regulatory authorities. The state regulatory authorities were given the freedom to implement the rules "by the issuance of regulations, on a case-by-case basis or by any other means reasonably designed to give effect to the FERC's rules." Order of July 16, 1993, Docket No. E-100, Sub 66 ("1993 Order"). Thus, the Commission was not obligated to determine in advance specific rates covering every type of transaction.

The Commission's first proceeding to implement its delegated authority commenced in 1980. The hearing was held in two phases beginning on July 22, 1980, and culminated in the Recommended Order Approving Rates and Terms and Conditions After Reconsideration and Rescheduling Further the Hearing on Wheeling Provisions, Docket No. E-100, Sub 41 (September 21, 1981) ("1981 Order"). In its 1981 Order, the Commission described, very clearly, the scope of the authority it was exercising in the biennial proceedings:

> As a part of its responsibility in these matters, the North Carolina Utilities Commission will determine the rates, charges, and conditions for the sale of electric energy and electric

> capacity between electric utilities and qualifying cogenerators or small power producers in North Carolina. In addition, the Commission will determine the relative responsibilities of utilities and qualifying facilities with respect to system protection, service reliability, interconnection of privately owned generation sources with the utility grid, and other matters affecting such service. (Emphasis added)

In its Order of January 11, 1982, in Docket Number E-100, Sub 41, the Commission separately considered its responsibility to implement 18 C.F.R. § 292.303(d) of the FERC rules allowing utilities to wheel power from qualifying facilities. Specifically, the Commission considered whether it should set rates for intrastate wheeling of power from qualifying facilities in North Carolina. In concluding that setting rates for wheeling within the State was not necessary, the Commission again summarized its goal:

> There is substantial evidence in the record that the current rates, terms and conditions set by this Commission in its Order of September 21, 1981, will encourage cogeneration and small power production in North Carolina without forcing the utilities' other customers to subsidize such generation. No evidence has been presented by any party to this proceeding that wheeling of power generated by qualifying facilities is necessary to maintain the economic viability of existing qualifying facilities or to encourage further development of cogeneration and small power production. There has also been no showing that wheeling of power generated by qualifying facilities will be cost-effective either for such facilities or for North Carolina's other consumers of electricity. (Emphasis added)

The Commission, in its 1983 avoided cost Order, Docket No. E-100, Sub 41 (April 1, 1983), again addressed the scope of the authority it was exercising with respect to transactions between electric utilities and qualifying facilities within its jurisdiction:

> As permitted by the applicable provisions of federal law (PURPA), the Federal Energy Regulatory Commission in its wisdom, by regulation, has delegated to the state regulatory authorities, such as this Commission, the power and duty to implement, regulate, and oversee the implementation of Section 210 of PURPA relating to purchases and sales of electricity between and among "qualifying" electric generating facilities within the jurisdiction of such state regulatory authorities, on the one hand, and the electric utilities regulated by each state regulatory authority, on the other hand. That delegation took place soon after the enactment of PURPA by the Congress. (Emphasis added)

In its 1987 avoided cost Order, Docket No. E-100, Sub 53 (May 7, 1987), the Commission further observed that "[i]n each of the prior three biennial proceedings, the Commission has determined separate avoided cost rates to be paid by each of the four major electric utilities to the respective qualifying facilities (QFs) that are interconnected with them. . . . The Commission has also reviewed and approved other related matters involving the relationship between the electric utilities and the respective qualifying facilities interconnected with them, such as terms and conditions of service, contractual arrangements, and interconnection charges" (emphasis added). The Hearing Examiner notes that this language is repeated in subsequent biennial Orders of the Commission establishing avoided costs rates and approving contract terms.

The Hearing Examiner concludes that the Commission has expressly limited the exercise of its authority in the biennial proceedings to setting rates and approving contract terms in transactions between utilities under the Commission's jurisdiction and qualifying facilities located in North Carolina and interconnected with such electric utilities. This conclusion is clear from the express language of the Commission's numerous avoided cost Orders. The Commission was under no obligation from PURPA or the FERC to set rates or approve contract terms in advance for every possible transaction. PURPA permits the Commission to establish avoided cost rates pursuant to its rulemaking authority on a case-by-case basis or in any other reasonable manner. The Commission was free to consider only the avoided costs associated with purchases from interconnected qualifying facilities located in North Carolina.

The Hearing Examiner is aware of the Recommended Order of January 29, 1988, and the Final Order of February 24, 1988, in Docket No. E-2, Sub 539, a complaint case of Fries Textile Company against Carolina Power & Light Company. That case involved a hydroelectric facility in Virginia that wanted to sell electricity to CP&L. The specific issues litigated were which standard avoided cost rate was applicable to Fries (the standard rate changed during the parties' negotiations) and whether Fries had to meet the renewability requirement of CP&L's standard contract. The Commission held that the new rate was applicable and that Fries had to meet all standard contract terms. It was assumed that the standard rates and contract terms were available to Fries. The out-of-state location of the Fries facility was never mentioned in the Commission's Orders as affecting Fries' eligibility for the standard rates and contract terms. This was because CP&L never questioned Fries' eligibility for standard rates and terms based on its being out of state; CP&L only raised issues of which standard rate was applicable and whether Fries could meet the standard renewability provision. Thus, the significance of a QF's out-of-state location was simply not litigated in that case, as it must be in this one. The Commission's Orders in the Fries' complaint case are not precedents in this case because the question at issue here was never raised or discussed or decided in those Orders.

The Hearing Examiner also is not persuaded that the FERC rule on wheeling, 18 C.F.R. § 292.303(d), requires a different conclusion as to the inapplicability of rates established in the biennial avoided cost proceedings to non-interconnected facilities. The wheeling rule derives from Section 292.303(a) of the FERC rules, which requires electric utilities to purchase power from qualifying facilities, whether supplied "directly to the electric utility" or "indirectly . . . in accordance with" Section 292.303(d). Section 292.303(d) permits a utility that is interconnected to the qualifying facility to wheel the facility's power to another utility, if the qualifying facility consents. The rule then establishes an obligation on the part of the receiving utility to purchase the wheeled power. It is important to note, however, that Section 292.303(d) does not establish rates for purchases of wheeled power. Section 292.303(a), on the other hand, requires that all purchases from qualifying facilities, whether directly from the qualifying facility or indirectly pursuant to the wheeling rule, must be "in accordance with § 292.304." Section 292.304 requires that rates for such purchases must be "just and reasonable" and may not be "more than the avoided costs." This point is also evident from the FERC order adopting the rule on wheeling: "The electric utility to which the electric energy is transmitted has the obligation to purchase the energy at a rate which reflects the costs that it can avoid as a result of making such a purchase." FERC Order No. 69, Docket No. RM 79-55 (effective March 20, 1980) (emphasis added). The FERC rules, taken as a whole, obligate the receiving utility to purchase wheeled power, but clearly require that the rate for such purchases not exceed the utility's true avoided costs. The Commission, in the biennial proceedings, has determined rates only for

purchases from interconnected facilities located in North Carolina. Requiring Duke to make these rates available to non-interconnected facilities, solely on the basis of 18 C.F.R. § 292.303(d), ignores the full scope of the FERC's rules under PURPA.

9. Terms of Schedule PP(NC) and Standard PPA.

In the several avoided cost proceedings conducted by the Commission since the enactment of PURPA, electric utilities operating in North Carolina have prepared and filed proposed contract documents and detailed rate schedules to be used expressly for transactions with qualifying facilities. Beginning with its 1981 Order, the Commission, upon review of the testimony and other evidence presented by all interested parties, approved specific terms and provisions of such contracts and schedules filed by the utilities, and required that proposed changes to the approved contracts and schedules be submitted to the Commission for further review and approval. (See NCUC Docket No. E-100, Sub 41, Order of April 1, 1983)

In the instant proceeding, Duke presented the standard PPA and Schedule PP(NC) into evidence as Duke Exhibit 1. The Hearing Examiner notes that a number of provisions in both documents indicate an intent that the qualifying facility must be located in North Carolina and interconnected with Duke. The introduction of the PPA contains specific provisions for identifying the location of the qualifying facility in "North Carolina." In Article 1.3 of the PPA, the parties also must identify the county and town in "North Carolina" where the power is to be delivered. The first line of Schedule PP(NC) states that the Schedule is "available only to establishments which have generating facilities not in excess of eighty (80) megawatts which are interconnected with" Duke's system (emphasis added). Section 2 of the PPA provides that the sale, delivery and use of electrical power is subject to Duke's Service Regulations on file with the Commission. Article 13 of the PPA provides that the entire contract is contingent upon the qualifying facility obtaining certain approvals, including a Certificate of Public Convenience and Necessity, from the Commission. Schedule PP(NC) requires Duke to furnish backup and maintenance power to the qualifying facility through one metering point, at one delivery point, and at certain specified voltages and, in certain circumstances, to install a substation adjacent to the qualifying facility. Both Schedule PP(NC) and Section 5 of the PPA require Duke to install and maintain interconnection facilities and suitable control and protective devices. Duke witness Keels testified that Duke has never provided electrical services, equipment or facilities outside of Duke's service territory.

Duke witness Young testified that Duke has a separate avoided cost rate schedule, Schedule PP(SC), which has been approved by the South Carolina Public Service Commission for use only by qualifying facilities located in South Carolina. Schedule PP(SC) rates are higher than Schedule PP(NC) rates because of differences in how the South Carolina Commission handles carrying costs on fuel inventory, cash working capital, excise taxes and other factors. South Carolina also does not require Duke to offer long-term rates. Duke witness Young testified that Schedule PP(SC) rates are not available to North Carolina qualifying facilities, just as Schedule PP(NC) rates are not available to South Carolina facilities. Witness Young testified that "jurisdictional applicability" of the respective rate schedules is "very critical." Otherwise, a qualifying facility in one state could wheel its power into the other state to take advantage of higher rates offered by Duke in the receiving state.

The Hearing Examiner concludes that the terms of Duke's standard PPA and Schedule PP(NC), which have been approved by the Commission in the biennial avoided cost proceedings, are applicable only to qualifying facilities that are located in North Carolina and interconnected with Duke. The numerous references to "North Carolina" and "interconnection" are material terms of both documents. Those terms, the many provisions requiring Duke to provide service and equipment directly to the qualifying facility, and the references in both documents to Duke's Service Regulations and to the Commission's jurisdiction are consistent with the Commission's intent, expressed in numerous biennial avoided cost Orders, to establish rates and contract terms in the biennial proceedings only for transactions between utilities operating in North Carolina and qualifying facilities within the Commission's jurisdiction and interconnected to such utilities. Noah offered no compelling evidence to contradict this conclusion.

10. Interconnection.

Schedule PP(NC) and Duke's standard PPA are applicable only to facilities that are located in North Carolina and "interconnected" to Duke's transmission system or distribution system. The Summersville Project is clearly not located in North Carolina. Further, the Hearing Examiner concludes that the Summersville Project cannot be "interconnected" to Duke. Noah witness Price testified that the Summersville Project is located within the service territory of Monongahela Power Company. Noah plans to construct a 12-mile transmission line from the Summersville Project to Appalachian Power, a subsidiary of American Electric Power Service Corporation ("AEP"), and to wheel the power over the Appalachian Power system to Duke. In his testimony, Noah witness Price acknowledged that the Summersville Project will be interconnected with Appalachian Power. When asked on direct examination whether Duke could be "interconnected" with the Summersville Project, witness Price responded affirmatively, stating that interconnection is simply "the ability to transfer power."

The Duke witnesses testified at length on the issue of interconnection. Duke witness Keels disagreed with Noah witness Price's definition of the term "interconnection." Witness Keels testified that interconnection means the connection of two entities with each other, not the ability to transmit power across the entire east coast of the United States. The Hearing Examiner also notes the following exchange between counsel for Noah and Duke witness Keels:

> **Q.** Are you aware that the United States Supreme Court in the American Paper Institute case defined interconnection as a physical connection that allows electricity to flow from one entity to another?
>
> * * *
>
> **A.** I am not aware of that holding. I also don't believe there is a physical interconnection between a facility that is not on our system. (Emphasis added)

Duke witness Campbell testified that the term "interconnection" is a device or facility that connects one system with another, or a specific connection between the control area of one utility with the control area of another. Witness Campbell testified that he has served as Duke's representative to the Southeastern Electric Reliability Council ("Southeastern") and as a Southeastern

representative to the North American Electric Reliability Council ("NERC"). Witness Campbell further testified that the operating guide used by NERC defines "interconnection" as follows:

> When the term is capitalized, it refers to one of the four bulk electric system networks in North America; namely, the Eastern, the Western, ERCOT, which is the Electric Reliability Council of Texas, and Quebec, which is, of course, in Canada. When not capitalized, the facilities that connect two systems or control areas. Duke does not consider itself to be interconnected with all of the some 150 control areas that make up the eastern [I]nterconnection of which Duke is a part.

Duke witness Campbell testified that in Duke's bulk power agreements, the term "interconnection" refers to the specific interconnections that have been established between the control areas of the contracting parties. As an example, he noted that there are two "interconnections" between Duke and the AEP system. Witness Campbell also explained that the Summersville Project "will feed its power into the AEP control area." Duke will receive the power only by scheduling an equal amount of power to flow out of the AEP control area, not by a direct flow from Noah.

The Hearing Examiner finds Duke's interpretation of the term "interconnection" persuasive. The term "interconnection" as used in Duke's Schedule PP(NC) and standard PPA is not the mere ability to transfer power through an intervening utility system, as Noah claims. Interconnection means a direct, physical connection between two control areas, or between a generating facility and an electric utility. The Commission, in the biennial avoided cost Orders and pursuant to FERC regulations, 18 C.F.R. § 292.303(c), has required Duke and other utilities within its jurisdiction to install, own and maintain interconnection facilities necessary for purchasing power from qualifying facilities. Schedule PP(NC) and Duke's standard PPA contain provisions to that effect. It is inconsistent to conclude that this requirement can be applied to a transaction with a qualifying facility with which Duke cannot directly connect.

The Hearing Examiner takes judicial notice of the United States Supreme Court's decision in American Paper Institute, Inc. v. American Electric Power Service Corporation, 461 U.S. 402 (1983), which was cited by counsel for Noah. In that case, the issue was whether the FERC had exceeded its authority in issuing a regulation, 18 C.F.R. § 292.303(c)(1), requiring electric utilities to "make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart." The Court defined "interconnection" as "a physical connection that allows electricity to flow from one entity to another." 461 U.S. at 407 (emphasis added). As proposed, the Summersville Project would have a "physical connection" with Appalachian Power allowing electricity to "flow" from the Summersville Project to Appalachian Power. The electricity would not "flow" from the Summersville Project to Duke; instead Duke would obtain an equal amount of power from Noah by schedule through a "physical connection" between Duke and Appalachian Power. The Summersville Project would have no "physical connection" with Duke through which electricity can "flow."

The Hearing Examiner concludes that the Summersville Project will not be "interconnected" with Duke's transmission system or distribution system. For this reason, Schedule PP(NC) and Duke's standard PPA, which apply only to generating facilities which are "interconnected with" Duke's system, are not applicable to Noah.

11. Factors Considered in Setting Avoided Cost Rates.

Section 210(b) of PURPA requires the FERC to prescribe rules governing the rates to be paid by utilities for power from qualifying facilities. These rates are to be "just and reasonable to the electric consumers of the electric utility and in the public interest" and may not exceed "the incremental cost to the electric utility of alternative electric energy." 16 U.S.C. § 824a-3(b). FERC rules confirm this mandate by stating that "[n]othing in . . . [these rules] requires any electric utility to pay more than the avoided costs for purchases" from qualifying facilities. 18 C.F.R. § 292.304(a)(2). The FERC regulations specifically require the Commission to consider the following specific factors in determining such rates (18 C.F.R. § 292.304):

a. The ability of the utility to dispatch the qualifying facility,
b. The expected or demonstrated reliability of the qualifying facility,
c. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirements and sanctions for non-compliance,
d. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities,
e. The usefulness of energy and capacity supplied from the qualifying facility during system emergencies, and
f. The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system.

G.S. 62-156 echoes the FERC regulations by requiring the Commission, in determining rates to be paid by electric utilities for power purchased from small power producers, to consider "the reliability and availability of the power." The North Carolina statute also requires that determinations of avoided energy costs consider the expenses which a utility would otherwise incur in "purchasing power from another source."

In the 1981 Order and in the Commission's other biennial avoided cost proceedings, the Commission considered all of these factors in establishing avoided cost rates for transactions between utilities operating in North Carolina and qualifying facilities and small power producers within the Commission's jurisdiction and interconnected with such utilities. In the instant proceeding, the Hearing Examiner concludes that, in light of the specific factors of reliability, availability, value and alternative sources of power, all of which were considered by the Commission, the avoided cost rates approved by the Commission in Schedule PP(NC) are not applicable to power purchased by Duke from a qualifying facility not located in North Carolina and not interconnected with Duke.

Both parties presented testimony on wheeling and its effect on the reliability, availability, and value of power from Noah. Power from the Summersville Project must be wheeled to Duke through the Appalachian Power system. Noah does not yet have a contract for wheeling service with Appalachian Power. Noah must also construct a 12-mile transmission line in order to interconnect the Summersville Project with Appalachian Power. Noah has not yet obtained the rights-of-way necessary for construction of the transmission line.

Duke's witnesses also presented testimony on the value of power from a facility that is not interconnected to Duke. Specifically, this testimony addressed the additional costs that Duke would

incur by purchasing power from Noah. Duke witness Keels explained that there is a "substantial difference" between metering and administering a transaction with a facility that is interconnected to Duke's system and one that is not interconnected. He explained that, in the case of an interconnected facility, Duke installs a meter at the point of interconnection to meter the actual flow of electricity into the Duke system. In the case of a facility that wheels power into Duke, Duke would not meter the actual flow of electricity from the facility. The generating facility schedules the power flow into the wheeling utility's system and the wheeling utility separately schedules a power flow into Duke's system. Duke, AEP and Noah must agree in advance as to the amount of power that is to be delivered from Noah to Appalachian Power and then from Appalachian Power to Duke. The scheduling arrangements would be handled by different procedures from those contemplated by the standard PPA and, according to witness Keels, would be more costly. He testified that Duke also would have to install more elaborate monitoring equipment than required for purchases from interconnected qualifying facilities and that Duke would incur additional costs in monitoring and insuring compliance with the Noah contract.

Duke witness Young confirmed that purchases from the Summersville Project would require that scheduling information be transferred from Noah to AEP to Duke. The billing determinants would be based on a detailed hour-by-hour record of scheduling information as agreed upon by AEP and Duke. Witness Young testified that scheduling power to be wheeled from Noah through the Appalachian Power system would result in extra costs for the additional administrative functions of hourly communications between AEP and Duke and the manual entry of the scheduling information into the various computer logs.

The Hearing Examiner concludes that, pursuant to PURPA, the FERC rules, and the applicable North Carolina statutes, the Commission must consider specific factors in determining rates for sales of power by qualifying facilities and small power producers to electric utilities. Among these factors are the availability, reliability and value of the power from such facilities, and the utility's alternative power sources. The Hearing Examiner concludes that the availability, reliability and value of power purchased from Noah may differ from the availability, reliability and value of power purchased from an interconnected facility. Power wheeled to Duke from the Summersville Project is subject to Noah's ability to negotiate a contract for wheeling service with AEP at a rate, for a term and on conditions that are compatible with any proposed contract for the sale of power to Duke. Noah has not yet obtained such a contract. Purchasing power from Noah will also subject Duke to costs that are not present when Duke purchases power from an interconnected facility. These additional costs are not reflected in the Schedule PP(NC) avoided cost rates.

11. Small Power Producers.

In addition to its duties under PURPA and the FERC regulations, the Commission has a special mandate, created by state law, on behalf of "small power producers." G.S. 62-156 requires the Commission to determine avoided cost rates for sales of power from small power producers to electric utilities and to encourage long-term contracts for such sales. The term "small power producer" is defined in G.S. 62-3(27a) as a person or corporation owning or operating an electrical power production facility with a power production capacity not in excess of 80 megawatts of electricity and which depends upon hydroelectric power for its permanent source of energy. Thus, North Carolina has created a special preference for hydroelectric facilities that is not extended to

qualifying facilities utilizing other forms of renewable resources. The Hearing Examiner concludes that Noah is not a "small power producer" under State law and thus is not an intended beneficiary of this special preference.

An examination of the legislative history for G.S. 62-3(27a) and 62-156 indicates that this preferred status was designed to promote hydroelectric resources in North Carolina. The June 18, 1979, Joint Resolution of the North Carolina House of Representatives and Senate to study hydroelectric power observed that "many small and large scale hydroelectric plants could produce substantial amounts of energy as part of a Statewide program of generating electricity without reliance on petroleum" (emphasis added). The House and the Senate therefore resolved to authorize the Legislative Research Commission "to study the issue of hydroelectric generation power in North Carolina" (emphasis added). The Legislative Research Commission ("LRC") subsequently issued an Interim Report to the 1979 General Assembly, Second Session, 1980, entitled Hydroelectric Generation of Power. The report focused exclusively on the potential for hydroelectric generation in North Carolina and examined small scale hydro resources county by county within the State. The report observed that the objective of its efforts was "to develop small-scale hydropower to the fullest extent possible as an indigenous energy source for North Carolina, both to offset the high cost of energy that will need to be produced utilizing fossil fuels or nuclear energy to meet future demand (produced from imported oil), and to stimulate the economy by increasing employment throughout the state" (emphasis added). Based on its analysis and this stated goal, the LRC recommended that the General Assembly amend Chapter 62 of the General Statute to include new Sections 62-3(27a) and 62-156, specifically for the purpose of encouraging "the development of small-scale hydro in North Carolina." The specific amendments recommended by the LRC were introduced in the short session of the 1980 General Assembly and were enacted.

The Hearing Examiner concludes that the policy of North Carolina is to encourage the development of hydroelectric generating facilities within the State of North Carolina. G.S. 62-3(27a) and 62-156 were enacted with this purpose in mind, and the benefits of the preferred category of "small power producer" should not be extended to a facility located in West Virginia without express legislative authorization. Noah has not demonstrated that Noah is a "small power producer" within the meaning of the North Carolina statutes

III. Negotiated Rates.

The Hearing Examiner has concluded that Noah is not entitled to sell power from the Summersville project to Duke under Schedule PP(NC) and Duke's standard PPA and that Noah is not a "small power producer" under North Carolina law. The Summersville Project has, however, been certified as a qualifying facility by the FERC. That being the case, Duke is obligated to purchase power from the Summersville Project if it is wheeled to Duke. Noah is entitled to attempt, through negotiation, to reach an agreement with Duke for a negotiated rate covering the Summersville Project and Duke has an obligation to negotiate in good faith with Noah. The Commission has consistently held in past avoided cost Orders that all regulated electric utilities are expected to negotiate in good faith with qualifying facilities for such terms as are fair to the qualifying facility as well as to the utility's ratepayers and that a qualifying facility may file a complaint with the Commission if it feels that a utility is not negotiating in good faith. If it chooses to do so, Noah may resume negotiations with Duke for a negotiated rate covering the Summersville Project. Although the Commission has

heretofore declined to set specific guidelines for negotiations between utilities and qualifying facilities, the Commission has in previous avoided cost Orders, including the most recent avoided cost Order entered in Docket No. E-100, Sub 66 on July 16, 1993, listed specific issues and problems which should be addressed during such negotiations.

IT IS, THEREFORE, ORDERED as follows:

1. That the Complaint filed in this proceeding by the Noah Corporation against Duke Power Company be, and the same is hereby, denied.

2. That this docket be, and the same is hereby, closed.

ISSUED BY ORDER OF THE COMMISSION.
This 14th day of February 1995.

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

DOCKET NO. E-2, SUB 680

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	)))))	ORDER APPROVING NET FUEL CHARGE DECREASE

HEARD: Tuesday, August 1, 1995, at 10:00 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding, and Commissioners Ralph A. Hunt and Jo Anne Sanford

APPEARANCES:

For Carolina Power & Light Company:

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

For the Public Staff:

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

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

Carson Carmichael, III, Attorney at Law, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602-1351

For the Carolina Utility Customers Association, Inc. (CUCA):

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

BY THE COMMISSION: Rule R8-55 of the North Carolina Utilities Commission's Rules of Practice and Procedure and G.S. §62-133.2 require the Commission to conduct annual public hearings in order to review changes in Carolina Power & Light Company's (CP&L or Company) cost of fuel and the fuel component of purchased power. This public hearing is to be held on the first Tuesday of August of each year. Rule R8-55 requires CP&L to file a variety of information regarding its fuel cost and fuel component of purchased power in the form of testimony and exhibits at least sixty days prior to each such annual hearing. For 1995, CP&L was required to file its Application, testimony and exhibits on June 2, 1995, and the hearing was scheduled for August 1, 1995. CP&L

filed its Application for a change in rates based solely on the cost of fuel in accordance with the provisions of G.S. §62-133.2 and Commission Rule R8-55 along with the testimony and exhibits of witness John L. Harris. In its Application, CP&L proposed an increment of 0.004 cents per kWh (0.004 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 Company recommended a fuel factor of 1.280 cents per kWh. In its Application, the Company also requested a decrement of 0.1657 cents per kWh (0.171 cents per kWh including gross receipts tax) for the Experience Modification Factor (EMF) to refund approximately $49.9 million of over-recovered fuel revenues experienced during the period April 1, 1994, to March 31, 1995, including interest. 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 in conjunction with the expiration of the EMF Rider approved in the last fuel proceeding (Docket No. E-2, Sub 658) would result in a decrease of $2.01/1000 kWhs in the typical customer's bill.

On June 7, 1995, the Carolina Industrial Group for Fair Utility Rates (CIGFUR-II) filed a petition to intervene. The petition was granted by the Commission on June 16, 1995. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On June 8, 1995, the Commission issued its Order Scheduling Hearing, Requiring Filing of Testimony and Requiring Public Notice.

On June 15, 1995, Carolina Utility Customers Association, Inc. (CUCA) filed a petition to intervene in the proceeding. The Commission granted CUCA's petition on June 16, 1995.

On July 17, 1995, the Public Staff filed the testimony and appendix of Thomas S. Lam and on July 14, 1995, CUCA filed the testimony and exhibits of Kevin W. O'Donnell. Both filings were made in accordance with the Commission's June 8, 1995, Order which addressed the filing of intervenor testimony.

On July 28, 1995, the Company filed the affidavits of publication showing that public notice had been given as required by Rule R8-55(f) and the Commission's Order.

The case-in-chief came on for hearing as ordered on August 1, 1995, at 10:00 a.m. The Commission received into evidence CP&L's Application, the testimony and exhibits of CP&L witness Harris, the testimony and appendix of Public Staff witness Lam and the testimony and exhibits of CUCA witness O'Donnell.

On August 2, 1995, the Commission issued an Order Setting Time to File Proposed Orders. The Order required that proposed orders be filed within 20 days from the date of mailing of the transcript. The transcript was mailed on August 4, 1995.

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 under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. CP&L is engaged in the business of generating, transmitting, and selling electric power to the public in North Carolina. CP&L is lawfully before this Commission based upon its Application filed pursuant to G.S. §62-133.2.

2. The test period for purposes of this proceeding is the 12-month period ended March 31, 1995.

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 total 44,608,214,262 kWhs with North Carolina retail kWh sales totaling 28,964,562,276 kWhs. The per books generation level is 50,125,797 MWHs.

5. The adjustments for growth and weather of 1,100,729,182 kWhs on a system basis and 1,176,829,723 kWhs for North Carolina retail are appropriate in this proceeding. The adjusted generation level of 51,308,884 MWHs on a system basis is appropriate to use in this proceeding.

6. The appropriate fuel prices for use in this proceeding are as follows:

A. The coal fuel price is $17.77/MWH.
B. The nuclear fuel price is $4.99/MWH.
C. The IC turbine fuel price is $112.28/MWH.
D. The fuel price for AEP purchase is $10.43/MWH.
E. The fuel price for Duke Schedule J is $17.49/MWH.
F. The fuel price for other purchases is $21.21/MWH.
G. The fuel price for off-system sales is $19.49/MWH.

7. The system normalized nuclear capacity factor which is reasonable to use in this proceeding is 78.9%.

8. The proper fuel factor for this proceeding is 1.280¢/kWh, excluding gross receipts tax.

9. The Company's North Carolina test period jurisdictional fuel expense over-collection is $43,576,200.

10. The appropriate amount of interest expense associated with the over-collection of test period fuel revenues is $6,362,123, based upon a 10% annual interest rate.

11. The Company's Experience Modification Factor (EMF) is a decrement of 0.1657 cents per kWh (including gross receipts tax, the factor is 0.171 cents per kWh).

12. CP&L's operation of its nuclear units during the test period was exceptional. The Company's operation of its base load fossil plants was reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

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 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 direct testimony submitted by the Company in support of its Application utilized the 12 months ended March 31, 1995, 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 appropriate for use in this proceeding is the 12 months ended March 31, 1995, 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 which was updated in May 1994. In addition, the Company files monthly reports of its fuel costs pursuant to Rule R8-52(a). These reports were filed in Docket No. E-2, Sub 655 for calendar year 1994 and in Docket E-2, Sub 676 for calendar year 1995. 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 FINDINGS OF FACT NOS. 4 AND 5

The evidence supporting these findings can be found in the exhibits of Company witness Harris.

Company witness Harris utilized test period system sales of 44,608,214,262 kWhs and North Carolina retail sales of 28,964,562,276 kWhs (Harris Exhibit 1). This level of sales was not challenged by any party and was used as the basis for the test period adjustments. The per books total system generation of 50,125,797 MWHs (including Power Agency ownership) reflects the

generation resources available to serve the CP&L customers. This generation value was derived in the Company's work papers and was used as the basis for the test period generation adjustments.

The Company calculated adjustments for customer growth and weather normalization using customer meter data. The Company calculated a positive customer growth adjustment of 600,041,222 kWhs for the system and 649,476,812 kWhs for North Carolina retail. The method employed by the Company in making this calculation utilizes the end-of-period number of customers and is consistent with the calculations from past fuel cases. The Company calculated a positive weather normalization adjustment of 500,687,960 kWhs on a system basis and 527,352,911 kWhs for North Carolina retail.

The Commission notes that no party took exception to the level of growth and weather normalization calculated by the Company. Both calculations were performed in a manner consistent with the methodologies performed by the Company in past cases. The Commission finds these kWh adjustments appropriate and consistent with the adjustments made by the Company in past cases.

The adjustments for growth and weather total 1,100,729,182 kWhs on a system basis and 1,176,829,723 kWhs for the North Carolina retail jurisdiction. The Company applied losses to the kWh adjustments calculated for growth and weather normalization and determined that these adjustments total 1,183,087 MWHs at the generation level. The adjusted generation level of 51,308,884 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 51,308,884 MWHs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding can be found in the testimony and exhibits of Company witness Harris, the testimony of Public Staff witness Lam, and the testimony and exhibits of CUCA witness O'Donnell.

The fuel prices utilized by the Company in determining its fuel factor were based on the March 31, 1995 period. The Company utilized the following fuel prices:

A. The coal fuel price is $17.77/MWH.
B. The nuclear fuel price is $4.99/MWH.
C. The IC turbine fuel price is $112.28/MWH.
D. The fuel price for AEP purchase is $10.43/MWH.
E. The fuel price for Duke Schedule J is $17.49/MWH.
F. The fuel price for other purchases is $21.21/MWH.
G. The fuel price for off-system sales is $19.49/MWH.

Public Staff witness Lam adopted the Company's prices except for coal and IC turbine fuel for which he used updated May 1995 prices. His resulting fuel factor calculation was higher than the

Company's recommended factor which witness Lam testified did not appear unreasonable. Witness Lam recommended adoption of the Company's fuel factor which utilized the above fuel prices. CUCA witness O'Donnell also adopted the Company's fuel pricing.

The Commission concludes that the fuel pricing values proposed by the Company are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding can be found in the testimony and exhibits of Company witness Harris, the testimony of Public Staff witness Lam, and the testimony and exhibits of CUCA witness O'Donnell.

In Harris 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 Reliability Council (NERC) Equipment Availability Report 1989-1993 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 60.71% and the capacity factors of the Robinson and Harris Units, both PWRs, were normalized at 70.78%. The Company's normalized calculations resulted in a system nuclear capacity factor of 65.78%. Using this capacity factor and the historical test period methodology, a fuel factor of 1.368 cents/kWh was derived. According to the testimony of the Public Staff witness, NERC data for the five-year period 1990-1994 published after the Company filed testimony, reflected an average system capacity factor of 67.87%.

Company witness Harris testified that the system nuclear capacity factor used in his Exhibit No. 3 produced a fuel factor that did not adequately match fuel revenues with fuel expenses for the ensuing test year. Rather, he believed a fuel factor based upon the actual expected performance of CP&L's nuclear plants during the next test period was more appropriate. As a result, he calculated the Company's proposed fuel factor utilizing the nuclear capacity factors the Company expects to achieve during the next test period. The expected nuclear capacity factor for the next test period is 81.7%. Witness Harris explained that because he decided to use the nuclear capacity factor expected during the next test period to derive the Company's proposed fuel factor, it was also necessary to use expected next test period fuel prices, kWh sales, and other data. This calculation produced the fuel factor proposed by the Company. At the hearing, witness Harris presented his Exhibit No. 3A which shows the Company's proposed fuel factor proformed back into the historical test period data with a normalized nuclear capacity factor of 78.9%. Public Staff witness Lam did not object to the nuclear capacity factor shown on Exhibit No. 3A and testified that the 78.9% factor was reasonable.

CUCA witness O'Donnell testified that the appropriate nuclear capacity to use in this proceeding is 80%. His calculation was based on a regression analysis using data from 1987 to present, but with the data for 1992 excluded because the Company experienced a low capacity factor during 1992 and O'Donnell considered it to be an outlier. On cross examination, witness O'Donnell testified that he could not say with certainty that the actual capacity factor for 1995 would equal his 80% projection.

Witness O'Donnell agreed that the regression model used to produce the 80% projection had a standard error of almost 10 percentage points which would yield a confidence interval range of 70% to 90% for his projection. Witness O'Donnell further agreed that capacity factors of 78.9%, 80%, and 81.7% were all reasonable.

Witness O'Donnell testified that he recommended the use of a nuclear capacity factor of 80% in Duke Power Company's last fuel case, but that it was not derived using a regression analysis and that, in his judgment, it was not appropriate to use such an analysis in the Duke case. When asked how the Commission should determine when to use a regression analysis and when not, he indicated it was a matter of judgment. He agreed that the Commission had not used a regression analysis to calculate a utility's fuel factor before.

Finally, witness O'Donnell agreed on cross examination that the use of his proposed nuclear capacity factor produces a fuel factor only 0.007 of a cent different from the one proposed by the Company, and he also agreed that the calculation of a fuel factor is "not a precise science."

The Commission must determine the appropriate level of nuclear generation to use as a basis for calculating a fuel factor. The Commission is not convinced that the regression method suggested by CUCA witness O'Donnell is appropriate. The Commission has not adopted the practice of using regression analysis to determine nuclear capacity factors before and sees no reason to utilize the practice in this proceeding. The Commission notes, based upon witness O'Donnell's Exhibit KWO-1, that the 1994 capacity factor, which he included in performing his regression analysis, appears to be just as much of an outlier as the 1992 capacity factor, which he excluded. This inconsistency makes the regression analysis presented in this case particularly unconvincing. Witness O'Donnell testified that if the 1992 value was included, his regression analysis would predict a capacity factor of 70% for 1995. The Commission rejects the regression analysis advocated by CUCA. The Commission finds that the appropriate normalized system nuclear capacity factor to use in this proceeding is the 78.9% figure proposed by the Company and accepted by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding can be found in the testimony and exhibits of Company witness Harris, the testimony of Public Staff witness Lam, and the testimony and exhibits of CUCA witness O'Donnell.

The Company requested a fuel factor of 1.280 cents/kWh. Public Staff witness Lam calculated a fuel factor of 1.314 cents/kWh but adopted the Company's request since he did not believe the Company's fuel factor unreasonable and the Public Staff does not generally recommend a fuel factor or revenue level higher than that requested by the Company. CUCA witness O'Donnell calculated a fuel factor of 1.273 cents/kWh using a nuclear capacity factor of 80%. With the exception of the use of an 80% capacity factor, witness O'Donnell did not state an objection to the data in Harris Exhibit No. 3A.

As set forth above, the Commission concluded that the appropriate normalized nuclear capacity factor to use in this proceeding is 78.9% as proposed by the Company. This capacity factor produces a fuel factor of 1.280 cents/kWh using the test period data which is proposed by the Company and

a fuel factor of 1.280 cents/kWh using the test period data which is proposed by the Company and adopted by the Public Staff. The Commission concludes that a base fuel factor of 1.280 cents/kWh is just and reasonable and should be approved in this proceeding. This factor is 0.004 cents/kWh higher than the base fuel factor of 1.276 cents/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537. The 1.280 cents/kWh fuel factor is shown in the following table:

	MWH Gen	$/MWH	Fuel Cost
Nuclear	21,177,265	4.99	105,674,553
Coal	25,667,584	17.77	456,112,968
IC	34,730	112.28	3,899,484
Hydro	728,375	--	--
Purchases:			
Co-Gen	3,343,800	--	58,465,791
AEP Rockport	1,473,500	10.43	15,368,605
Duke Sch J	147,100	17.49	2,572,779
SEPA	189,699	--	--
Other	366,158	21.21	7,766,211
Sales	(1,819,327)	19.49	(35,458,683)
Total Adjusted	51,308,884		$ 614,401,708
NCEMPA Adjustments			
PA Nuclear			(14,411,649)
Harris Buyback			1,598,690
PA Coal			(19,289,619)
Mayo Buyback			805,443
Total Fuel Expense			$583,104,573
Normalized kWh Sales			45,549,371,919
Fuel Factor (cents/kWh)			1.280

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9, 10 AND 11

The evidence supporting these findings can be found in the testimony and exhibits of Company witness Harris, the testimony of Public Staff witness Lam, and the testimony of CUCA witness O'Donnell.

G.S. §62-133.2(d) provides that the Commission "shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period...in fixing an increment or decrement rider. The Commission shall use deferral accounting and consecutive test periods in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for

12 months, notwithstanding any changes in the base fuel cost in a general rate case." Further, Rule R8-55(c)(5) provides, "Pursuant to G.S. §62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate."

Company witness Harris testified that the Company over-collected its fuel expense by $40,835,877 during the test year from the fuel factors approved in the past two fuel cases, Docket Nos. E-2, Sub 644 and Sub 658. Witness Harris adjusted the over-collection by $2,740,323 to reflect the adjustment for Stone Container fuel costs. The $2.7 million adjustment was agreed to by CP&L and the Public Staff as the proper amount for this proceeding. Both parties have agreed to determine the appropriate methodology for determining this adjustment prior to the next fuel proceeding. With the Stone Container adjustment, the proper EMF over-collection to refund to the North Carolina retail customers is $43,576,200. Witness Harris computed interest on the EMF using a 10% interest rate. His interest calculation totaled $6,362,123. Public Staff witness Lam and CUCA witness O'Donnell agreed with the Company's calculations of the amount of the EMF and interest to be refunded to the customers.

In its Application and testimony, the Company proposed an EMF decrement factor of 0.1657¢/kWh (0.171¢/kWh with gross receipts tax) to refund $49,938,323 of over-collected fuel expense plus interest. This factor was determined by dividing the over-recovered amount by NC retail adjusted kWhs of 30,141,391,999. CP&L asked that this factor remain in rates for a 12-month period.

No party offered any evidence contesting the Company's calculations. The Commission concludes that the Company's calculation of the EMF plus 10% interest totaling $49,938,323 should be refunded to the customers over a 12-month period. The Commission finds that the EMF decrement of 0.1657 cents/kWh (0.171 cents/kWh with gross receipts tax) is appropriate for use in this proceeding. The EMF decrement will remain in effect for a fixed 12-month period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding can be found in the Company's Application and direct testimony and exhibits of CP&L witness Harris and the testimony of Public Staff witness Lam.

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 655 for calendar year 1994 and in Docket No. E-2, Sub 676 for calendar year 1995. Witness Harris testified that the Company met the standard for prudent operation as set forth in Commission Rule R8-55 based upon the test year actual nuclear capacity factor of 90% which was substantially above the NERC five-year average of 65.78%. Public Staff witness Lam testified that the test year average of 90% is the highest level of nuclear performance that the Public Staff has seen from any of the three major utilities in the State. Witness Lam indicated that the highest level of test year performance from Duke was 82% and the highest from VEPCO was 85.9%. The Commission commends CP&L for its outstanding nuclear performance during this past test period.

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, 1995, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.004¢/kWh increment (0.004¢/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 0.1657¢/kWh (0.171¢/kWh including gross receipts tax). The EMF is to remain in effect for a 12-month period beginning September 15, 1995.

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 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 6th day of September 1995.

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

APPENDIX A

DOCKET NO. E-2, SUB 680

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light	)	NOTICE TO
Company for Authority to Adjust Its	)	CUSTOMERS OF
Electric Rates and Charges Pursuant	)	NET RATE
to G.S. §62-133.2 and NCUC Rule R8-55	)	DECREASE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order on September 6, 1995, after public hearings, approving a fuel charge decrease of approximately $60.6 million in the rates and charges paid by the retail customers of Carolina Power & Light Company in North Carolina. The net rate decrease will be effective for service rendered on and after

September 15, 1995. The rate decrease was ordered by the Commission after a review of CP&L's fuel expense during the 12-month test period ended March 31, 1995, and represents 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 decrease of $2.01 for a typical customer using 1,000 kWhs per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of September, 1995.

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

DOCKET NO. E-7, SUB 559

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Duke Power Company	)	ORDER APPROVING FUEL
Pursuant to G.S. 62-133.2 and NCUC Rule	)	CHARGE ADJUSTMENT
R8-55 Relating to Fuel Charge	)	
Adjustments for Electric Utilities	)	

HEARD: Wednesday, May 3, 1995, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Ralph A. Hunt and Judy Hunt

APPEARANCES:

For Duke Power Company:

Robert W. Kaylor, Bode, Call & Green, Post Office Box 6338, Raleigh, North Carolina 27628-6338

and

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

For the Public Staff:

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

For the Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon, & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

BY THE COMMISSION: On March 3, 1995, Duke Power Company (Duke or the Company) filed an application and accompanying testimony and exhibits pursuant to G.S. 62-133.2 and NCUC Rule R8-55 relating to fuel charge adjustments for electric utilities.

On March 21, 1995, the Commission issued an Order Scheduling Hearing and Requiring Public Notice.

Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene which was allowed by the Commission. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On May 2, 1995, Duke Power Company filed certain revised testimony and exhibits of Candace A. Paton proposing a fuel factor of 1.0400¢/kWh based on the use of an 82% system nuclear capacity factor to determine the fuel rate in this proceeding. Concurrently, a Stipulation between Carolina Utility Customers Association, Inc., Public Staff - North Carolina Utilities Commission, and Duke Power Company was filed with the Commission for approval. The Stipulation states that all parties agree to support the position contained in the revised exhibits of Duke Power and to agree to the admission of the prefiled testimony and exhibits of all parties into the record.

The case came on for hearing as ordered on May 3, 1995. Commissioner Ralph A. Hunt was unable to be present at the hearing. The parties agreed to Commissioner Hunt participating in the decision by reading of the record in this proceeding. Pursuant to the Stipulation, the parties stipulated into the record the direct and revised testimony and exhibits of Candace A. Paton, Manager, Regulatory Accounting, Rates and Regulatory Affairs Department of Duke Power Company; the affidavit of Thomas S. Lam, Engineer, Electric Division of the Public Staff; and the testimony and exhibits of Kevin W. O'Donnell on behalf of Carolina Utility Customers Association, Inc. No other party presented witnesses and no public witnesses appeared at the hearing.

Based upon the Company's verified application, the Stipulation between the parties, the testimony and exhibits received into evidence at the hearing and the record as a whole, the Commission makes the following

FINDINGS OF FACT

1. Duke Power Company is a duly organized corporation existing under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission as a public utility. 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 filed pursuant to G.S. 62-133.2.

2. The test period for purposes of this proceeding is the twelve month period ended December 31, 1994.

3. Duke's fuel procurement and power purchasing practices during the test period were reasonable and prudent.

4. The test period per book system sales are 72,895,076 mWh.

5. The test period per book system generation is 80,118,714 mWh and is categorized as follows:

	mWh
Coal	32,713,851
Oil & Gas	35,340
Light Off	-
Nuclear	35,586,870
Hydro	1,929,632
Net Pumped Storage	(469,425)
Purchased Power	595,680
Interchange	191,830
Catawba Contract Purchases	9,046,274
Catawba Interconnection Agreements	492,758
Interchange	(4,096)
Total Generation	80,118,714

6. The Stipulation between CUCA, the Public Staff and Duke Power wherein the parties agreed to the use of a system normalized nuclear capacity factor of 82% and its associated generation of 36,478,085 mWh to determine Duke's fuel rate should be approved for use in this proceeding.

7. The adjusted test period sales of 69,944,014 mWh consists of test period system sales of 72,895,076 mWh which are increased by 529,951 mWh for customer growth, and 1,083,899 mWh associated with weather normalization, and reduced by 4,564,912 mWh associated with the adjustment for Catawba retained generation.

8. The adjusted test period system generation for use in this proceeding is 77,145,863 mWh and is categorized as follows:

	mWh
Coal	35,047,791
Oil & Gas	39,003
Light Off	-
Nuclear	36,478,085
Hydro	1,731,400
Net Pumped Storage	(518,664)
Purchased Power	595,680
Interchange	191,830
Catawba Contract Purchases	3,580,738
Total Generation	77,145,863

9. The appropriate fuel prices and fuel expenses for use in this proceeding are as follows:

A. The coal fuel price is $15.30/mWh.
B. The oil and gas fuel price is $73.71/mWh.
C. The appropriate Light Off fuel expense is $3,483,000
D. The nuclear fuel price is $5.45/mWh.
E. The purchased power fuel price is $13.11/mWh.
F. The interchange fuel price is $38.16/mWh.
G. The Catawba Contract Purchase fuel price is $5.36/mWh

10. The adjusted test period system fuel expense for use in this proceeding is $727,406,000.

11. The proper fuel factor for this proceeding is 1.0400¢/kWh, excluding gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense overcollection was $42,705,000. The adjusted North Carolina jurisdictional test year sales are 46,284;179 mWh.

13. The Company's Experience Modification Factor (EMF) is a decrement of .0923¢/kWh, excluding gross receipts tax.

14. Interest expenses associated with the overcollection of test period fuel revenues amount to $6,406,000, based upon a 10% annual interest rate.

15. The EMF interest decrement is .0138¢/kWh, excluding gross receipts tax.

16. The final fuel factor is 0.9339¢/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, 1994.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each electric utility to file a Fuel Procurement Practices Report at least once every 10 years and each time the utility's fuel procurement practices change. The Company's updated fuel procurement practices were filed with the Commission in Docket No. E-100, Sub 47, in July 1994 and were in effect throughout the 12 months ended December 31, 1994. 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 that 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.

Company witness Paton testified that the test period per books system sales were 72,895,076 mWh and test period per book system generation was 80,118,714 mWh. Public Staff witness Lam and CUCA witness O'Donnell accepted these levels of test period per book system sales and generation for use in the fuel computation. The test period per book generation is categorized as follows:

	mWh
Coal	32,713,851
Oil & Gas	35,340
Light Off	-
Nuclear	35,586,870
Hydro	1,929,632
Net Pumped Storage	(469,425)
Purchased Power	595,680
Interchange	191,830
Catawba Contract Purchases	9,046,274
Catawba Interconnection Agreements	492,758
Interchange	(4,096)
Total Generation	80,118,714

Witness Paton testified that Duke achieved a system nuclear capacity factor of 82% for the test period and that the most recent (1989-1993) North American Electric Reliability Council's five-year average nuclear capacity factor for all pressurized water reactor units is 70.78%. Witness Paton's revised testimony and exhibits reflect the use of an 82% system nuclear capacity factor to determine the fuel factor in this proceeding. On May 2, 1995, Duke filed for approval a Stipulation between CUCA, the Public Staff and Duke wherein the parties agreed to support the position contained in Duke's revised exhibits. No other party contested the use of an 82% nuclear capacity factor in this proceeding.

Based upon the agreement of the Company, the Public Staff and CUCA as to the appropriate numbers, and noting the absence of evidence presented to the contrary, the Commission concludes that the level of per book sales and generation are reasonable and appropriate for use in this proceeding.

Based upon the performance of the Duke system and the Stipulation entered into by the parties, the Commission concludes that the 82% nuclear capacity factor and its associated generation of 36,478,085 mWh, is reasonable and appropriate for determining the appropriate fuel costs in 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.

Witness Paton decreased total per book test period sales by 2,951,062 mWh. This adjustment is the sum of adjustments for customer growth, weather, and Catawba retained generation of 529,951 mWh, 1,083,899 mWh, and negative 4,564,912 mWh, respectively. The level of Catawba retained generation is associated with the system nuclear capacity factor of 82%.

The Public Staff and CUCA accepted witness Paton's adjustment for customer growth, weather normalization and Catawba retained generation.

The Commission concludes that the adjustments for customer growth of 529,951 mWh, and weather normalization of 1,083,899 mWh, and Catawba retained generation of a negative 4,564,912 mWh as presented by the Company and reviewed and accepted by the Public Staff and CUCA, are reasonable and appropriate for use in this proceeding. Therefore, the Commission concludes that the per book test period system sales of 72,895,076 mWh should be decreased by 2,951,062 resulting in an adjusted test period sales level of 69,944,014 mWh which 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.

Witness Paton made an adjustment of a negative 2,972,851 mWh to per book generation for adjustments relating to weather normalization, customer growth and Catawba retained generation, based on an 82% normalized system nuclear capacity factor and, therefore, calculated an adjusted generation level of 77,145,863 mWh.

Witness Lam and witness O'Donnell reviewed and accepted witness Paton's adjusted generation level of 77,145,863 mWh.

The Commission concludes, after finding a system nuclear capacity factor of 82% reasonable and appropriate in Finding of Fact No. 6 and adjustments to sales for customer growth, weather and Catawba retained generation reasonable and appropriate in Finding of Fact No. 7, that the adjustment to per book system generation of a negative 2,972,851 mWh and the resulting adjusted test period generation level of 77,145,863 mWh are both reasonable and appropriate for use in this proceeding. Total generation is broken down by type as follows:

	mWh
Coal	35,047,791
Oil & Gas	39,003
Light Off	-
Nuclear	36,478,085
Hydro	1,731,400
Net Pumped Storage	(518,664)
Purchased Power	595,680
Interchange	191,830
Catawba Contract Purchases	3,580,738
Total Generation	77,145,863

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-15

The evidence for these findings of fact is found in the testimony and exhibits of Company witness Paton, the affidavit of Public Staff witness Lam, the testimony and exhibits of CUCA witness O'Donnell and the Stipulation between the parties.

Witness Paton's testimony recommended fuel prices as follows: (1) coal price of $15.30/mWh; (2) oil and gas price of $73.71/mWh; (3) light-off fuel expense of $3,483,000; (4) nuclear fuel price of $5.45/mWh; (5) purchased power fuel price of $13.11/mWh; (6) interchange fuel price of $38.16/mWh; and (7) Catawba Contract purchase fuel price of $5.36/mWh.

Witnesses Lam and O'Donnell accepted Ms. Paton's recommended fuel expense and fuel prices.

Therefore, the Commission concludes that adjusted test period fuel expenses of $727,406,000 and the fuel factor of 1.0400¢/kWh, excluding gross receipts tax, as Stipulated to by the parties are reasonable and appropriate for use in this proceeding. This approved base fuel factor is .0632¢/kWh lower than the base fuel factor of 1.1032¢/kWh set in the Company's last general rate case, Docket No. E-7, Sub 487.

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 Public Staff witness Lam and CUCA witness O'Donnell accepted the Company's calculation of over-recovered fuel cost and the resulting experience modification factor (EMF) and associated interest expense as set forth on Paton Exhibit 6. The $42,705,000 over-recovered fuel revenue is divided by the adjusted North Carolina jurisdictional sales of 46,284,179 mWh to arrive at an EMF decrement of .0923¢/kWh, excluding gross receipts tax. The Commission concludes that there being no controversy, the EMF decrement of .0923¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding.

Company witness Paton determined the amount of interest calculated at an annual rate of 10% applicable to the EMF decrement to be $6,406,000. This calculation was reviewed and accepted by witnesses Lam and O'Donnell.

Based upon the agreement of the parties as to the rate and amount of interest on the EMF decrement, and noting the absence of any evidence to the contrary, the Commission concludes that $6,406,000 is the appropriate amount of interest expense to use to determine the EMF interest decrement.

Based upon the previously approved adjusted level of North Carolina jurisdictional sales of 46,284,179 mWh and the $6,406,000 of EMF interest expense, the Commission concludes that the EMF interest decrement rider should be set at .0138¢/kWh.

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 .9339¢/kWh, excluding gross receipts tax, as shown in the following table:

Description	Adjusted Generation (mWh)	Fuel Price $/mWh	Fuel Dollars (000's)
Coal	35,047,791	15.30	$536,231
Oil and gas	39,003	73.71	2,875
Light-Off		-	3,483
Nuclear	36,478,085	5.45	198,752
Hydro	1,731,400	-	0
Net Pumped Storage	(518,664)	-	0
Purchased Power	595,680	13.11	7,811
Interchange Purchases	191,830	38.16	7,321
Catawba Contract Purchases	3,580,738	5.36	19,193
TOTAL	77,145,863		775,666
Less:			
Intersystem Sales	(2,828,237)		(48,260)
Line Loss	(4,373,612)		0
System MWH Sales	69,944,014		$727,406
Fuel Factor ¢/kWh			1.0400¢
EMF ¢/kWh			(0.0923)
EMF Interest ¢/kWh			(0.0138)
FINAL FUEL FACTOR ¢/KWH			0.9339¢

IT IS, THEREFORE, ORDERED:

1. That the Stipulation between the Carolina Utility Customers Association, Inc., the Public Staff - North Carolina Utilities Commission and Duke Power Company regarding the system nuclear capacity factor to be used in this proceeding, filed with the Commission on May 2, 1995, is hereby approved.

2. That, effective for service rendered on and after July 1, 1995, Duke shall adjust the base fuel cost approved in Docket No. E-7, Sub 487, in its North Carolina rates by an amount equal to a .0632¢/kWh decrease (excluding gross receipts tax) and further that Duke shall adjust the resultant approved fuel cost by decrements of .0923¢/kWh and .0138¢/kWh for the EMF and EMF interest, respectively. The EMF and EMF interest decrements are to remain in effect for a 12-month period beginning July 1, 1995.

3. That Duke shall file appropriate rate schedules and riders with the Commission in order to implement these approved fuel charge adjustments no later than 10 days from the date of this Order.

4. That Duke shall notify its North Carolina retail customers of these fuel adjustments 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 7th day of June, 1995.

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

DOCKET NO. E-7, Sub 559

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 GIVEN that the North Carolina Utilities Commission entered an Order on June 5, 1995, after public hearings, approving a fuel charge net rate decrease of approximately $29 million on an annual basis in the rates and charges paid by the retail customers of Duke Power Company in North Carolina. The net rate decrease will be effective for service rendered on and after July 1, 1995. The rate decrease was ordered by the Commission after review of Duke's fuel expense during the 12-month period ended December 31, 1994, 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 62¢ for each 1,000 kWh of usage per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of June 1995.

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

DOCKET NO. E-22, SUB 355

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Power Pursuant to N.C.G.S. § 62-133.2 and NCUC Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities	)))))	ORDER APPROVING FUEL CHARGE ADJUSTMENT

Heard: Tuesday, November 21, 1995, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611

Before: Commissioner Allyson K. Duncan, Presiding; Commissioners Jo Anne Sanford and Judy Hunt

Appearances:

For North Carolina Power:

James S. Copenhaver, North Carolina Power, P.O. Box 26666, Richmond, Virginia 23261

For the Public Staff:

Antoinette R. Wike, Chief Counsel and A. W. Turner, Jr., Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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

Ralph McDonald, Bailey and Dixon, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865

For the Carolina Utility Customers Association, Inc. (CUCA):

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon, & Ervin, P.A., One Northsquare, Post Office Drawer 1269, Morganton, North Carolina 28680-1269

BY THE COMMISSION: N.C.G.S. § 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel component established in the last general rate case. The statute further requires that additional

hearings be held on an annual basis, but only one hearing for each utility may be held within 12 months of the last general rate case. In addition to the increment or decrement to reflect changes in the cost of fuel and the fuel component of purchased power, the Commission is required to incorporate in its fuel cost determination the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test year. The last general rate case order for North Carolina Power (or "the Company") was issued by the Commission on February 26, 1993, in Docket No. E-22, Sub 333. The last order approving a fuel charge adjustment for the Company was issued on December 19, 1994, in Docket No. E-22, Sub 348.

North Carolina Power filed its fuel adjustment application and supporting testimony and exhibits in accordance with NCUC Rule R8-55 and N.C.G.S. § 62-133.2 on September 15, 1995. North Carolina Power filed testimony and exhibits for the following witnesses: Thomas H. Christian - Director, Corporate Accounting; Daniel J. Green - Director, Planning Services; and Glenn A. Pierce - Regulatory Specialist, Rate Design. The Company also filed information and workpapers required by NCUC Rule R8-55(d).

On September 19, 1995, the Commission issued an Order Scheduling Hearing, Requiring Filing of Testimony and Requiring Public Notice of this proceeding. The Commission issued an Order Rescheduling Hearing on September 29, 1995 in response to a Motion to Continue Hearing filed by the Public Staff on September 27, 1995.

The Carolina Industrial Group for Fair Utility Rates (CIGFUR) filed a Petition to Intervene on October 2, 1995, which petition was granted by Order dated October 4, 1995. The Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene dated October 10, 1995, which petition was granted by Order dated October 16, 1995.

On November 3, 1995, the Company filed a Notice of Affidavits, which indicated that the Company would enter its testimony (as modified in the affidavits) into the record by affidavit at the hearing in the absence of an objection from any party. No such objection was raised by any party.

On November 6, 1995, the Company filed a Joint Stipulation of North Carolina Power and the Public Staff which recommended that an additional $485,769 be credited to jurisdictional fuel expenses for the test year ended June 30, 1995. This adjustment will result in an additional credit of $558,634 (including interest) being flowed through the Experience Modification Factor (EMF) during the rate year ending December 31, 1996.

On November 7, 1995, the Public Staff filed an affidavit of Kerim L. Powell that recommended approval of the Company's fuel adjustment filing, as modified by the Joint Stipulation. The Public Staff also filed a Notice of Affidavit, indicating that the Public Staff would enter the affidavit of Mr. Powell into the record at the hearing in the absence of an objection from any party. No objection was raised by any party.

The matter came on for hearing as scheduled on Tuesday, November 21, 1995. The prefiled testimony of the Company's witnesses were admitted into the record. The affidavit of Public Staff witness Powell and the exhibits of all of the witnesses were admitted into evidence.

Based upon the foregoing, the prefiled testimony and affidavits of Company witnesses Christian, Green and Pierce and Public Staff witness Powell, the Joint Stipulation, and the entire record, the Commission makes the following:

FINDINGS OF FACT

1. North Carolina Power is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. The Company is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in northeastern North Carolina. The Company has its principal offices and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding is the twelve months ended June 30, 1995.

3. The Company's fuel and power purchasing practices during the test period were reasonable and prudent.

4. The fuel proceeding test period per book system sales are 63,165,932 MWh.

5. The fuel proceeding test period per book system generation is 66,906,697 MWh which includes various energy generations as follows:

	MWh
Coal	25,685,134
Combustion Turbine	2,574,754
Heavy Oil	1,040,267
Natural Gas	26,026
Nuclear	24,554,602
Hydro	2,268,892
Pumped Storage	(2,208,803)
Power Transactions	
NUG	10,177,313
Other	4,657,129
Sales for Resale	(1,868,617)

6. The normalized system nuclear capacity factor which is appropriate for use in this proceeding is 77.03%, which is the latest NERC five year average.

7. The adjustment to system test period sales of 2,931,679 MWh results from a decrease of 70,747 MWh associated with customer growth, 1,903,119 MWH of additional customer usage, an increase of 1,172,763 MWh associated with weather normalization, and a decrease of 73,456 MWh from the restatement of non-jurisdictional ODEC sales from production level to sales level, added to fuel test period per book system sales of 63,165,932 MWh.

8. The adjusted test period system generation for use in this proceeding is 70,060,893 MWh which includes various energy generations as follows:

	MWh
Coal	28,657,454
Combustion Turbine	2,872,693
Heavy Oil	1,160,626
Natural Gas	29,021
Nuclear	22,598,476
Hydro	2,268,892
Pumped Storage	(2,208,803)
Power Transactions	
NUG	11,355,078
Other	5,196,073
Interruptible Sales	(1,868,617)

9. The appropriate fuel prices for use in this proceeding are as follows:

A. The coal fuel price is $13.74/MWh.
B. The nuclear fuel price is $4.34/MWh.
C. The heavy oil fuel price is $20.61/MWh.
D. The natural gas price is $27.37/MWh.
E. The internal combustion turbine (IC) fuel price is $19.48/MWh.
F. The fuel price for other power transactions is $18.68/MWh.
G. Hydro, pumped storage, and non-utility generation (NUG) have a zero fuel price.

10. The adjusted system fuel expense for the July 1, 1994, to June 30, 1995 test period for use in this proceeding is $658,183,196.

11. The appropriate fuel cost rider (Rider A) for this proceeding is a decrement of 0.095¢/kWh, excluding gross receipts tax; 0.098¢/kWh decrement including gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense over-collection is $602,918. The adjusted North Carolina jurisdictional test year sales are 3,055,434 MWh.

13. An additional $485,769 should be credited to jurisdictional fuel expenses for the test year as recommended in the Joint Stipulation between North Carolina Power and the Public Staff. The total jurisdictional fuel expense over-collection for use in establishing the EMF in this proceeding is $1,088,687.

14. Interest expense associated with the over-collection of test period fuel revenues amounts to $163,303, based upon a 10% annual interest rate.

15. The Company's Experience Modification Factor (EMF) and interest combine for a decrement of 0.041¢/kWh, excluding gross receipts tax; 0.042¢/kWh decrement including gross receipts tax.

16. The final fuel factor is 0.955¢/kWh, excluding gross receipts tax; 0.987¢/kWh, including gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

N.C.G.S. § 62-133.2(c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending June 30 as the test period for North Carolina Power. The Company's filing on September 15, 1995, was based on the 12 months ended June 30, 1995.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each utility to file a Fuel Procurement Practices Report at least once every ten years, plus each time the utility's fuel procurement practices change. Procedures related to North Carolina Power's procurement of fossil and nuclear fuels were filed in Docket No. E-22, Sub 335, on April 2, 1993. 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 supporting these findings of fact is found in the testimony and exhibits of Company witnesses Christian and Green and the affidavit of Public Staff witness Powell.

Company witnesses Christian and Green and Public Staff witness Powell testified with regard to the July 1, 1994 to June 30, 1995 test period sales, test period generation, and normalized nuclear capacity factor. Company witnesses Christian and Green testified that the test period levels of sales and generation were 63,165,932 MWh and 66,906,697 MWh, respectively. The test period per book system generation includes various energy generations as follows:

	MWh
Coal	25,685,134
Combustion Turbine	2,574,754
Heavy Oil	1,040,267
Natural Gas	26,026
Nuclear	24,554,602
Hydro	2,268,892
Pumped Storage	(2,208,803)
Power Transactions	
NUG	10,177,313
Other	4,657,129
Sales for Resale	(1,868,617)

Public Staff witness Powell accepted the levels of sales and generation as proposed by the Company for use in his fuel computation.

Company witness Green testified that the Company achieved a system nuclear capacity factor of 83.7% for the July 1, 1994 to June 30, 1995 test period. Witness Green normalized the system nuclear capacity factor to a level of 77.03%, which is the latest North American Electric Reliability Council's (NERC) five-year nuclear capacity factor. Witness Powell agreed that the nuclear capacity factor of 83.7% as achieved by the Company should be normalized to the latest NERC five-year pressurized water reactor average of 77.03%. No other party offered testimony on the normalized nuclear capacity factor. In the absence of evidence presented to the contrary, the Commission concludes that the July 1, 1994 to June 30, 1995 test period levels of sales and generation are reasonable and appropriate for use in this proceeding. The Commission further concludes that the 77.03% normalized system nuclear capacity factor is reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Pierce.

Witness Pierce testified that, consistent with Commission Rule R8-55(d)(2), the Company's system sales data for the 12-month period ending June 30, 1995 was adjusted by jurisdiction for weather normalization, customer growth, and increased usage. Witness Pierce adjusted total Company sales by 2,931,679 MWh. This adjustment is the sum of adjustments for customer growth, increased usage, and weather normalization of (70,747) MWh, 1,903,119 MWh and 1,172,763 MWh, respectively, and a decrease of 73,456 MWh from the restatement of non-jurisdictional ODEC sales from production level to sales level. The Public Staff reviewed and accepted these adjustments.

Based on the foregoing evidence, the Commission concludes that the adjustments due to customer growth, increased usage, and weather normalization of (70,747) MWh, 1,903,119 MWh, and 1,172,763 MWh, respectively, and a decrease of 73,456 MWh from restatement of non-jurisdictional ODEC sales from production level to sales level are reasonable and appropriate adjustments for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witnesses Green and Pierce.

Company witness Pierce presented an adjustment to per book MWh generation for the 12-month period ended June 30, 1995, due to weather normalization, customer growth, and increased usage of 3,154,196 MWh, to arrive at witness Green's adjusted generation level of 70,060,893 MWh. Witness Powell reviewed and accepted witness Pierce's adjustment to per book MWh generation for the 12-month period ended June 30, 1995, due to weather normalization, customer growth and increased usage. Witness Powell also accepted witness Green's generation level of 70,060,893 MWh which includes various energy generations as follows:

	MWh
Coal	28,657,454
Combustion Turbine	2,872,693
Heavy Oil	1,160,626
Natural Gas	29,021
Nuclear	22,598,476
Hydro	2,268,892
Pumped Storage	(2,208,803)
Power Transactions	
NUG	11,355,078
Other	5,196,073
Interruptible Sales	(1,868,617)

Based on the foregoing evidence and with no other evidence to the contrary, the Commission concludes that the adjustment of 3,154,196 MWh is reasonable and appropriate for use in this proceeding, and that the resultant adjusted fuel generation level of 70,060,893 MWh is also reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-11

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witnesses Green and Pierce and the affidavit of Public Staff witness Powell.

Witness Green testified that the Company's proposed fuel factor is based on June 1995 fuel prices as follows: (1) coal price of $13.74/MWh; (2) nuclear fuel price of $4.34/MWh; (3) heavy oil price

of $20.61/MWh; (4) natural gas price of $27.37/MWh; (5) internal combustion turbine price of $19.48/MWh; (6) other power transactions price of $18.68/MWh; and (7) hydro, pumped storage, and non-utility generation at a zero fuel price. Witness Powell accepted witness Green's fuel prices.

In the absence of any evidence to the contrary, the Commission concludes that the fuel prices recommended by Company witness Green and accepted by Public Staff witness Powell are reasonable and appropriate for use in this proceeding.

The Commission concludes that adjusted fuel test period expenses of $658,183,196 and the fuel cost rider (Rider A) decrement of 0.095¢/kWh, excluding gross receipts tax (0.098¢/kWh decrement with gross receipts tax), is reasonable and appropriate for use in this proceeding. No party opposed this calculation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-15

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Pierce, the affidavit of Public Staff witness Powell and the Joint Stipulation between North Carolina Power and the Public Staff.

North Carolina General Statute § 62-133.2(d) requires the Commission to "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, Rule R8-55(c)(5) provides: "Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate."

Company witness Pierce and Public Staff witness Powell testified that the Company over-collected its fuel expense by $602,918 during the test year ending June 30, 1995. Further, witness Pierce testified that the adjusted North Carolina jurisdictional fuel clause test year sales are 3,055,434 MWh.

In addition, the Joint Stipulation embodies an agreement of North Carolina Power and the Public Staff to credit an additional $485,769 to jurisdictional fuel expenses for purposes of establishing the EMF in this proceeding. This adjustment reflects a resolution of issues arising from the Company's renegotiation of its 1988 coal transportation contract with CSX Transportation, Inc. The Joint Stipulation was supported by the affidavit of Public Staff witness Powell, was not opposed by any party, and is adopted by the Commission.

The total jurisdictional fuel expense over-collection for use in establishing the EMF in this proceeding is $1,088,687. The Joint Stipulation reflects calculated interest for this over-collection of $163,303 in accordance with Rule R8-55(c)(5) using a Commission approved 10% interest rate.

The Company is proposing to refund the fuel revenue over-collection and associated interest to the customers over a 12-month period beginning January 1, 1996, using the adjusted North Carolina retail sales of 3,055,434 MWh as determined by the Company and accepted by the Public Staff.

The Commission concludes that the fuel revenue over-collection and associated interest of $1,088,687 and $163,303, respectively, are appropriate for use in this proceeding and should be refunded to the customers over a 12-month period. No party opposed these calculations. This refund should be in the form of a separate EMF rider - Rider B.

The $1,088,687 over-collected fuel revenue plus the $163,303 of interest was divided by the adjusted North Carolina jurisdictional sales of 3,055,434 MWh to arrive at the Company's proposed EMF decrement of 0.041¢/kWh, excluding gross receipts tax (0.042¢/kWh including gross receipts tax). Public Staff witness Powell accepted this proposed EMF decrement. The Commission concludes that there being no controversy, the proposed EMF decrement of 0.041¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding, and shall become effective on January 1, 1996, and shall expire one year from that date.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence supporting this finding of fact is cumulative and is contained in the testimony and exhibits of Company witnesses Christian, Pierce and Green, the affidavit of Public Staff witness Powell and the Joint Stipulation between North Carolina Power and the Public Staff.

Based upon our prior findings in this proceeding, the Commission finds that the final net fuel factor, including gross receipts tax, approved for usage in this case is 0.987¢/kWh.

The fuel calculation incorporating these conclusions is shown in the following table:

	Adjusted Generation (MWh)	Fuel Price $/MWh	Fuel Dollars (000's)
Coal	28,657,454	13.74	393,753
Nuclear	22,598,476	4.34	98,077
Heavy Oil	1,160,626	20.61	23,919
Natural Gas	29,021	27.37	794
Combustion Turbine	2,872,693	19.48	55,960
Hydro	2,268,892	-0-	-0-
Pumped Storage	(2,208,803)	-0-	-0-
Power Transactions			
NUG	11,355,078	-0-	31,808
Other	5,196,064	18.68	97,062
Sales for Resale	(1,868,617)	-	(43,191)
System MWh Generation & Total Fuel Cost	70,060,893		658,182
System MWh Sales at Sales Level	66,097,611		
Fuel Factor (¢/kWh) Excluding Gross Receipts Tax	0.996		
Fuel Factor (¢/kWh) Including Gross Receipts Tax	1.029		

Fuel Factor (¢/kWh) Including Gross Receipts Tax	1.029
Base Fuel Factor (¢/kWh)	(1.127)
Fuel Cost/Rider A (¢/kWh)	(0.098)

	Effective 1/1/96 (Including Gross Receipts Tax)
Base Fuel Factor ¢/kWh	1.127
EMF/Rider B ¢/kWh	(0.042)
Fuel Cost/Rider A ¢/kWh	(0.098)
FINAL FUEL FACTOR ¢/kWh	0.987

IT IS, THEREFORE, ORDERED as follows:

1. That effective beginning with usage on and after January 1, 1996, North Carolina Power shall adjust the base fuel component in its North Carolina retail rates approved in Docket No. E-22, Subs 333 and 335, by a decrement (Rider A) of 0.095¢/kWh (excluding gross receipts tax).

2. That an EMF Rider decrement (Rider B) of 0.041¢/kWh (excluding gross receipts tax) shall be instituted and remain in effect for usage from January 1, 1996, until December 31, 1996.

3. That North Carolina Power shall notify its North Carolina retail customers of the rate adjustments approved in this proceeding by including the "Notice to Customers of Rate Increase" attached to this Order as Appendix A as a bill insert with customer bills rendered during the next regularly scheduled billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1995.

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

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-22, SUB 355

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Power	)	
Pursuant to N.C.G.S. § 62-133.2 and	)	NOTICE TO CUSTOMERS
NCUC Rule R8-55 Relating to Fuel Charge	)	OF RATE INCREASE
Adjustments for Electric Utilities	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on December 8, 1995, after public hearings, approving an approximate $764,000 increase in the annual rates and charges paid by the retail customers of North Carolina Power in North Carolina. The rate increase will be effective beginning with the next regularly scheduled monthly billing cycle. The rate increase was ordered by the Commission after a review of North Carolina Power's fuel expenses during the 12-month test period ended June 30, 1995, and represents actual changes experienced by the Company with respect to its reasonable costs of fuel and the fuel component of purchased power during the test period.

For a typical residential customer using 1,000 kWh per month, the Commission's Order will result in a net rate increase of approximately $0.25 per month from the previous effective rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December, 1995.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. G-38
DOCKET NO. G-9, SUB 357

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-38

In the Matter of Application of Frontier Utilities of North Carolina, Inc., for a Certificate of Public Convenience and Necessity to Construct, Own and Operate an Intrastate Pipeline and Local Distribution System and for the Establishment of Rates	) ORDER GIVING OPTION OF CONDITIONAL CERTIFICATE TO PIEDMONT
Docket No. G-9, Sub 357	)
In the Matter of Application of Piedmont Natural Gas Company, Inc., for a Certificate of Public Convenience and Necessity to Provide Natural Gas Service in Surry, Watauga, Wilkes and Yadkin Counties or, in the Alternative, for a Declaration that Piedmont's Existing Certificates of Public Convenience and Necessity Authorize It to Construct the Necessary Facilities to Permit It to Extend Natural Gas Service to Said Counties	)

HEARD IN: Wilkesboro Community Center, 1241 School Street, Wilkesboro, North Carolina, on Thursday, December 1, 1994.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 31, 1995, through Friday, February 3, 1995, Wednesday, February 8, 1995, and Tuesday, March 7, 1995.

BEFORE: Chairman Hugh A. Wells, Presiding; Commissioners William W. Redman, Jr., Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt, and Judy Hunt

APPEARANCES:

For Frontier Utilities of North Carolina, Inc.:

James P. Cain and M. Gray Styers, Jr., Attorneys at Law, Petree Stockton, L.L.P., 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Attorney at Law, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For 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 28680-1269

For the Using and Consuming Public:

Gisele L. Rankin and Gina C. Holt, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

J. Mark Payne and Margaret A. Force, Assistant Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 23, 1994, Frontier Utilities of North Carolina, Inc., (Frontier) filed an application for a certificate of public convenience and necessity to construct, own and operate an intrastate pipeline and local distribution system and for the establishment of rates. Frontier requested authority to serve Surry, Wilkes and Yadkin Counties. Frontier amended its application on October 12, 1994, to include Watauga County.

On September 27, 1994, Piedmont Natural Gas Company, Inc., (Piedmont) filed an application for a certificate of public convenience and necessity to provide natural gas service to Surry, Watauga, Wilkes and Yadkin Counties (hereinafter referred to as the Four-County area) or, in the alternative, for a declaration that Piedmont's existing certificates of public convenience and necessity authorize it to construct the necessary facilities to permit it to extend natural gas service to said counties under the "contiguous" proviso in G.S. § 62-110(a). Piedmont's application indicated that a combination of conventional financing and funds from an expansion fund makes the construction into the four counties economically feasible. Piedmont contemporaneously filed an amended petition for the establishment of an expansion fund and for the deposit of certain supplier refunds into the expansion fund in Docket No. G-9, Sub 328. In that filing, Piedmont cited the Four-County area as a potential project for the use of expansion fund financing.

The Commission, by Order dated October 21, 1994, consolidated the two applications for hearing, required public notice and established intervention and filing deadlines. A public hearing in Wilkesboro was set for Thursday, December 1, 1994, at 9:30 a.m., with the hearing continuing in Raleigh on Tuesday, January 31, 1995.

The Commission invited briefs on the issue of whether Piedmont was entitled to extend natural gas service into the Four-County area under its existing certificates as territory contiguous to territory already occupied by it. By Order dated December 6, 1994, the Commission concluded that there was

considerable "unoccupied" territory between those parts of Caldwell, Davie, and Forsyth Counties that are occupied by Piedmont and the unserved Four-County area. The Commission therefore denied Piedmont's alternative claim for authority to serve the Four-County area pursuant to the "contiguous" proviso of G.S. § 62-110(a).

The following parties intervened in the consolidated proceeding: Public Service Company of North Carolina, Inc. (Public Service), Carolina Utility Customers Association, Inc. (CUCA), Pennsylvania & Southern Gas Company, a Division of NUI Corporation (Penn & Southern), and the Attorney General. Public Service and Penn & Southern did not participate in the hearing.

A public hearing was held as scheduled in Wilkesboro, North Carolina, on December 1, 1994. Forty-eight persons testified as public witnesses. The matter came on for hearing in Raleigh on January 31, 1995. Seven public witnesses testified at this hearing.

Frontier then presented the testimony of the following witnesses: a panel of Robert J. Oxford, Chairman of the Board and President of Frontier and Industrial Gas Services, Inc., and Steven Shute, an officer and shareholder of Frontier and a professional engineer specializing in rural gas utilities through his consulting company, Pipeline Solutions, Inc.; a panel of Richard W. Remley, recently retired Senior Vice president of Greeley Gas Company in Colorado and consultant for Frontier, and E. Scott Heath, President of Heath and Associates, Inc., a management and engineering consulting firm specializing in the natural gas industry; a panel of John P. Schauerman, Vice President of Strategic Planning for ARB Inc., and James A. Anderson, Senior Vice President of Sutro & Company, Inc.; and Ben Hadden, Director of Transportation Services for Appalachian Gas Sales (AGS), a subsidiary of the Eastern Group, who adopted the pre-filed testimony of Lisa Yoho, also with AGS.

Piedmont presented the testimony of a panel consisting of the following: John H. Maxheim, Chairman of the Board, President and Chief Executive Officer of Piedmont; Ware F. Schiefer, Executive Vice President of Piedmont; and Ray B. Killough, Piedmont's Senior Vice President of Operations.

The Public Staff presented the testimony of a panel consisting of the following: Eugene H. Curtis, Jr., Director of the Natural Gas Division of the Public Staff, James G. Hoard, Supervisor of the Natural Gas Section in the Accounting Division of the Public Staff, and Thomas W. Farmer, Jr., Financial Analyst with the Economic Research Division of the Public Staff.

At the conclusion of the Public Staff's initial testimony, the Commission ordered that the Public Staff would prefile supplemental testimony setting forth its recommendations on February 21, 1995, and that the hearing would be reconvened for the purpose of receiving that testimony on March 7, 1995.

On March 6, 1995, Piedmont filed supplemental rebuttal testimony. The hearing reconvened as scheduled on March 7, 1995, at which time the Public Staff presented its testimony. The Commission

sustained Frontier's objection to the majority of Piedmont's supplemental rebuttal testimony. The Piedmont testimony deemed to be rebuttal of the Public Staff's recommendation was allowed. The Commission then recessed the hearing.

On March 9, 1995, the Commission issued its Order Inviting Briefs and Proposed Orders. The Commission invited all parties to file proposed orders dealing with how the Commission should proceed with the disposition of the two applications in these dockets. In addition, the Commission invited the parties to file briefs addressing the issue of the Commission's authority to issue a certificate of public convenience and necessity subject to revocation if certain conditions and deadlines are not met.

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

FINDINGS OF FACT

1. Frontier is a North Carolina corporation formed to provide natural gas service in Surry, Watauga, Wilkes, and Yadkin Counties. It is owned by Frontier Utilities, Inc., a Colorado company owned by Industrial Gas Services, Inc. (IGS) (45% ownership), ARB Corporation (50%), and Pipeline Solutions, Inc. (5%), which was created to pursue opportunities in the midwestern and eastern parts of the United States to develop rural natural gas systems where natural gas is not available.

2. Piedmont is a North Carolina corporation that has been engaged in the business of transporting, distributing and selling gas for more than forty years. Piedmont is a public utility under the laws of this State, and its public utility operations in North Carolina are subject to the jurisdiction of this Commission. Piedmont is furnishing natural gas to customers in 42 cities and towns located in 14 counties in North Carolina. Piedmont presently serves approximately 308,000 customers in North Carolina, 89,000 customers in South Carolina and 111,000 customers in Tennessee.

3. Both Frontier and Piedmont have properly applied to this Commission for a certificate of public convenience and necessity to provide natural gas service to Surry, Watauga, Wilkes, and Yadkin Counties; the proceedings regarding these two applications were consolidated for reasons of administrative efficiency; all required notices were given and the parties and members of the public who desired to appear were present at the public hearings.

4. Frontier's proposed project includes 144 miles of transmission mains and 718 miles of distribution mains and is estimated to cost $46.6 million. At the end of its first five years of operation, Frontier expects to serve 10,060 residential customers, 2,090 commercial customers, 500 poultry farms, and 20 industrial customers, with annual volumes totaling 4.5 million dekatherms (dts). Frontier intends to finance its proposed project with capital raised from investors using an initial capital structure of 25% equity and 75% debt, the equity portion of which will increase to a more conservative level within five to eight years of initial operation.

5. Piedmont's proposed project includes 118.5 miles of transmission mains and 215 miles of distribution mains and is estimated to cost $56.6 million. At the end of the first five years of operation, Piedmont expects to serve 4,705 residential customers, 1,660 commercial customers, 111 poultry farms, and 32 industrial customers, with annual volumes totaling 3 million dts. Piedmont intends to finance a significant portion of its proposed project with an expansion fund that it has requested be established pursuant to G. S. § 62-158. Piedmont has filed an application for creation of an expansion fund in Docket No. G-9, Sub 328, and Piedmont has filed an application for approval to use expansion fund monies to extend facilities into the Four-County area in Docket No. G-9, Sub 362.

6. There is a public demand and need for natural gas service in Surry, Watauga, Wilkes and Yadkin Counties and no natural gas is now available in the Four-County area.

7. Factors favorable to Piedmont include its lower rates, its existing large customer base, and its experience and proven record in providing safe and reliable utility service in the State.

8. It is not appropriate to grant a certificate premised on extending service over a 5-year period. Service should be extended to the Four-County area on an expedited basis with construction of the entire transmission system and the core distribution systems in the communities of Wilkesboro, North Wilkesboro, Yadkinville and Boone completed within 24 months from the date a certificate is issued assuming no appeal, or from the date of the final appellate decision if there is an appeal, and distribution systems in the communities of Jonesville, Arlington, Elkin, Dobson and Mt. Airy completed within 36 months from such date.

9. It is not appropriate to grant a certificate premised on the use of expansion fund financing where another applicant for a certificate to serve the same area has offered credible evidence that adequate service can be provided without such non-traditional financing.

10. Piedmont should be given the option of accepting a certificate to serve the Four-County area with certain conditions. These conditions are designed to ensure that facilities are constructed to adequately serve the area on a timely basis without the use of expansion fund financing. The conditions are (1) that no expansion fund monies shall be requested or used for the facilities hereinafter described, (2) that facilities shall be constructed according to the design proposed by Piedmont in Docket No. G-9, Sub 362, (3) that Piedmont shall complete construction of its entire transmission system and its core distribution systems in the communities of Wilkesboro, North Wilkesboro, Yadkinville and Boone within 24 months from the date a certificate is issued assuming no appeal, or from the date of the final appellate decision if there is an appeal, and the distribution systems in the communities of Jonesville, Arlington, Elkin, Dobson and Mt. Airy within 36 months from such date, (4) that Piedmont shall file progress reports every six months during construction, and (5) that Piedmont shall choose to accept a certificate subject to these conditions. If Piedmont chooses to accept the conditional certificate, it shall file a verified pleading in this docket within 20 days signed by its attorney and its chief executive officer stating the above conditions, accepting a certificate subject to these conditions, and committing to comply with these conditions. If Piedmont accepts the conditional certificate, it shall at the same time file a detailed system design, a specific construction budget, and a new construction schedule, all consistent with this Order, in this docket.

11. Both Frontier's application and Piedmont's application shall be held in abeyance at this time. If Piedmont accepts the conditional certificate within 20 days and no appeal is taken, orders will be issued granting a conditional certificate to Piedmont, dismissing Piedmont's application in Docket No. G-9, Sub 362 as moot, and denying Frontier's application. If Piedmont declines the certificate, a further order will be issued in these dockets.

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

The evidence supporting these findings of fact is contained in the verified applications and the testimony filed by the applicants and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact is contained in the verified applications, the Commission's files and records regarding this proceeding, the Commission orders scheduling hearings, and the testimony of witnesses. This finding of fact is essentially informational, procedural and jurisdictional in nature. The Commission conducted public hearings in Wilkesboro, North Carolina, on December 1, 1994, and in Raleigh, North Carolina, beginning on January 31, 1995, to hear from members of the general public and the parties. Fifty-five (55) witnesses from the general public testified.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence in support of this finding is contained in the testimony and exhibits of Frontier witnesses Oxford and Shute and the Public Staff panel.

The evidence indicates that the transmission line proposed by Frontier would originate with a connection to Transco at U.S. Highway 601, approximately four miles southeast of Cooleemee. From the point of connection with Transco, the pipeline would proceed northwest through Rowan, Davie, and Iredell Counties. After crossing these three counties, which are in the service areas of other natural gas utilities, the pipeline would enter Yadkin County and generally follow U.S. Highway 21 to Brooks Cross Roads. The pipeline from Transco to Brooks Cross Roads would be approximately 34 miles in length. At the intersection of U.S. Highways 21 and 421 (at Brooks Cross Roads), the pipeline would separate and proceed in three directions.

One pipeline, approximately 8 miles long, would proceed east along U.S. Highway 421 and serve Yadkinville in Yadkin County. Another pipeline would proceed northwest about 10 miles, generally following U.S. Highway 21 to Elkin and then northeast generally following I-77 and U.S. Highway 601 for about 26 miles to Mount Airy. This pipeline (or laterals from this pipeline) would serve Jonesville and Arlington in Yadkin County, Ronda in Wilkes County, and continue north into Surry County to serve Elkin (a small part of Elkin is also in Wilkes County) and Mount Airy, as well as a number of smaller communities. Although not included in Frontier's application, Frontier's supplemental testimony indicated that it is interested in serving Pilot Mountain in Surry County from this pipeline.

The third proposed pipeline would proceed approximately 24 miles west along U.S. Highway 421 into Wilkes County and serve Wilkesboro, North Wilkesboro and Moravian Falls, as well as a number of smaller communities, and then extend approximately 32 miles further west along U.S. Highway 421 to serve Boone in Watauga County. Although not included in Frontier's application, Frontier's supplemental testimony indicates it is interested also in serving Blowing Rock from this pipeline.

Frontier's witnesses testified that by the end of year five it estimates that service will be provided to approximately 10,060 residential customers, 2,090 commercial customers, 500 poultry farm customers and 20 industrial customers. The total annual volumes sold or transported by the end of year five is estimated to be about 4.5 million dts. Nineteen percent of this total annual volume would be to residential customers, 23% would be to commercial customers, 11% would be to poultry farms, and 47% would be to industrial customers.

The initial rates anticipated for the Four-County area are $6.60/dt with an $8 per month facilities charge for residential customers, $6.40/dt with a $12 per month facilities charge for commercial customers, $6.10/dt with a $15 per month facilities charge for poultry farms, and $1.77/dt for transportation services with a $200 per month facilities charge for service to industrial customers. The rates proposed for approval would be determined at a later date after construction bids have been received and expected customer conversions have been firmed up, but these proposed rates are not expected to be significantly different from the anticipated rates, with the exception of the addition of an interruptible rate for industrial customers.

Frontier testified that the transmission and distribution systems along the primary and secondary roads would be constructed somewhat simultaneously. The transmission system is expected to be complete within the first year following receipt of all necessary approvals and the vast majority of the distribution system is expected to be completed within three years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence to support this finding of fact can be found in the testimony of the Piedmont panel and the Public Staff panel.

The Piedmont witnesses testified that the construction of natural gas facilities into these four counties would not produce a positive return based on Piedmont's existing rates. Piedmont noted that it was presently holding approximately $15 million of supplier refunds and interest for inclusion in an expansion fund to be established under G.S. § 62-158 and that the use of a combination of conventional financing and funds from an expansion fund would make the proposed construction economically feasible.

Piedmont has filed an amended application for the establishment of an expansion fund and the approval of the deposit of certain supplier refunds pursuant to G.S. § 62-158 and Commission Rule R6-82. Piedmont subsequently petitioned the Commission for the use of expansion fund monies to construct facilities in the Four-County area. Piedmont indicated in its testimony that it would consider other non-traditional financing methods.

The Public Staff panel testified that in response to data requests, Piedmont had indicated it intends to install approximately 118 miles of transmission lines at a cost of $43.5 million. Further, these data requests indicated that Piedmont expects 50.5 miles of 12" transmission lines through Yadkin County and into Wilkes County and 7 miles of 6" laterals in these two counties to be in service by October 31, 1996; 34 miles of 10" pipe into Watauga County to be in service by October 31, 1997; and 26.5 miles of 8" pipe into Surry County to be in service by October 31, 1998. After that, construction to other areas, including Pilot Mountain, Boonville, and Blowing Rock, would be based on customer commitments.

With regard to distribution facilities, the Public Staff panel testified that in response to data requests, Piedmont had indicated it intends to complete the major construction of its core distribution system in the communities of Wilkesboro, North Wilkesboro, Yadkinville, and Boone within 24 months of receiving a certificate and in the communities of Jonesville, Arlington, Elkin, Dobson and Mt. Airy within 30 to 60 months. They also testified the data responses indicate that Piedmont intends to install approximately 150 miles of core distribution system (including service lines) at a cost of $13.1 million. After the core distribution system is in place within each community, the system will be expanded using Piedmont's normal extension procedures. Piedmont changed its estimate of the number of miles of distribution mains it would install from 150 miles to 215 miles on cross-examination.

The Public Staff panel testified further that in response to data requests, Piedmont had indicated it intends to construct 18 miles of core distribution system by October 31, 1996. These 18 miles of distribution lines would be composed of 4.7 miles for Yadkinville and 13.3 miles for Wilkesboro and North Wilkesboro. The response also indicated that approximately 13 miles of distribution system would be constructed in Watauga County by October 31, 1997; 11.8 miles of distribution lines would be built in Elkin, Arlington and Jonesville and 2.4 miles in Dobson by October 31, 1998; 11.8 miles in Mt. Airy by October 31, 1998; and 9.3 miles in Mt. Airy by October 31, 1999. After this initial construction, additional construction of pipe larger than 2" would be based on customer commitments and the results of Piedmont's feasibility analyses.

The evidence further indicated that barring circumstances beyond its control, Piedmont believes it can complete the major construction in Wilkes, Yadkin, and Watauga Counties within 24 months of receiving a certificate and provide gas service to Surry County within 30 to 60 months. Piedmont estimates that it will cost approximately $56.6 million to construct the transmission and core distribution systems.

It appears Piedmont proposes to provide service to approximately 4,705 residential customers, 1,660 commercial customers, 111 poultry farm customers and 32 industrial customers by the end of the fifth year of operations. The total annual volumes sold or transported by the end of year five is estimated to be about 3 million dts. Thirteen percent of this total annual volume would be to residential customers, 20% would be to commercial customers, 4% would be to poultry farms, and 63% would be to industrial customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact can be found in the testimony of the public witnesses at the hearing in Wilkesboro on December 1, 1994, and in the testimony offered by Frontier, Piedmont and the Public Staff.

There is no question about the need for natural gas service in the Four-County area. All four counties currently are unfranchised. Over 150 people attended the public hearing in Wilkesboro. This level of attendance amply demonstrates the Four-County area's interest in and need for natural gas service. Forty-seven witnesses from the Four-County area testified in support of natural gas being extended into their counties. An additional witness from King in Stokes County, which is not included in the certificate applications, testified with respect to King's desire and need for natural gas. The Commission concludes that there is a public demand and need for natural gas service in the Four-County area.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is contained in the testimony and exhibits of the witnesses of Piedmont, Frontier, and the Public Staff.

The Public Staff identified numerous factors which could be used to compare the two applications. The Commission has considered all of this evidence. For present purposes, the Commission will focus on the following factors.

The first factor is the competitiveness of each applicant's rates with alternate fuels. Piedmont proposes to charge its currently approved rates which are lower than the rates anticipated by Frontier in all rate classes. Both applicants have made numerous assumptions in determining the level of revenues and expenses in this case. Piedmont has asserted that Frontier has under-estimated its construction costs and certain of its expenses and over-estimated its projected conversion rates and revenues. Any error in these projections could have a substantial impact on Frontier's rates. If Frontier has in fact over-estimated its demand, its rates will be higher than those now anticipated. On the other hand, if Piedmont's projections are in error, they would have very little impact on Piedmont's rates or on its ability to provide service to the Four-County area due to its existing large customer base. The competitiveness of the rates will determine in large part the extent to which either applicant is successful in converting homes and businesses to natural gas. Considerable evidence was offered by the parties with respect to the number of customers that each applicant expects initially to serve; however, the actual number of customers ultimately to be served depends upon many factors that are not in the control of either party. A natural gas distribution company must be able to show substantial savings to potential customers in order for them to justify a conversion to natural gas. Even when substantial savings can be shown, many customers will not convert because they cannot afford to do so. The Commission concludes that the competitiveness of the rates of Piedmont with alternative fuels, vis-a-vis those anticipated by Frontier, offers Piedmont a substantial advantage in converting customers to natural gas in the Four-County area and provides a significant price advantage to the customers located therein. Furthermore, if the rates for natural gas in the Four-County area are substantially higher than in surrounding counties, it is not as likely

that industry will be attracted to the Four-County area. Based on the foregoing, the Commission concludes that Piedmont's lower rates and its existing large customer base are factors favoring Piedmont.

Another factor favoring Piedmont is the experience and proven record in providing safe and reliable utility service in the State. Piedmont has been engaged in the natural gas business in North Carolina and elsewhere for over forty years. It has an exemplary operating record. Piedmont's personnel are experienced in all aspects of natural gas system operation, and Piedmont has an employee training program that can easily assimilate the additional employees needed for the Four-County area. Piedmont conducts an extensive operations and maintenance training program and maintains around-the-clock trained personnel to answer and respond to emergency situations. Piedmont employs a sophisticated System Control and Data Acquisition Telemetering System (SCADA) system, in conjunction with its telecommunication system, which prevents it from exceeding its gas supply contracts, limits curtailment to its interruptible customers, helps maximize the use of its peaking supplies, and provides notice of potential problems by monitoring pressure and flow rates. Frontier's proposed system in North Carolina would be far smaller than Piedmont's system. Although the Commission recognizes that many small gas distribution systems operate in a safe and reliable manner, it concludes that Piedmont has more experience and resources to operate in the Four-County area in a safe and reliable manner. Further, Piedmont has a diverse, well-balanced portfolio of gas supplies under contract for its system which will enable it to provide reliable service to the Four-County area. Piedmont has contracted to increase its annual interstate pipeline capacity in North and South Carolina. Interstate pipeline capacity will increase from 310,000 dts/day currently to 387,000 dts/day in November 1995 and to 415,000 dts/day in November 1996. Piedmont's capacity is provided through a mix of interstate pipeline capacity, underground storage, local liquified natural gas facilities, local propane facilities, and other varied peaking services.

The Commission concludes that the foregoing factors favor Piedmont. Piedmont has more experience and a proven record. Piedmont has proven over time that it can construct natural gas transmission and distribution systems and operate those systems in a safe and reliable manner. Piedmont has a reliable gas supply and pipeline capacity to deliver that gas supply. Piedmont will charge lower rates, and it has a large existing customer base and greater corporate resources to absorb unforseeable exigencies.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Although the Commission finds that the factors discussed above favor Piedmont, the Commission is not satisfied with Piedmont's proposed construction schedule. Piedmont indicated that it would complete the major construction of its core distribution system in the communities of Wilkesboro, North Wilkesboro, Yadkinville, and Boone within 24 months of receiving a certificate and in the communities of Jonesville, Arlington, Elkin, Dobson, and Mount Airy within 30 to 60 months. The Commission is not satisfied with a proposal that would take up to five years to complete its core distribution system.

Support for natural gas service comes not only from the large communities of the Four-County area, but the smaller communities as well. Witnesses at the public hearing in Wilkesboro testified to the need for gas service in smaller communities such as Mount Airy, Pilot Mountain, Elkin, Jonesville, Arlington, Boonville, East Bend, and King.

Communities in the Four-County area have twice before been disappointed. In 1968 Abitibi Corporation (Abitibi) was planning to locate a plant near Wilkesboro. Public Service Company of North Carolina, Inc. (PSNC), entered into preliminary negotiations to serve Abitibi. PSNC reported that service to Wilkesboro would not be feasible without including service to Elkin Township in Surry County, which was included in Piedmont's franchise. Piedmont thereafter notified PSNC that it would not release the Elkin territory, and PSNC notified Abitibi that it could not serve the Wilkesboro area as a result of Piedmont's position. Meanwhile, area residents had organized Blue Ridge Gas Company (Blue Ridge) and had secured franchises from the principal towns in the three counties of Surry, Wilkes and Yadkin. Blue Ridge applied for a certificate of public convenience and necessity on November 21, 1968, in Docket No. G-30. By Order dated May 30, 1969, the Commission found that there was a public demand and need for natural gas, but denied Blue Ridge's application without prejudice to refile. The Commission found that Blue Ridge planned to finance the entire cost of the project through the issuance of tax exempt revenue bonds, which would not be marketable until Blue Ridge secured a ruling from the Internal Revenue Service that the interest on such bonds would be tax exempt. The Commission found that there was a difference of opinion as to whether such bonds would be eligible for such a tax exempt ruling. In addition, the Commission stated its concerns about Blue Ridge's proposed management's lack of experience in the natural gas industry and Transcontinental Gas Pipe Line Corporation's inability to promise a supply of gas at any known date in the future. Order Denying Application Without Prejudice, Docket No. G-30. By that time, Piedmont had filed an application for a certificate to serve this three-county area in Docket No. G-9, Sub 72. Piedmont later filed to withdraw this application because of changing conditions that threatened the reliability of gas supply and the economic feasibility of the project. By Order dated June 17, 1969, the Commission again found that there was a public demand and need for natural gas in the three county area and that economic progress had been impeded by the lack of natural gas. Piedmont, however, was allowed to withdraw its application because Piedmont was no longer willing to serve the area and unless ordered to do so would not serve the area. The Commission concluded that it could not order Piedmont to begin construction at that time. By this Order, the Commission also canceled and revoked the franchise previously issued by it to Piedmont for Yadkin County and Elkin Township in Surry County for failure to provide service in those areas, without prejudice to further proceedings by Piedmont or the Commission to secure service to this area. Order Allowing Withdrawal of Application Without Prejudice to Subsequent Proceeding to Require Piedmont to Serve, Docket No. G-9, Sub 72.

Thus, it is clear that communities in the Four-County area have long required natural gas service, that they have seen the prospect of gas service come and go several times before, and that they are now entitled to more than a promise of gas service five years down the road. The Four-County area is entitled to have gas service provided on an expedited basis. All core distribution systems proposed by Piedmont should be completed in all proposed communities in the Four-County area within three years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Although the Commission finds that the factors discussed above favor Piedmont, the Commission does not look favorably on Piedmont's intention to use an expansion fund in extending service to the Four-County area.

Piedmont's application for a certificate to serve this area is clearly premised upon the use of an expansion fund. In its certificate application, Piedmont asserts, "The use of a combination of conventional financing and funds from the expansion fund makes the proposed construction economically feasible." On September 27, 1994, Piedmont filed an amended application for creation of an expansion fund in Docket No. G-9, Sub 328 that included service to the Four-County area as a potential project. On March 7, 1995, Piedmont filed a petition in Docket No. G-9, Sub 362 specifically asking the Commission for authority to use expansion funds for construction of a project to provide gas service to the Four-County area.

Thus, it is clear that Piedmont's present certificate application is premised upon the use of an expansion fund. Frontier's application, on the other hand, is premised upon traditional investor financing, and Frontier has presented evidence that its project is economically feasible. The Public Staff seized upon this distinction as crucial. Citing the intent of the General Assembly in enacting G.S. § 62-158 to make natural gas service available to unserved areas that are economically infeasible to serve, the Public Staff witnesses testified that "[a]llowing the construction of a project using expansion fund financing when a feasible alternative appears to be available does not seem consistent with this legislative intent." The Commission agrees with this interpretation of the expansion fund statute. Further, the Commission believes that credible evidence has been presented to the effect that adequate service can be provided to the Four-County area without resort to non-traditional financing. The Commission is faced with the policy issue of whether an expansion fund should be used where an alternative that appears to be feasible is available. The Commission believes that it should not.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 & 11

In effect, the Commission is not prepared to grant either application as proposed at this time. The Commission would, however, grant a certificate to Piedmont subject to certain conditions relating to financing, design and construction. Piedmont will be given the option of accepting a certificate with these conditions. The first condition is that no expansion fund monies shall be requested or used for construction of the facilities. This condition is imposed for the reasons set forth in Finding of Fact No. 9 above. Further, as discussed in connection with Finding of Fact No. 8 above, conditions should be imposed to require that facilities in the Four-County area be constructed according to the design proposed by Piedmont in Docket No. G-9, Sub 362, but on an expedited basis, i.e., the certificate shall require that Piedmont complete construction of its entire transmission system and its core distribution systems in the communities of Wilkesboro, North Wilkesboro, Yadkinville, and Boone within 24 months and distribution systems in the communities of Jonesville, Arlington, Elkin, Dobson, and Mount Airy within 36 months. These times shall run from the date a certificate is issued assuming no appeal, or from the date of the final appellate decision if there is an appeal. To enable the Commission to monitor compliance, the certificate should require that Piedmont file detailed progress reports every six months during construction reflecting a summary

of its construction costs to date, a comparison of actual costs to budgeted costs, a comparison of its actual construction schedule to its forecasted construction schedule, and the number of customers served by rate schedule. The Commission recognizes that such a certificate is far different than that sought by Piedmont in its application. The certificate should therefore be conditioned on Piedmont's acceptance of the above conditions.

The applications of both Frontier and Piedmont shall be held in abeyance at this time. Piedmont shall have 20 days within which to advise the Commission as to whether it will accept a conditional certificate as herein provided and will commit itself to comply with the conditions. If Piedmont chooses to accept the conditional certificate, it shall file a verified pleading signed by its attorney and its chief executive officer; it shall file a detailed system design consistent with that proposed in Docket No. G-9, Sub 362; it shall file a construction budget; and it shall file a new construction schedule consistent with that ordered herein. In that event, a subsequent order will be issued granting a conditional certificate to Piedmont and, consistent therewith, dismissing Piedmont's application in Docket No. G-9, Sub 362, as moot and denying Frontier's application. If Piedmont declines a conditional certificate as herein provided, an appropriate further order will be issued in these dockets.

IT IS, THEREFORE, ORDERED as follows:

1. That the applications of Frontier and Piedmont shall be held in abeyance at this time;

2. That Piedmont should be given the option of accepting a certificate to serve the Four-County area subject to conditions (1) that no expansion fund monies shall be requested or used for the facilities hereinafter described, (2) that facilities shall be constructed according to the design proposed by Piedmont in Docket No. G-9, Sub 362, (3) that Piedmont shall complete construction of its entire transmisssion system and its core distribution systems in the communities of Wilkesboro, North Wilkesboro, Yadkinville and Boone within 24 months from the date a certificate is issued assuming no appeal, or from the date of the final appellate decision if there is an appeal, and distribution systems in the communities of Jonesville, Arlington, Elkin, Dobson and Mt. Airy within 36 months from such date, (4) that Piedmont shall file progress reports every six months during construction, and (5) that Piedmont shall choose to accept a certificate subject to these conditions;

3. That if Piedmont chooses to accept the conditional certificate, it shall file a verified pleading signed by its attorney and its chief executive officer within 20 days stating the above conditions, accepting a certificate subject to the above conditions, and committing to comply with these conditions and it shall at the same time file a detailed system design, a specific construction budget, and a new construction schedule, all consistent with this Order, in this docket;

4. That if Piedmont accepts the conditional certificate as hereinabove provided, further orders will be issued granting a conditional certificate to Piedmont, dismissing Piedmont's application in Docket No. G-9, Sub 362 as moot, and denying Frontier's application; and

5. That if Piedmont declines the conditional certificate as hereinabove provided, an appropriate further order will be issued in these dockets.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of June, 1995.

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

Commissioner Cobb concurs.
Commissioner Judy Hunt dissents.
Commissioner Hughes dissents.

Commissioner Laurence A. Cobb, Concurring:

I concur in the decision to grant the option to Piedmont Natural Gas Company, Inc. However, for the reasons below, I would have preferred granting a certificate without conditions and allowing consideration of the use of expansion funds in Docket G-9, Sub 362. Piedmont's application and evidence meet all of the criteria for the awarding of a certificate.

The denial of expansion funds to Piedmont is predicated upon a finding that Frontier Utilities of North Carolina, Inc. presented credible evidence that it could furnish adequate service to the four counties in question without such non-traditional financing methods. I do not believe that such credible evidence has been presented. In fact, the Public Staff, in its analysis of the Frontier proposal, found it lacking in so many details that it recommended that a conditional certificate be issued to Frontier predicated upon Frontier's meeting ten specific conditions. The Public Staff would have allowed Frontier ninety days to meet the first nine conditions and would then have granted Frontier an additional one hundred days after the entry of an order finding that the first nine conditions had been met to develop an adequate financing plan. The burden was on Frontier to present its case at this hearing. At best, it offered a skeleton plan of what it proposed to do and then asked for substantial additional time to flesh out the proposal.

Even if it is conceded that Frontier could build its project as proposed, it would offer inadequate service to the four county area. Frontier's proposal was for a rural system which would be adequate only to meet the existing potential needs together with a factor for reasonable growth among existing potential customers. There would be no additional capacity available for expansion in the event of industrial growth in the region. Furthermore, the projected cost of the gas would be substantially in excess of the cost of gas under the Piedmont proposal. Costs would be exacerbated substantially in the event the market penetration studies or the construction cost projections proved to be unreliable.

Piedmont has proposed to build a system which would meet the intent of the expansion legislation. One of the prime considerations in the passage of this legislation was to allow for economic development in areas currently unserved. The Piedmont proposal would meet this objective by providing adequate capacity both for present needs of the area and for potential industrial

expansion in the future. Furthermore, the Piedmont proposal would involve less risk for the customers in that Piedmont would use its system wide rates and any shortfall in revenues or excess costs would have an insignificant effect on the rates paid.

Denying the use of expansion funds in the construction of this project results in greater risk to all of Piedmont's customers. Upon completion of the construction, all of the costs of the system will be included in the rate base in the next rate case regardless of the revenues produced by the system. The fact that the expansion funds will not be used for this project will not result in their refund to the customers, since other projects may be forthcoming in the future. On the other hand, if the project were constructed with the use of expansion funds for the negative net present value, that portion of the construction would not be placed in the rate base unless and until the project itself became viable. At that time, Piedmont would pay the expansion fund back for monies advanced from it.

The denial of the use of expansion funds could have further adverse consequences in the future if this Commission establishes a standard that a mere presentation indicating that a project could be built without the use of such funds is sufficient to preclude their use. Enactment of House Bill 792 could increase this risk substantially.

The citizens of Surry, Watauga, Wilkes and Yadkin Counties are entitled to natural gas service equivalent to that received by customers in other areas of the state. The proper way to provide such service would have been to grant the franchise to Piedmont without conditions and to allow the use of expansion funds in the construction as originally contemplated in the legislation.

Laurence A. Cobb, Commissioner

COMMISSIONER CHARLES H. HUGHES, DISSENTING. I agree with the reasoning set forth in the dissent filed in these dockets by Commissioner Judy Hunt and join in that dissent. I too would grant a conditional certificate to serve the Four-County area to Frontier Utilities of North Carolina, Inc. (Frontier) subject to the terms and conditions recommended by the Public Staff. As opposed to Piedmont, Frontier proposes to construct a natural gas infrastructure in the Four-County area which will serve not only the major towns and industrial entities, but also the more rural localities in those counties. Frontier proposes to construct what I consider to be a truly rural natural gas system designed to more comprehensively serve the Four-County area. That being the case, I believe that Frontier should be given the opportunity to demonstrate that it can satisfy the terms and conditions necessary to conclusively demonstrate that it can successfully and reliably provide natural gas service throughout the Four-County area. The action taken by the Majority foregoes an opportunity, which we may never again have, to allow a new entrant into the natural gas business in this State; an entrant which desires to specialize in operating a rural natural gas system.

Commissioner Charles H. Hughes

COMMISSIONER JUDY HUNT, DISSENTING. I respectfully dissent from the decision of the Majority to give Piedmont Natural Gas Company, Inc. (Piedmont) the option of accepting a

conditional certificate to provide natural gas service as a public utility in the Four-County area. I would instead grant a conditional certificate to serve the Four-County area to Frontier Utilities of North Carolina, Inc. (Frontier) subject to the terms and conditions recommended by the Public Staff.[3] Frontier, rather than Piedmont, deserves consideration
for the following reasons:

1. **FRONTIER HAS MADE A *PRIMA FACIE* AND CREDIBLE CASE THAT ITS PROPOSED PROJECT IS FEASIBLE AND THAT IT CAN SUCCESSFULLY AND RELIABLY PROVIDE NATURAL GAS SERVICE TO THE FOUR-COUNTY AREA.**
I believe and the Majority order acknowledges that Frontier has offered credible evidence in support of its application which demonstrates that it can successfully and feasibly provide reliable and competitively priced natural gas service in the area in question. More specifically, I am convinced that Frontier has made a reasonable showing that its project is technically feasible; that Frontier has and can provide the necessary resources and personnel to operate and maintain its proposed intrastate pipeline and local distribution system in a safe and efficient manner; that Frontier can reasonably expect to receive sufficient commitments of gas supply and transportation in the current market environment to provide a dependable supply of natural gas to theFour-County area; and that Frontier can reasonably expect to receive debt and equity financing for its project from potential investors.

2. **FRONTIER PROPOSES TO PROVIDE SERVICE TO TWICE AS MANY CUSTOMERS AND TO CONSTRUCT SIGNIFICANTLY GREATER MILES OF TRANSMISSION AND DISTRIBUTION MAINS AT A LESSER CAPITAL COST THAN PIEDMONT.** There is clearly a public demand and need for natural gas service in the Four-County area. It is, to me, undisputed that residents and businesses in the Four-County area desire, need, and should be provided natural gas service to the greatest extent possible. Based on the credible evidence, Frontier proposes, by the end of the first five years of its operation, to provide natural gas service to twice as many customers than Piedmont in the Four-County area. Furthermore, Frontier proposes to construct 144 miles of transmission mains and 718 miles of distribution mains within three years at an estimated cost of $46.6 million, as compared to Piedmont's proposal to construct 118.5 miles of transmission mains and 215 miles of core distribution mains within five years at an estimated cost of $56.6 million. There is such a disparity in these numbers that I believe an effort should be made to ascertain more real costs. Also, with the condition placed on Piedmont by the Majority order, their costs are likely to go up even more. Frontier also projects that it will sell 50 percent more natural gas in the Four-County area on an annual basis than Piedmont; i.e., 4.5 million dekatherms for Frontier versus 3 million dekatherms for Piedmont. I am convinced by the evidence and the competing proposals offered by Frontier and Piedmont that the Four-County area will be more comprehensively and therefore better served if the natural gas franchise is granted to Frontier rather than Piedmont.

[3] I concur in the Proposed Order submitted by the Public Staff.

3. **PIEDMONT'S PROPOSED PROJECT ENCOMPASSES ONLY THE MAJOR TOWNS IN THE FOUR-COUNTY AREA AND WOULD RESULT IN FAR FEWER CUSTOMERS BEING SERVED THAN THE PROJECT PROPOSED BY FRONTIER. IT IS LIKELY THAT THE FOUR-COUNTY AREA WOULD ALSO HAVE TO COMPETE FOR LIMITED CORPORATE RESOURCES WITH OTHER AREAS IN PIEDMONT'S FRANCHISED TERRITORY, WHICH MAY BE MORE PROFITABLE TO SERVE, THEREBY INHIBITING OR AT LEAST DELAYING THE WIDE-SPREAD AVAILABILITY OF NATURAL GAS SERVICE WITHIN THE FOUR-COUNTY AREA.** In evaluating the competing applications filed by Frontier and Piedmont, I am concerned that the decision of the Majority will have the likely effect of denying or at least significantly delaying the availability of natural gas service to the more rural localities in the Four-County area. I share the concern expressed by the Public Staff that Piedmont will serve only the major industrial entities and a relatively small part of the major towns in the four counties in question, thereby depriving a substantial number of residents and small businesses of the availability of natural gas. By comparison, Frontier intends to serve the more rural areas of the Four-County area, including such communities as Brooks Cross Roads in Yadkin County; Hays, Fairplains, Mulberry, and Miller's Creek north of North Wilkesboro and Moravian Falls and Boomer south of Wilkesboro in Wilkes County, Deep Gap in western Wilkes County on the way to Boone in Watauga County; and White Plains, Toast, and Bannertown in Surry County. Furthermore, Frontier plans to construct 718 miles of distribution mains in the Four-County area, while Piedmont plans to construct only 215 miles of core distribution mains. The residents of this area desire and need a system which serves the rural localities as well as the major towns. I am also greatly concerned that the Majority's decision will have the unintended effect of placing the Four-County area in a position of competing for Piedmont's corporate financial and capital resources against other currently franchised areas, which may be more profitable. Because of the potential conflict which could exist between the Four-County area and other areas in Piedmont's currently franchised territory which may be more profitable, I fear that the extension of natural gas service to the more rural portions of the Four-County area will, at the very least, occur at a slower pace than would be possible by a stand-alone entity, such as Frontier.

4. **FRONTIER HAS VOLUNTARILY AGREED TO PROVIDE SECURITY IF THE COMMISSION SO DESIRES IN ORDER TO MITIGATE RISK DURING THE EARLY YEARS OF OPERATION OF FRONTIER'S PROJECT.** In its application and testimony, Frontier indicates that it is willing and has volunteered to provide $4 million in security, in a form acceptable to the Commission, in order to mitigate risk and provide additional financial assurance during the early years of operation of the Company's project. The Public Staff testified that it supports Frontier's proposal to provide such security and I concur in that proposal, because it will provide an appropriate balance to the inherent risks associated with a start-up company and will provide a significant degree of assurance of continuity of service to customers.

5. **DENYING FRONTIER THE OPPORTUNITY TO PURSUE ITS PROPOSED PROJECT IN THE FOUR-COUNTY AREA WILL SEVERELY DISCOURAGE NATURAL GAS COMPANIES OTHER THAN THE CURRENTLY FRANCHISED NORTH CAROLINA LOCAL DISTRIBUTION COMPANIES (LDCs) FROM PURSUING FUTURE GAS EXPANSION PROJECTS IN THE STATE.** The action taken by the Majority in favor of

Piedmont and in opposition to Frontier will, without a doubt, have a chilling and detrimental effect on the willingness of companies other than the four LDCs already doing business in this State to propose future natural gas expansion projects into unassigned territories in North Carolina. In deciding among competing applications to serve the Four-County area, the Majority has unjustifiably given preferential treatment to Piedmont to the detriment of Frontier citing Piedmont's lower rates its existing large customer base, and its experience and proven record in providing safe and reliable utility service in the State. Piedmont's lower rates were predicated on the assumption that Piedmont would use expansion funds. The Majority order disallows expansion funds, as it should (because we have evidence the project is feasible), and therefore Piedmont's rates will be higher than originally projected. Piedmont's experience and proven record in providing safe and reliable utility service in the State should not be given the weight the Majority seems to have placed on it because any gas company operating in North Carolina would be required by Federal and State laws to provide safe and reliable service. The fact that Frontier has not provided this service in North Carolina to date in no way diminishes its ability to do so. To me, it is clear that the preponderance of the evidence favors Frontier rather than Piedmont. The Majority's decision to the contrary will, in the future, discourage other companies such as Frontier from seeking to provide natural gas service to unfranchised areas in this State. While I am sure that the Majority does not intend that unfortunate result, it will nevertheless be the case that potential new LDCs will be discouraged from investing in the gas infrastructure of North Carolina.

6. **THE MAJORITY ORDER PROPOSES TO ISSUE PIEDMONT A CONDITIONAL CERTIFICATE, BUT THERE ARE NO ENFORCEMENT PROVISIONS.** The order places five conditions on the Piedmont certificate. However, no enforcement provisions are provided, particularly for numbers 2 and 3. These two conditions require Piedmont to construct a certain design, at certain locations, and within a certain time frame. But should Piedmont agree to these conditions and not perform, there are no negative consequences. At that point in time, we will have lost the window of opportunity to provide gas service to these deserving citizens. As the Majority order says, "Communities in the Four-County area have twice before been disappointed." In June of 1969, the Commission "canceled and revoked the franchise previously issued by it to Piedmont for Yadkin County and Elkin Township in Surry County for failure to provide service in these areas." I am concerned that the Majority order, with no enforcement capabilities, will cause these same citizens to be disappointed a third time and suffer the inequities caused by the absence of natural gas.

For the reasons set forth above, I dissent from the Majority's decision because I believe that Frontier, rather than Piedmont, should be given the opportunity to demonstrate that it can finalize the necessary studies and arrangements and meet the conditions and deadlines recommended by the Public Staff necessary to justify the award of an unconditional certificate to serve the Four-County area. I take the position that the preponderance of the evidence justifies awarding a conditional certificate to Frontier in the first instance, particularly in view of the position taken by Piedmont that its Four-County project is financially infeasible without the use of natural gas expansion funds to assist in the construction of such project. Frontier has proposed a project which is, according to the evidence, financially feasible utilizing investor-supplied capital. That being the case, Frontier deserves authorization to finalize the studies and arrangements necessary to satisfy the conditions and deadlines recommended by the Public Staff in order to fully satisfy the Commission that its project will in fact be successful. Commissioner Judy Hunt

DOCKET NO. G-38
DOCKET NO. G-9, SUB 357

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-38

In the Matter of Application of Frontier Utilities of North Carolina, Inc., for a Certificate of Public Convenience and Necessity to Construct, Own and Operate an Intrastate Pipeline and Local Distribution System and for the Establishment of Rates	)	ORDER GRANTING CERTIFICATE WITH CONDITIONS TO FRONTIER UTILITIES AND SCHEDULING FURTHER HEARING
Docket No. G-9, Sub 357	)	
In the Matter of Application of Piedmont Natural Gas Company, Inc., for a Certificate of Public Convenience and Necessity to Provide Natural Gas Service in Surry, Watauga, Wilkes and Yadkin Counties or, in the Alternative, for a Declaration that Piedmont's Existing Certificates of Public Convenience and Necessity Authorize It to Construct the Necessary Facilities to Permit It to Extend Natural Gas Service to Said Counties	)	

HEARD IN: Wilkesboro Community Center, 1241 School Street, Wilkesboro, North Carolina, on Thursday, December 1, 1994

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 31, 1995, through Friday, February 3, 1995, Wednesday, February 8, 1995, and Tuesday, March 7, 1995

BEFORE: Chairman Hugh A. Wells, Presiding; Commissioners William W. Redman, Jr., Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt, and Judy Hunt

APPEARANCES:

For Frontier Utilities of North Carolina, Inc.:

James P. Cain and M. Gray Styers, Jr., Attorneys at Law, Petree Stockton, L.L.P., 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Attorney at Law, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For 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 28680-1269

For the Using and Consuming Public:

Gisele L. Rankin and Gina C. Holt, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

J. Mark Payne and Margaret A. Force, Assistant Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 23, 1994, Frontier Utilities of North Carolina, Inc. (Frontier), filed an application for a certificate of public convenience and necessity to construct, own and operate an intrastate pipeline and local distribution system and for the establishment of rates. Frontier requested authority to serve Surry, Wilkes and Yadkin Counties. Frontier amended its application on October 12, 1994, to include Watauga County.

On September 27, 1994, Piedmont Natural Gas Company, Inc. (Piedmont), filed an application for a certificate of public convenience and necessity to provide natural gas service to Surry, Watauga, Wilkes and Yadkin Counties (hereinafter referred to as the Four-County area) or, in the alternative, for a declaration that Piedmont's existing certificates of public convenience and necessity authorize it to construct the necessary facilities to permit it to extend natural gas service to said counties under the "contiguous" proviso in G.S. § 62-110(a). Piedmont's application indicated that a combination of conventional financing and funds from an expansion fund makes the construction into the four counties economically feasible. Piedmont contemporaneously filed an amended petition in Docket No. G-9, Sub 328 for the establishment of an expansion fund pursuant to G.S. § 62-158 and for the deposit of certain supplier refunds into the expansion fund. In that filing, Piedmont cited the Four-County area as a potential project for the use of expansion fund financing.

The Commission, by Order dated October 21, 1994, consolidated the two applications for hearing, required public notice and established intervention and filing deadlines. A public hearing in Wilkesboro was set for Thursday, December 1, 1994, at 9:30 a.m., with the hearing continuing in Raleigh on Tuesday, January 31, 1995.

The Commission invited briefs on the issue of whether Piedmont was entitled to extend natural gas service into the Four-County area under its existing certificates as territory contiguous to territory already occupied by it. By Order dated December 6, 1994, the Commission concluded that there was

considerable "unoccupied" territory between those parts of Caldwell, Davie, and Forsyth Counties that are occupied by Piedmont and the unserved Four-County area. The Commission therefore denied Piedmont's alternative claim for authority to serve the Four-County area pursuant to the "contiguous" proviso of G.S. § 62-110(a).

The following parties intervened in the consolidated proceeding: Public Service Company of North Carolina, Inc. (Public Service), Carolina Utility Customers Association, Inc. (CUCA), Pennsylvania & Southern Gas Company, a Division of NUI Corporation (Penn & Southern), and the Attorney General. Public Service and Penn & Southern did not participate in the hearing.

A public hearing was held as scheduled in Wilkesboro, North Carolina, on December 1, 1994. Forty-eight persons testified as public witnesses. The matter came on for hearing in Raleigh on January 31, 1995. Seven public witnesses testified at this hearing.

Frontier then presented the testimony of the following witnesses: a panel of Robert J. Oxford, Chairman of the Board and President of Frontier and Industrial Gas Services, Inc., and Steven Shute, an officer and shareholder of Frontier and a professional engineer specializing in rural gas utilities through his consulting company, Pipeline Solutions, Inc.; a panel of Richard W. Remley, recently retired Senior Vice president of Greeley Gas Company in Colorado and consultant for Frontier, and E. Scott Heath, President of Heath and Associates, Inc., a management and engineering consulting firm specializing in the natural gas industry; a panel of John P. Schauerman, Vice President of Strategic Planning for ARB Inc., and James A. Anderson, Senior Vice President of Sutro & Company, Inc.; and Ben Hadden, Director of Transportation Services for Appalachian Gas Sales (AGS), a subsidiary of the Eastern Group, who adopted the pre-filed testimony of Lisa Yoho, also with AGS.

Piedmont presented the testimony of a panel consisting of the following: John H. Maxheim, Chairman of the Board, President and Chief Executive Officer of Piedmont; Ware F. Schiefer, Executive Vice President of Piedmont; and Ray B. Killough, Piedmont's Senior Vice President of Operations.

The Public Staff presented the testimony of a panel consisting of the following: Eugene H. Curtis, Jr., Director of the Natural Gas Division of the Public Staff; James G. Hoard, Supervisor of the Natural Gas Section in the Accounting Division of the Public Staff; and Thomas W. Farmer, Jr., Financial Analyst with the Economic Research Division of the Public Staff.

At the conclusion of the Public Staff's initial testimony, the Commission ordered that the Public Staff prefile supplemental testimony setting forth its recommendations on February 21, 1995, and that the hearing would be reconvened for the purpose of receiving that testimony on March 7, 1995.

On March 6, 1995, Piedmont filed supplemental rebuttal testimony. The hearing reconvened as scheduled on March 7, 1995, at which time the Public Staff presented its testimony. The Commission sustained Frontier's objection to the majority of Piedmont's supplemental rebuttal testimony. The Piedmont testimony deemed to be rebuttal of the Public Staff's recommendation was allowed. The Commission then recessed the hearing.

On March 9, 1995, the Commission issued its Order Inviting Briefs and Proposed Orders. The Commission invited all parties to file proposed orders dealing with how the Commission should proceed with the disposition of the two applications in these dockets. In addition, the Commission invited the parties to file briefs addressing the issue of the Commission's authority to issue a certificate of public convenience and necessity subject to revocation if certain conditions and deadlines are not met. Proposed orders and briefs of the parties were subsequently filed.

On June 19, 1995, the Commission issued its Order Giving Option of Conditional Certificate to Piedmont. By that Order, the Commission noted that some factors favored Piedmont, such as its lower rates and its experience in providing utility service. However, the Commission indicated other factors that favored Frontier, such as its shorter construction schedule and its use of traditional investor financing. The Commission stated that it was not satisfied with Piedmont's proposed construction schedule and that it did not look favorably on Piedmont's plan to use an expansion fund to extend service to the Four-County area. The Commission concluded that it was not prepared at that time to grant either application as proposed. The Commission went on to state that it would grant a certificate to Piedmont if Piedmont would make certain changes in its proposal, including withdrawal of expansion fund financing. The Commission gave Piedmont an option to change its proposal.

On July 10, 1995, Piedmont filed a Response to the Commission's June 19, 1995 Order, in which Piedmont refused to change its proposal as to use of expansion fund financing. At the same time, Piedmont filed Exceptions to the June 19, 1995 Order.

The Commission issued its June 19, 1995 Order in hope of a proposal that would combine some of the better aspects of both Frontier's application and Piedmont's application. That hope has not been realized. It is now clear that the Commission must make its decision on the basis of the applications as filed. The Commission has therefore undertaken a new evaluation of all the evidence. Based on the testimony and exhibits offered at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Frontier is a North Carolina corporation formed to provide natural gas service in Surry, Watauga, Wilkes, and Yadkin Counties. It is owned by Frontier Utilities, Inc., a Colorado company owned by Industrial Gas Services, Inc. (IGS) (45% ownership), ARB Corporation (50%), and Pipeline Solutions, Inc. (5%), which was created to pursue opportunities in the midwestern and eastern parts of the United States to develop rural natural gas systems where natural gas is not available.

2. Piedmont is a North Carolina corporation that has been engaged in the business of transporting, distributing and selling gas for more than forty years. Piedmont is a public utility under the laws of this State, and its public utility operations in North Carolina are subject to the jurisdiction of this Commission. Piedmont is furnishing natural gas to customers in 42 cities and towns located in 14 counties in North Carolina. Piedmont presently serves approximately 308,000 customers in North Carolina, 89,000 customers in South Carolina and 111,000 customers in Tennessee.

3. Both Frontier and Piedmont have properly applied to this Commission for a certificate of public convenience and necessity to provide natural gas service to Surry, Watauga, Wilkes, and Yadkin Counties; the proceedings regarding these two applications were consolidated for reasons of administrative efficiency; all required notices were given and the parties and members of the public who desired to appear were present at the public hearings.

4. Frontier's proposed project includes 144 miles of transmission mains and 718 miles of distribution mains and is estimated to cost approximately $47 million. At the end of its first five years of operation, Frontier expects to serve 10,060 residential customers, 2,090 commercial customers, 500 poultry farms, and 20 industrial customers, with annual volumes totaling 4.5 million dekatherms (dts). Frontier intends to finance its proposed project with capital raised from investors using an initial capital structure of 25% equity and 75% debt, the equity portion of which will increase to a more conservative level within five to eight years of initial operation.

5. Piedmont's proposed project includes 118 miles of transmission mains and 215 miles of distribution mains and is estimated to cost $56.6 million. At the end of the first five years of operation, Piedmont expects to serve 4,705 residential customers, 1,660 commercial customers, 111 poultry farms, and 32 industrial customers, with annual volumes totaling 3 million dts. Piedmont intends to finance a significant portion of its proposed project with an expansion fund that it has requested be established pursuant to G. S. § 62-158. Piedmont has filed an application for creation of an expansion fund in Docket No. G-9, Sub 328, and Piedmont has filed an application for approval to use expansion fund monies to extend facilities into the Four-County area in Docket No. G-9, Sub 362.

6. There is a public demand and need for natural gas service in Surry, Watauga, Wilkes and Yadkin Counties and no natural gas in now available in the Four-County area.

7. Frontier has made a prima facie case that its proposed project is feasible and that it can successfully and reliably provide natural gas service to the Four-County area. Frontier has proposed a project that appears to be technically feasible. Frontier has presented sufficient evidence that it can provide the necessary resources and personnel to operate and maintain its system in a safe and efficient manner. In the current market environment, Frontier can reasonably expect to receive sufficient commitments of gas supply and transportation to provide a dependable supply of natural gas to its customers. Frontier can reasonably expect to receive debt and equity financing for the project from investors.

8. Frontier will finance its proposed project with 100% of the capital provided by traditional investor financing. Piedmont's proposal is contingent upon 30% or more of the capital being provided from an expansion fund or other non-traditional financing methods. This factor favors Frontier.

9. Frontier plans to provide natural gas service to approximately twice as many customers as Piedmont and plans to make service available sooner than Piedmont. These factors favor Frontier.

10. Piedmont's proposed project would result in fewer communities being served than the project proposed by Frontier. Further, under Piedmont's proposal, the Four-County area would have to compete for limited corporate resources with other areas in Piedmont's territory which may be more profitable to serve, thereby inhibiting or delaying the widespread availability of service within the Four-County area. These factors favor Frontier.

11. Frontier has volunteered to provide security, in a form acceptable to the Commission, in an amount up to $4 million to provide additional assurance that the resources are available to operate the system should there be any unanticipated interim need.

12. Neither applicant had finalized all of its studies, designs and arrangements at the time of the hearing. It is neither reasonable nor realistic to expect Frontier to finalize its plans, including financing and gas supply commitments, prior to the granting of a certificate. Because Frontier is the only applicant to propose constructing an intrastate pipeline and local distribution system in the Four-County area with its own investors' funds, because Frontier has made a prima facie case in support of its proposal, and because other factors favor Frontier, Frontier should be given the opportunity to show that it can finalize the necessary studies and make the definitive gas supply, financing, and other arrangements that could not be finalized prior to a certificate with conditions being granted.

13. A certificate of public convenience and necessity, subject to the conditions and proceedings hereinafter set forth, should be issued to Frontier for the provision of natural gas service to Surry, Watauga, Wilkes, and Yadkin Counties. As conditions of this certificate, Frontier shall complete and file the following:

(1) a detailed market study by a qualified independent consultant evaluating the potential customers and loads in the Four-County area and the likelihood that these potential customers and loads could be converted to natural gas at the full range of rates and rate designs that Frontier contemplates proposing for approval;

(2) a detailed design of the gas transmission and distribution mains that would be eventually constructed to serve the Four-County area, showing the pipeline route, pipe sizes, length of all pipe sizes, pipeline flows at all critical points including junctions and city gates, and cathodic protection requirements;

(3) an opinion letter from a qualified independent engineer as to the adequacy and reliability of the system design;

(4) guaranteed pipe, materials, and construction contracts with reputable and qualified contractors and suppliers for the construction of the transmission and distribution mains described in detail in response to (2) above;

(5) a detailed presentation of the arrangements that have been made for the delivery of sufficient gas supplies to the Four-County area on satisfactory terms, including commitments from suppliers of the gas and the pipeline capacity required to deliver

supplies to the Four-County area with sufficient details for the Commission to evaluate the reliability of the suppliers of the gas and pipeline capacity;

(6) just and reasonable proposed rates, tariffs, and service rules;

(7) a detailed economic feasibility study of the project by a qualified independent consultant;

(8) an operating manual;

(9) evidence of Frontier's ability to arrange security in the amount of $4 million, in a form acceptable to the Commission, to make available additional resources, to be used should the need arise, and to provide additional assurance that the proposed natural gas system will be constructed and operated in a safe and reliable manner consistent with all applicable federal and state statutes, the rules and regulations of the Commission, and industry standards, practices and procedures; and

(10) a preliminary financing plan to (a) secure debt and equity capital on reasonable terms to construct and initially operate the system and (b) increase its equity ratio to the 35% range within a reasonable period of time.

Frontier should be given specific periods of time in which to complete and file the information required to satisfy these conditions, the hearing in these proceedings should remain open for the receipt of evidence regarding whether Frontier has met the conditions, and a further hearing should be held, all as set forth in this Order.

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

The evidence supporting these findings of fact is contained in the verified applications and the testimony filed by the applicants and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact is contained in the verified applications, the Commission's files and records regarding these proceedings, the Commission orders scheduling hearings, and the testimony of witnesses. This finding of fact is essentially informational, procedural and jurisdictional in nature. The Commission conducted public hearings in Wilkesboro, North Carolina, on December 1, 1994, and in Raleigh, North Carolina, beginning on January 31, 1995, to hear from members of the general public and the parties. Fifty-five (55) witnesses from the general public testified.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence in support of this finding is contained in the testimony and exhibits of Frontier witnesses Oxford and Shute and the Public Staff panel.

The evidence indicates that the transmission line proposed by Frontier would originate with a connection to Transcontinental Gas Pipe Line Corporation (Transco) at U.S. Highway 601, approximately four miles southeast of Cooleemee. From the point of connection with Transco, the pipeline would proceed northwest through Rowan, Davie, and Iredell Counties. After crossing these three counties, which are in the service areas of other natural gas utilities, the pipeline would enter Yadkin County and generally follow U.S. Highway 21 to Brooks Cross Roads. The pipeline from Transco to Brooks Cross Roads would be approximately 34 miles in length. At the intersection of U.S. Highways 21 and 421 (at Brooks Cross Roads), the pipeline would separate and proceed in three directions.

One pipeline, approximately 8 miles long, would proceed east along U.S. Highway 421 and serve Yadkinville in Yadkin County. Another pipeline would proceed northwest about 10 miles, generally following U.S. Highway 21 to Elkin and then northeast generally following I-77 and U.S. Highway 601 for about 26 miles to Mount Airy. This pipeline (or laterals from this pipeline) would serve Jonesville and Arlington in Yadkin County, Ronda in Wilkes County, and continue north into Surry County to serve Elkin (a small part of Elkin is also in Wilkes County) and Mount Airy, as well as a number of smaller communities. Although not included in Frontier's application, Frontier's supplemental testimony indicated that it is interested in serving Pilot Mountain in Surry County from this pipeline.

The third proposed pipeline would proceed approximately 24 miles west along U.S. Highway 421 into Wilkes County and serve Wilkesboro, North Wilkesboro and Moravian Falls, as well as a number of smaller communities, and then extend approximately 32 miles further west along U.S. Highway 421 to serve Boone in Watauga County. Although not included in Frontier's application, Frontier's supplemental testimony indicates it is interested also in serving Blowing Rock from this pipeline.

Frontier's witnesses testified that by the end of year five it estimates that service will be provided to approximately 10,060 residential customers, 2,090 commercial customers, 500 poultry farm customers and 20 industrial customers. The total annual volumes sold or transported by the end of year five is estimated to be about 4.5 million dts. Nineteen percent of this total annual volume would be to residential customers, 23% would be to commercial customers, 11% would be to poultry farms, and 47% would be to industrial customers.

The initial rates anticipated for the Four-County area are $6.60/dt with an $8 per month facilities charge for residential customers, $6.40/dt with a $12 per month facilities charge for commercial customers, $6.10/dt with a $15 per month facilities charge for poultry farms, and $1.77/dt for transportation services with a $200 per month facilities charge for service to industrial customers. The rates proposed for approval would be determined at a later date after construction bids have been received and expected customer conversions have been firmed up, but Frontier does not expect these proposed rates to be significantly different from the anticipated rates, with the exception of the addition of an interruptible rate for industrial customers.

Frontier testified that the transmission and distribution systems along the primary and secondary roads would be constructed somewhat simultaneously. The transmission system is expected to be complete within the first year following receipt of all necessary approvals and the vast majority of the distribution system is expected to be completed within three years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence to support this finding of fact can be found in the testimony of the Piedmont panel and the Public Staff panel.

The Piedmont witnesses testified that the construction of natural gas facilities into these four counties would not produce a positive return based on Piedmont's existing rates. Piedmont noted that it was presently holding approximately $15 million of supplier refunds and interest for inclusion in an expansion fund to be established under G.S. § 62-158 and that the use of a combination of conventional financing and funds from an expansion fund would make the proposed construction economically feasible.

Piedmont has filed an amended application for the establishment of an expansion fund and the approval of the deposit of certain supplier refunds pursuant to G.S. § 62-158 and Commission Rule R6-82. Piedmont subsequently petitioned the Commission for the use of expansion fund monies to construct facilities in the Four-County area. Piedmont indicated in its testimony that it would consider other non-traditional financing methods.

The Public Staff panel testified that in response to data requests, Piedmont had indicated it intends to install approximately 118 miles of transmission lines at a cost of $43.5 million. Further, these data requests indicated that Piedmont expects 50.5 miles of 12" transmission lines through Yadkin County and into Wilkes County and 7 miles of 6" laterals in these two counties to be in service by October 31, 1996; 34 miles of 10" pipe into Watauga County to be in service by October 31, 1997; and 26.5 miles of 8" pipe into Surry County to be in service by October 31, 1998. After that, construction to other areas, including Pilot Mountain, Boonville, and Blowing Rock, would be based on customer commitments.

With regard to distribution facilities, the Public Staff panel testified that in response to data requests, Piedmont had indicated it intends to complete the major construction of its core distribution system in the communities of Wilkesboro, North Wilkesboro, Yadkinville, and Boone within 24 months of receiving a certificate and in the communities of Jonesville, Arlington, Elkin, Dobson and Mt. Airy within 30 to 60 months. They also testified the data responses indicate that Piedmont intends to install approximately 150 miles of core distribution system (including service lines) at a cost of $13.1 million. After the core distribution system is in place within each community, the system will be expanded using Piedmont's normal extension procedures. Piedmont changed its estimate of the number of miles of distribution mains it would install from 150 miles to 215 miles on cross-examination.

The Public Staff panel testified further that in response to data requests, Piedmont had indicated it intends to construct 18 miles of core distribution system by October 31, 1996. These 18 miles of

distribution lines would be composed of 4.7 miles for Yadkinville and 13.3 miles for Wilkesboro and North Wilkesboro. The response also indicated that approximately 13 miles of distribution system would be constructed in Watauga County by October 31, 1997; 11.8 miles of distribution lines would be built in Elkin, Arlington and Jonesville and 2.4 miles in Dobson by October 31, 1998; 11.8 miles in Mt. Airy by October 31, 1998; and 9.3 miles in Mt. Airy by October 31, 1999. After this initial construction, additional construction of pipe larger than 2" would be based on customer commitments and the results of Piedmont's feasibility analyses.

The evidence further indicated that barring circumstances beyond its control, Piedmont believes it can complete the major construction in Wilkes, Yadkin, and Watauga Counties within 24 months of receiving a certificate and provide gas service to Surry County within 30 to 60 months. Piedmont estimates that it will cost approximately $56.6 million to construct the transmission and core distribution systems.

It appears Piedmont proposes to provide service to approximately 4,705 residential customers, 1,660 commercial customers, 111 poultry farm customers and 32 industrial customers by the end of the fifth year of operations. The total annual volumes sold or transported by the end of year five is estimated to be about 3 million dts. Thirteen percent of this total annual volume would be to residential customers, 20% would be to commercial customers, 4% would be to poultry farms, and 63% would be to industrial customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact can be found in the testimony of the public witnesses at the hearing in Wilkesboro on December 1, 1994, and in the testimony offered by Frontier, Piedmont and the Public Staff.

There is no question about the need for natural gas service in the Four-County area. All four counties currently are unfranchised. Over 150 people attended the public hearing in Wilkesboro. This level of attendance amply demonstrates the Four-County area's interest in and need for natural gas service. Forty-seven witnesses from the Four-County area testified in support of natural gas being extended into their counties. An additional witness from King in Stokes County, which is not included in the certificate applications, testified with respect to King's desire and need for natural gas. The Commission concludes that there is a public demand and need for natural gas service in the Four-County area and that there has been for many years. Both companies presented evidence and testimony of the historical efforts to serve this area.

Piedmont applied for a natural gas franchise for Yadkin County and the Elkin Township in Surry County, and it received a certificate of public convenience and necessity to serve Yadkin County and Elkin in Docket No. G-9, Sub 16, issued on January 14, 1958. However, Piedmont did not serve the area pursuant to that certificate.

In 1968, the then North Carolina Department of Conservation and Development received a request from Abitibi Corporation (Abitibi) seeking natural gas for a hardboard plant site near Wilkesboro. Public Service of North Carolina, Inc. (Public Service) entered into preliminary

negotiations to serve Abitibi at the proposed plant site. Public Service reported that the Wilkesboro project would not be feasible without including service to Elkin Township in Surry County, which was included in the Piedmont franchise. Piedmont thereafter notified Public Service that the Elkin territory was included in its franchise and that Piedmont would not release the territory. Public Service then advised Abitibi and the Department of Conservation and Development that it could not serve the territory as a result of Piedmont's position.

On November 4, 1968, Piedmont filed an application in Docket No. G-9, Sub 72 for a franchise to serve Surry, Wilkes, and Yadkin Counties. Piedmont's application was originally consolidated with an application by Blue Ridge Gas Company, a North Carolina non-profit corporation, to serve the same three counties. Three months later, on February 6, 1969, Piedmont filed a motion to withdraw its application. On May 30, 1969, the application of Blue Ridge Gas was denied, but in its order the Commission concluded:

> The testimony of the witnesses from the Surry, Wilkes, and Yadkin County area and the witness from the North Carolina Department of Conservation and Development, and the applicant's engineering testimony of a survey of the estimated gas usage in the area, as well as the testimony of the intervenor Abitibi Corporation, all present the strong evidence of the public demand and the need for gas in the area. This public need justifies every effort possible by the Commission and all persons having an interest in securing a gas supply for the area to implement and expedite means by which gas service can be furnished to the area at reasonable rates on a sound economic basis.

In the related Piedmont Docket No. G-9, Sub 72, the Commission allowed Piedmont to withdraw its application and to refuse to serve these three counties, but the Commission stated:

> It is abundantly clear from all of the testimony in this docket and the Blue Ridge docket that the economic progress of the three county area is impeded from the lack of natural gas and that increased employment in the area requires the full efforts of the Commission and all interested parties in making natural gas available to Wilkes, Yadkin and Surry Counties so that the area may develop its full potential and utilize its natural resources for the economic improvement of the territory.

The Commission also revoked Piedmont's earlier franchise to provide natural gas service to Yadkin County and Elkin.

In the years since then, this area has not had access to natural gas, and no one applied to this Commission for a franchise to serve the area until Frontier filed its application on September 23, 1994.

Witness Oxford testified that Frontier's parent corporation was formed to find, evaluate, and develop areas in the United States that do not have natural gas service. He initially identified Wilkes County as one of the larger counties in the eastern United States that was unserved by natural gas.

He recounted Frontier's efforts to study the area, to meet with local government and business leaders, and to compile demographic and industrial information to assess this market for natural gas potential usage. Witness Oxford noted that, after this initial assessment, Frontier was founded as a rural natural gas company to serve the rural towns and citizens of the Four-County area.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding is found in the testimony of Frontier's witnesses Oxford, Shute, Anderson, Schauerman, Heath, and Yoho, in the testimony of the Public Staff witnesses, and in the contrary testimony of Piedmont's witnesses Maxheim, Schiefer, and Killough.

The Public Staff recommended that the Commission consider twelve factors in evaluating the certificate applications: design, technical ability, safety, market projections, time frame projections, likelihood of meeting projections, sources of funding, financing ability, estimates of revenues and expenses, gas supply, competitiveness of rates, and extent of proposed service. The Commission agrees that these factors are appropriate considerations, but they should not be -- and we do not believe the Public Staff intended them to be -- the framework for a point-by-point comparison of the two competing applicants. The Commission must also weigh the relative importance of the different factors and the policy and practical effects of our decision.

The Commission has carefully considered all of the evidence with respect to all twelve of these factors, their relative importance, and the effects of our decision. The Commission will discuss the source of funding in connection with later findings of fact. The remaining factors will be discussed in four broad categories below.

SYSTEM DESIGN AND CONSTRUCTION

Witnesses Shute and Oxford testified about the proposed route of Frontier's project, originating with a connection to Transco at U.S. Highway 601, near Cooleemee, extending along road rights-of-way to serve the towns of Yadkinville, Dobson, Elkin, Mount Airy, Wilkesboro, North Wilkesboro, and Boone and a number of smaller communities and rural areas in between. As noted in the Public Staff's testimony, Frontier plans to serve more rural areas of the four counties than Piedmont, including such communities as Brooks Cross Roads in Yadkin County; Hays, Fairplains, Mulberry, and Miller's Creek north of North Wilkesboro and Moravian Falls and Boomer south of Wilkesboro in Wilkes County; Deep Gap in western Wilkes County; and White Plains, Toast, and Bannertown in Surry County. Witness Oxford filed with the Commission copies of twenty-eight U.S. Geological Survey maps marked with its proposed routes for the pipeline.

Witness Steve Shute testified that Frontier analyzed the potential industrial market by direct contact in meetings and through correspondence with all the manufacturing and food processing industries. Witness Shute also met with local economic development offices, such as the chambers of commerce, who know and work with the industries. Frontier received industrial fuel use data from

most of the companies and converted these use figures into equivalent volumes of natural gas. Witness Shute also stated that the fuel needs of poultry growers were also analyzed with the help of the respective processing plant managers. He noted that propane is currently used to keep their poultry houses heated to anywhere from 80 to 90 degrees and that the price of natural gas is lower than the cost of propane.

With this information, Frontier designed a distribution system that would reach all of the large industries, most of the poultry growers, and most of the urban and the more densely populated rural areas. Witness Shute estimates an industrial demand on this system of 1.9 million dts of sales per year and conversion of all poultry growers currently using propane, accounting for an additional demand of 500,000 dts per year.

Witness Shute also testified that Frontier analyzed the residential and commercial user potential by using data from the 1990 census and the 1993 supplement for urban areas. After identifying each "Census Designated Place" (CDP) in the Four-County area, Shute assigned a percentage that represents how many of the homes in the CDP would have gas available along the distribution system route. From this information, Shute calculated that the project would make gas available to almost 30,000 residences and 4,400 commercial businesses. Witness Shute calculates conversion rates of 20% of potential residences in the early years, growing at a 4%-5% rate thereafter per year and a conversion rate of 50% of the commercial market. Although Piedmont contends in its testimony that Frontier has been overly-optimistic in its projected conversion rates, witnesses Heath and Remley confirmed that these projections were reasonable.

According to witness Shute, the transmission portion of the complete four-county system would consist of approximately 144 miles of pipeline and the distribution portion would consist of 718 miles of pipeline. With this system, Frontier plans to serve 10,060 residential customers, 2,090 commercial customers, 500 poultry farm customers, and 20 industrial customers within five years. The Commission agrees with the Public Staff that this compares favorably to Piedmont's proposal to serve 4,705 residential customers, 1,660 commercial customers, 111 poultry farm customers, and 32 industrial customers.

According to witness Shute's financial projections, the initial rates anticipated for the Four-County area are $6.60/dt with a $8 per month facilities charge for residential customers, $6.40/dt with a $12 per month facilities charge for commercial customers, $6.10/dt with a $15 per month facilities charge for poultry farms, and $1.77/dt with at $200 per month facilities charge for transportation service to industrial customers.

Witness Shute testified that Frontier's system transmission pipeline will consist of 71 miles of 10-inch pipe from Transco to Wilkesboro and to Elkin, 58 miles of 6-inch pipe, and 25+ miles of additional laterals. Frontier estimates that the cost of the entire system -- the transmission line, the distribution lines, and service and meter lines -- to be approximately $47 million.

Piedmont's witnesses testified that its proposed system would consist of approximately 118 miles of transmission pipeline and the distribution portion would consist of 215 miles of pipeline. The estimated cost of this entire system is approximately $57 million dollars. Noting the disparity between the construction cost projections, Piedmont's witnesses testified that they believed that Frontier's construction costs are too low, based upon its own experiences.

Witness Heath testified, however, that Piedmont's historic cost for constructing gas facilities in North Carolina is not the sole determinant in estimating what Frontier's costs will be. He observed that Heath and Associates' clients who have constructed distribution and transmission pipelines in this region have not experienced the high historic cost that Piedmont claims that it has. Witness Heath stated that he had provided Frontier with costs estimates for construction in these counties, and that, in the aggregate, the total cost of constructing the distribution system should be reasonably similar to that projected by Frontier.

Witness John P. Schauerman, Vice-President of Strategic Planning at ARB, Inc., also testified regarding the construction of the pipeline system. He explained that ARB is a diversified construction company with approximately $200,000,000 in annual revenues. ARB has over 55 years of experience building pipeline projects. It has recently completed a 103 mile-transmission pipeline from the border of California and Nevada into the central valley of California and a smaller pipeline project in Virginia for Transco. Witness Shauerman also stated that ARB is the largest construction contractor for SoCal Gas, the largest gas utility in Southern California, and performs approximately 30 percent of their annual gas distribution work. ARB also has experience constructing pipelines in mountainous terrains in California and Washington.

Witness Schauerman testified that ARB representatives had visited the Four-County area and driven through the area to review the terrain, evaluate the cost estimates, and assess the potential market. He stated that ARB had reviewed witness Shute's projections concerning the engineering and construction costs and confirmed that they were appropriate. Witness Schauerman stated that he anticipated that ARB would actually build Frontier's project, install the gas lines throughout the system and install whatever other equipment was required. He further testified that, as an owner of the project, ARB can ensure that it is done properly and most efficiently.

Witness Richard W. Remley, recently retired as Senior Vice-President of Greeley Gas Company in Greeley, Colorado testified as a consultant for Frontier. He testified that he had traveled the routes proposed by Frontier for the pipeline, looked at the digging conditions and made some rough evaluations of the amount of rock and water. Witness Remley testified that the potential for the use of the highway rights-of-way is excellent and that, based upon the soil conditions along the rights-of-way, his evaluation indicated that the project can be constructed fairly easily, without any significant construction problems. Witness Remley noted that there would be some rock along the pipeline routes, especially in the Mt. Airy and Boone areas, but that the amount of rock was not insurmountable and the work, he believed, can be done quite well. Witness Remley also considered potential environmental problems along the proposed route, including wet lands, river crosses, and the Blue Ridge Parkway. In summary, witness Remley concluded that the feasibility of the proposed route looks good.

Witness Remley also testified that constructing the pipeline along road rights-of-way as Frontier proposes was preferred because it precludes the need for condemnation and allows for easier access for maintenance and emergency response. Witness Remley also noted that construction by others near the pipeline is easier to detect because of highway permitting requirements.

In light of all these considerations, Mr. Remley concluded that the project could be constructed for the costs proposed by Frontier. Witness Remley also had reviewed Frontier's projection for the timing of their construction and connection with customers and concluded that, with simultaneous construction of the system at different sections (which should be possible because of the use of road rights-of-way), the projections can be met.

SYSTEM OPERATION AND MAINTENANCE

Witnesses Oxford, Shute, Remley, and Heath testified regarding Frontier's ability to operate and maintain the intrastate pipeline and local distribution system in a safe and efficient manner.

The testimony of Piedmont's witnesses emphasized their company's resources, expertise, and experience through its operations in North Carolina over the past 45 years. In the June 19, 1995 Order, the Commission noted that Piedmont's experience and proven record in providing safe and reliable service was a factor favoring Piedmont. However, the Commission also noted that many small gas distribution companies operate in a safe and reliable manner. Upon consideration of all the evidence, the relative importance of all the relevant factors, and the effects of our decision, the Commission now concludes that the appropriate issue as to system operation and maintenance is whether Frontier can safely and reliably operate and maintain the system it has proposed. The Commission concludes that the evidence summarized below indicates that it can.

Witnesses Bob Oxford, Steve Shute, and Richard Remley have a combined total experience of approximately 86 years in the natural gas industry. Witness Heath's company, Heath & Associates, has been in business designing and overseeing the construction of natural gas facilities for 36 years.

Witness Oxford is Chairman and President of Frontier, as well as Chairman and President of Industrial Gas Services, Inc. (IGS), a 45% owner of Frontier's parent corporation. A petroleum engineer, he has served as a member of the American Gas Association and as president of the Rocky Mountain Natural Gas Association. He worked as Assistant Vice-President and General Manager of McCulloch Oil Corporation's distribution company, which operated and managed the only intrastate gas pipeline system distributing natural gas to rural northeastern Wyoming communities. This system delivered natural gas to the towns of Newcastle, Moorcroft, and Gillette, Wyoming and to other towns as well as farms and ranches along the system.

From McCulloch, Oxford founded Gas Development Enterprises, which later became IGS. At IGS, witness Oxford helped develop natural gas reserves and constructed, managed and operated a natural gas transmission system for Adolph Coors Company in Golden, Colorado. He also developed and operated a 250-mile natural gas system to transport gas to Stauffer Chemical Company of Wyoming and still manages the gas supply for its plant, which uses an average of 20,000 MCF per day. IGS also built and operated a pipeline system and maintained the gas reserves for Lamar

Utilities, a municipality-owned utility in southeastern Colorado. IGS helped Wintershall Oil Company acquire, set up, operate, and manage production, gathering, and transmission assets including Mid-Louisiana Gas Company. Mid-Louisiana is a pipeline company supplying Gulf States Utilities, the local gas distribution company for Baton Rouge. IGS's involvement included gas storage management for peak day requirements in excess of 100,000 MCF per day. Witness Oxford also testified that, with IGS, he had been involved in developing natural gas supplies for Reichold Energy Company in St. Helens, Oregon; for Charter Exploration and Production Company east of Denver; for Centennial Pipeline System in northeastern Colorado; and for Weyerhaeuser in Longview, Washington.

Witness Steve Shute, through his consulting company, Pipeline Solutions, Inc. (PSI), is an officer and shareholder in Frontier's parent corporation. A registered professional engineer in several states, witness Shute worked eleven years for KN Energy, Inc., a large regional gas transmission and distribution utility. His last position with KN was as the general manager of Rocky Mountain Natural Gas, a subsidiary with about 30,000 customers. Shute founded PSI in 1991 to serve as a consultant for various gas utilities in the Rocky Mountain region. His work led him to design, build, and operate, as president, Pinedale Natural Gas, a small local gas distribution company near Jackson Hole, Wyoming.

Witness Remley is not an officer or employee of Frontier, but has been hired as a consultant by the company and has been asked to serve on the board of directors of Frontier's parent corporation. Witness Remley testified that he worked in the engineering department of Public Service Company of Colorado from 1962 to 1972. He then joined Greeley Gas Company (Greeley) and was its Senior Vice President, responsible for management of all engineering and operations of the company, for over fifteen years. Greeley has approximately 100,000 customers over 3,200 miles of distribution lines. Witness Remley stated that he reviewed all significant projects of Greeley as it extended its lines into the small towns and rural areas. Witness Remley has visited the Four-County area and found a lot of similarity between it and the area served by Greeley, in that both have small towns, small cities, and rural customers along the lines. He noted, however, that the population in northwestern North Carolina is much more dense than the markets he was used to serving in Colorado and Kansas. Witness Remley also testified that he had experience laying natural gas lines in mountainous terrains, including estimating the amount of rock, determining feasibility, and projecting construction costs for such lines.

Witness Scott Heath, through his company Heath and Associates, Inc., has conducted a review of a feasibility study by Frontier, including investigating the development of markets and load requirements, capital costs, availability of gas, and the overall economics of the project in the Four-County area. Heath and Associates, located in Shelby, North Carolina, is a management and engineering consulting firm that specializes in the natural gas industry. Its services include design and construction management oversight, feasibility analyses, load forecasting and peaking studies, distribution system flow analysis, operations optimization studies, writing of operation and maintenance manuals and construction manual and emergency plans, and other various tasks related to the operations and management of a natural gas system.

Witness Heath testified that the normal course of development of a new local gas distribution company would be to construct its system and develop its operating and maintenance plans,

contingency and emergency plans, and construction manuals simultaneous to construction of the system. Heath and Associates has written approximately twenty-five operation and maintenance manuals and construction manuals for its clients over the past twenty years. Witness Heath noted that these manuals have been accepted at the public utilities commissions of North Carolina, South Carolina, Tennessee, Virginia, and Kentucky. He testified that he knew from his own experience that this type of information and service to operate a local gas distribution company efficiently and safely can be developed. Witness Heath testified that programs for customer information, marketing, installation and repair, emergency response, etc. are in place and utilized by virtually every natural gas distribution system in the Southeast, and that, in his opinion, Frontier can and will implement comparable systems if given the opportunity.

The Commission believes that the experience of Robert Oxford and Steve Shute, assisted by consultants such as Richard Remley and Scott Heath, is sufficient to qualify them to operate and maintain a local distribution company in the Four-County area in a safe, reliable, and cost-effective manner. Their experiences have been in rural areas, like the rural areas in Yadkin, Surry, Wilkes, and Watauga Counties. The fact that they have not operated a large distribution system, such as Piedmont, that includes urban areas like Charlotte or Greensboro, does not indicate that they cannot operate a system such as the one Frontier proposes. In fact, their focus on operating rural systems should be an advantage to the citizens of the Four-County area.

GAS SUPPLIES AND TRANSPORTATION

Witness Oxford testified that Frontier plans to acquire its gas supply from gas suppliers who have access to sufficient capacity on the Transco interstate pipeline. Attached to witness Oxford's testimony were commitment letters from two suppliers, Coastal Gas Marketing and Appalachian Gas Supply (AGS), with whom Frontier is negotiating for firm gas supply and transportation. Witness Oxford further stated that Frontier will likely elect to have several different suppliers of gas, instead of just one supplier, to ensure flexibility and security of supply and benefit from competition among suppliers. Witness Ben Hadden testified that the Eastern Group could provide corporate warranties for a long-term gas supply contract such as the one AGS was proposing in its commitment letter. Witness Hadden also stated, however, that, based on his experience, Frontier would likely use a number of different suppliers for their gas, which would be prudent.

Witness Ben Hadden adopted the testimony of Lisa Yoho of the Eastern Group's gas marketing subsidiary, AGS, regarding the availability of natural gas for Frontier. AGS has proposed to provide the requisite natural gas supply service for a term of 15 years and will commit to serve Frontier's gas supply needs upon successful negotiation of a long-term gas sales contract.

Ms. Yoho's testimony stated that AGS has access to supplies of natural gas in quantities that would easily satisfy Frontier's gas supply requirements. A September 14, 1994 article in Gas Daily recognized AGS as one of the top ten largest acquirers of released firm capacity in the northeastern United States. AGS monitors Transco's electronic bulletin board continuously for released capacity. On a typical day, according to Ms. Yoho's testimony, AGS currently markets 600,000 dts per day (between 60,000 to 100,000 dts per day through Transco) in the states along the East coast.

In testimony for Piedmont, witness Schiefer recounted Piedmont's pipeline capacity and gas supplies and reserves to serve the Four-County area. He expressed doubt about Frontier's ability to obtain sufficient pipeline capacity and gas supplies. He acknowledged, however, that Piedmont would also have to contract for or replace additional capacity to serve the Four-County area.

Witness Ben Hadden explained that because the Transco pipeline is 100% subscribed, any local gas distribution company, whether Frontier or Piedmont, that fully used its firm capacity on Transco would have to look elsewhere, such as in the secondary market, to purchase the gas to meet its needs. Witness Schiefer confirmed that, in early 1994, Piedmont made its nominations for increased capacity from the Transco Southeast expansion, but in making its projections for anticipated growth on which the nominations were based, Piedmont did not specifically include any consideration of serving firm load in the Four-County area. Therefore, as witness Hadden explained, the gas supply and transportation needs of Frontier in the Four-County area would not be substantially different from the additional incremental needs of Piedmont in serving the same area.

Witness Heath also testified that Piedmont faces the same acquisition issues as Frontier. He added that if Piedmont has oversubscribed and has excess capacity to meet its projected needs, it should be willing to sell this excess capacity to Frontier or to gas marketers that supply Frontier. Witness Heath also mentioned that Frontier could join a gas purchasing pool, such as the one Heath and Associates manages, whereby multiple suppliers are used and gas packages can be obtained at lower prices due to economies of scale. He testified that gas pooling services have become commonplace in the post-FERC Order 636 environment. He concluded that gas supply or transportation would not be a prohibitive restriction for Frontier.

Witness Curtis with the Public Staff testified that his staff had investigated the supply and capacity markets in reviewing Frontier's proposal and had concluded that there is sufficient gas supply and pipeline capacity available for Frontier to meet its customers' needs. This capacity includes firm capacity year-round. This type of capacity has been available for purchase, five or six times over the past eighteen to twenty-four months, on the Transco's electronic bulletin board. Witness Curtis acknowledged that Frontier is doing everything it needs to do at this time with respect to looking at these suppliers and making contacts. He agreed that Frontier cannot proceed further until it receives a certificate because of the expense of demand charges that would accrue as soon as the supply and transportation is confirmed.

Witness Hadden agreed with witness Curtis that there is firm transportation in the released secondary market. He also recounted an example of how an expansion two years ago in New York had freed up approximately 125,000 dekatherms of capacity on an interstate pipeline that had been previously fully subscribed.

It appears from this evidence that FERC Order 636 has led to a more dynamic and efficient natural gas market than that that existed in the past and has made it easier for a company such as Frontier to purchase firm capacity. Witness Hadden confirmed that the intent of FERC Order 636

was to create a robust secondary market for released capacity, and, as evidenced by his daily experiences, that the secondary market for released capacity is robust and active. Piedmont witness Schiefer offered an illustration of this market when he testified that, if Piedmont is not awarded a certificate to serve the Four-County area, it will release its extra capacity into the Transco Release Capacity Program.

Finally, Piedmont attempted to question AGS's ability to supply gas during peak days by inquiring about an oral transaction between AGS and Piedmont in January 1994 for 30,000 dts of gas. Piedmont witness Schiefer testified that he thought the agreement with AGS was for firm capacity. Convincing evidence was presented that it was not. Witness Hadden explained that this arrangement was for interruptible capacity, as evidenced by AGS documents and by the price. The Public Staff's witnesses testified that Piedmont had reported to the Commission in March 1994 that its arrangement with AGS was for interruptible capacity. Witness Hadden testified that this type of arrangement was not a firm, warranted commitment like AGS proposes for Frontier. The Commission concludes that Piedmont's attempt to attack AGS's credibility failed.

The Public Staff recommended a real commitment to supply and transport gas that can be relied upon on the coldest day of the year as a condition for certifying Frontier. The Commission agrees that this is an appropriate condition and finds that the evidence in the record is sufficient to support the finding that Frontier can reasonably expect to receive these types of commitments for firm supply and transportation. Included in such commitments should be the specific terms and conditions on which the suppliers and capacity providers are willing to make the commitments, as well as the method of warranting adequate supplies and capacity on peak days. The Commission would not expect Frontier to actually enter into firm contracts and begin incurring demand charges until the conditions have been removed from the certificate and construction nears commencement.

PROJECT FINANCING

As already noted, Frontier proposes to construct the Four-County project with investor funds. Witness Oxford testified that Frontier proposes an initial financing structure of 75% debt and 25% equity. He testified that the equity portion of the financing will initially come from Industrial Gas Services, Inc., Pipeline Solutions, Inc., and ARB, Inc. He added that, as Frontier expands its distribution system and adds more customers, the debt-equity ratio will decrease and, probably within five to eight years, will be closer to 60% debt and 40% equity. Frontier is willing to provide security, in a form acceptable to the Commission, in an amount up to $4,000,000 to provide additional assurance that the resources are available to operate the system should there be any unanticipated interim need.

Witness John P. Schauerman, Vice-President of Strategic Planning for ARB, Inc. testified about ARB's support of Frontier's application. As noted above, ARB is one of the largest gas pipeline contractors in the country and owns 50% of the parent corporation of Frontier. Before joining ARB, witness Schauerman attended graduate business school at Columbia University and then worked nine years at a regional investment bank, Wedbush Morgan Securities, in their corporate finance group.

He testified that he worked arranging financing for middle market companies, i.e., companies with revenues from $15,000,000 to $200,000,000. Before leaving Wedbush to join ARB, he was the Senior Vice President responsible for negotiating with the providers of capital.

Witness Schauerman testified that ARB's initial role will be to help Frontier as an equity partner; second, to assist in arranging financing for construction; and third, to help in building the transmission and distribution pipeline. In its initial role, ARB has budgeted spending $500,000 to get through the certification and marketing stage of the project. Further, ARB is committed to contribute a minimum of $2.2 million in equity if Frontier receives a certificate to construct the project.

In its efforts to assist Frontier, witness Schauerman stated that ARB will find a financial advisor or an investment bank such as Sutro & Company to work with ARB through the process of arranging the financing. Witness Schauerman testified that he had talked to three investment banks about the project, including Sutro & Company, and all three had responded that Frontier's project was very financible and that they would like to have the assignment to arrange the financing. He also stated that he had spoken directly to two banks, Union Bank and Fuji Bank, and they also expressed interest in participating in financing Frontier, possibly taking on the whole debt portion of the project, if Frontier receives the certificate to move forward. Witness Schauerman stated that ARB was convinced that not only is Frontier's project itself economically feasible, but also that the financing will be feasible as well.

Witness James M. Anderson, Senior Vice-President of Sutro & Company, Incorporated, also testified about his company's interest in Frontier. Sutro & Company is a broker dealer licensed by the New York Stock Exchange and the National Association of Security Dealers to trade in securities. It has been in business for almost 140 years, and was purchased by the John Hancock Insurance Company in 1984. John Hancock has about $1.9 billion of policyholder equity. Sutro & Company has $19 million of net equity and annually handles more than $1 billion worth of principal value securities.

Mr. Anderson himself has been in corporate investment banking and public finance for 24 years. He testified that he has worked and served as the Senior Vice President and member of the Board of Directors of Hanifen Imhoff Incorporated, a regional investment banking firm in Denver; as Chief Executive Officer of his own firm, Anderson DeMonbrun Incorporated, which was merged with Prudential Bache Securities, Inc. (now Prudential Securities, Inc); and as Managing Director of Prudential's Denver Public Finance Department before joining Sutro & Company.

Mr. Anderson testified that he has worked with several municipal utility systems, including the City of Clarkesville, Tennessee and their gas distribution system; the City of Imperial, California; and the University of Colorado and their Buffalo Power Corporation electrical power generation system. He has also worked with the City of Fort Morgan, Colorado; the City of Cuba, Missouri; and the City of Springfield, Missouri, on their gas distribution or utility systems. The size of the financing for Clarkesville, Tennessee was $26,000,000; for the University of Colorado, $41,000,000; for Springfield, Missouri, $16,000,000; for Cuba, Missouri, $2,000,000; and for Imperial, California, $15,000,000.

Regarding investor-owned utilities, Mr. Anderson stated that Sutro & Company has worked with Southern Missouri Natural Gas Company, a unit of Torch Energy Advisors, Inc., on a $26 million financing; the Pinedale Natural Gas Distribution Company in Pinedale, Wyoming, on $1.05 million financing; and with Louis Dryfus Natural Gas Company located in Oklahoma City, Oklahoma, on $24 million financing.

In assessing the financing of Frontier's proposed project in the Four-County area, witness Anderson stated that he first looked at the ability of Frontier's principals to arrange the equity portion of the project and concluded that they have the ability to provide the necessary equity. Witness Anderson testified that he had also examined the proposed service area from the market perspective. He stated that he had traveled through Wilkes, Surry and Yadkin counties examining the market, meeting the citizens, and assessing the industrial and commercial and residential demand for gas there. He met with all of the major industrial users and talked with them about their energy needs, in the present and in the future. He also reviewed Frontier's market studies, cost projections and feasibility studies, pro formas, and profit and loss statements.

Based upon his observations when he visited the Four-County area, his review of Frontier's proposal, and his experience in other areas, witness Anderson testified that the Four-County market was very attractive and that Frontier's market penetration projections were conservative. Because of the excellent potential market, he believed that Frontier's project for the Four-County area and the financing of the project, were very feasible.

Witness Anderson further testified that, in addition to his own professional opinion, Sutro & Company also believes that the project is financially feasible and would like to be the underwriter of Frontier's corporate bonds. Although Sutro & Company does not yet have a formal agreement with Frontier, it hopes to play the role of the investment banker and offer through a private placement Frontier's fixed income capital to the securities market. Witness Anderson added that Sutro & Company may also be involved in raising equity capital.

Witness Anderson testified that he is familiar with many utility company rates of return and he believes that the fact that Frontier has reflected a 15% rate of return to equity investors in its projections is justified based on the alternatives an equity investor has and the degree of risk capital involved.

Witness Anderson also testified that Frontier's proposed initial debt/equity ratio of 75% to 25% provides a sufficient level of comfort for the debt holders and is a typical and reasonable mix for this type of project financing and for a start-up utility like Frontier. Financial statements of Piedmont during the early years of Piedmont's start-up, admitted into evidence during the cross-examination of witness Maxheim, indicated that Piedmont's total debt/equity ratios were 90.2% to 9.8% in 1951, 93.7% to 6.3% in 1952, and 85.3% to 14.7% in 1955.

Witness Anderson concluded that, if Frontier pursues a private placement structure, Sutro & Company is convinced that an institutional investor or investors can be found that will finance this project, with the debt/equity ratio and the other parameters proposed, and that Sutro & Company can finance the project in a reasonable period of time.

Piedmont's cross-examination of witnesses Shute and Oxford included numerous questions about their anticipated rate of return as shareholders in Frontier. As witness Anderson points out in his testimony, rate of return is a function of risk. The earlier an equity investor invests, the greater the risk, and the higher the rate of return. As witness Oxford stated, Frontier's investors plan to own and operate Frontier indefinitely and view this project as a long-term commitment. Regarding the original investors' stake in Frontier's proposal, Mr. Oxford testified:

> [W]e have identified communities in other states other than North Carolina where natural gas service is not available. . . . We're willing to risk our money and our time and avail ourselves to these states -- these communities -- if they so desire. We did not force ourselves on the County of Wilkes or any of the other counties. We, using our own professional skills, background, experience, have evaluated these projects, and we have taken it a step at a time trying very carefully to assess the climate in the state -- that is, the political and business climate -- and we reached some conclusions, and we've come to this point, and we have spent . . . several hundred thousand dollars. While we're sitting here, our companies don't have the benefit of our working on something else. So time is money to us. . . . We've come to the conclusion [that the Four-County area project] is [feasible]. We've risked our money that it is.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-11

The evidence for these findings of fact is found in the testimony of Frontier witnesses Oxford, Shute, and Anderson, the Piedmont panel, and the Public Staff panel.

It is undisputed that Frontier will not rely on contributions from an expansion fund, but rather will construct its proposed project with 100% of the capital provided by traditional investor financing. Frontier contends that its proposal is economically feasible. Piedmont, on the other hand, contends that its proposal is not economically feasible with traditional financing and that 30% or more of the necessary capital must be provided from an expansion fund or other non-traditional financing. As noted in the June 19, 1995 Order, this case presents the Commission with the policy issue of whether an expansion fund should be used if there is a reasonable alternative that appears to be feasible. As stated in that Order, the Commission believes that it should not.

The Public Staff testified that the purpose and intent of the General Assembly when it enacted G.S. § 62-158 was to make natural gas available in the numerous unserved counties in the State that are economically infeasible to serve. The Public Staff witnesses further testified that allowing the construction of a project using expansion fund financing when an alternative appears to be available does not seem consistent with this legislative intent. If Frontier is successful, the supplier refunds being held by Piedmont for possible inclusion in an expansion fund could be used to extend service into other unserved areas or the refunds could be returned to Piedmont's customers. The Public Staff witnesses also noted that denying Frontier the opportunity to pursue its project would severely discourage companies other than the currently franchised North Carolina gas utilities from pursuing expansion projects in North Carolina in the future. They recognized that this, too, would be contrary to the intent of the General Assembly in enacting G.S. § 62-158. The Commission agrees that expansion fund financing should not be used when a reasonable and feasible alternative is available.

G.S. § 62-158 provides for creation of an expansion fund to construct facilities into franchised areas "that otherwise would not be feasible for the company to construct." The Commission concludes that this is an important factor in Frontier's favor.

With respect to the number of customers, Piedmont intends to provide service by the end of year five to approximately 4,705 residential customers, which compares to Frontier's estimate of 10,060 residential customers. Piedmont estimates 1,660 commercial customers, which compares to Frontier's estimate of 2,090 commercial customers. Piedmont estimates 111 poultry farm customers, which compares to Frontier's estimate of 500 poultry farm customers. Piedmont estimates 32 industrial customers, which compares to Frontier's estimate of 20 industrial customers. Piedmont estimates the total annual volumes sold or transported by the end of year five to be about 3 million dts, while Frontier estimates about 4.5 million dts. These factors clearly favor Frontier.

With respect to construction schedules, Piedmont intends to construct the transmission line through Yadkin County and into Wilkes County during the twelve months ending October 31, 1996; into Watauga County during the twelve months ending October 31, 1997; and into Surry County during the twelve months ending October 31, 1998. Frontier intends to construct the transmission system in all four counties by the end of the first year. With respect to the distribution system, Piedmont indicated it expects to construct 18 miles of core distribution system in Yadkinville, Wilkesboro, and North Wilkesboro during the twelve months ending October 31, 1996; 13 miles in Watauga County during the twelve months ending October 31, 1997; 26 miles in Elkin, Arlington, Jonesville, Dobson and Mt. Airy during the twelve months ending October 31, 1998; and 9.3 miles in Mt. Airy during the twelve months ending October 31, 1999. On the other hand, Frontier indicated that the vast majority of its proposed 718 miles of distribution lines would be in place within three years, with most industrial and poultry customers and one-third of the estimated residential and commercial customers served during the first year. As noted in the June 19, 1995 Order, Frontier's shorter construction schedule is a factor in its favor.

With respect to the scope of the project proposed by Piedmont, the Public Staff panel members testified that they are concerned that Piedmont will serve only the major industrial entities and a relatively small part of the major towns in these four counties, thereby depriving a substantial number of residents and small businesses of the availability of natural gas. On the other hand, Frontier intends to serve the more rural areas of these counties, including such communities as Brooks Cross Roads in Yadkin County; Hays, Fairplains, Mulberry, and Miller's Creek north of North Wilkesboro and Moravian Falls and Boomer south of Wilkesboro in Wilkes County; Deep Gap in western Wilkes County on the way to Boone in Watauga County; and White Plains, Toast, and Bannertown in Surry County. The Public Staff cited the differences in the number of miles of distribution lines and the number of customers that each applicant estimates to illustrate its concern. Piedmont estimates 215 miles of core distribution lines compared to Frontier's estimate of 718 miles of distribution lines. The testimony from public witnesses at the Wilkesboro hearing demonstrates that the residents of these four counties want a system that serves more than just the downtown areas of the major towns. This factor favors Frontier.

An additional concern cited by the Public Staff was that Piedmont's development of the Four-County area would be competing for corporate resources with its current, possibly more profitable,

franchised areas. The Public Staff cited Piedmont's current customer growth rate, which has been one of the highest in the country in recent years. This growth in customers has resulted in significant increases in Piedmont's construction expenditures. If Piedmont were granted the certificate for the Four-County area, this area would be required to compete with Piedmont's currently franchised areas for limited corporate financial and other resources. Some of these other areas may be more profitable than the Four-County area.

The Public Staff panel testified that Piedmont's own investment in the Four-County project would be very substantial. The panel testified that unless Piedmont pursues incremental rates for the Four-County area, construction of a system to serve that area would tend to place upward pressure on Piedmont's system-wide rates even with expansion fund financing. The Commission agrees, though Piedmont's large customer base would help it absorb such an increase, as the Commission noted in the June 19, 1995 Order. Further, the Commission notes that Piedmont witness Maxheim confirmed that Piedmont intends to construct a new liquefied natural gas storage tank within the 1995 to 1997 time period. While the exact size and the extent of participation by other parties had not yet been determined, witness Maxheim estimated that this new tank will cost in excess of $80 million. He also confirmed that the North Carolina portion of Piedmont's 1993 construction budget has been $48 million and that construction for the years 1994 through 1996 has been forecasted to be $60 to $65 million, exclusive of the project for the Four-County area.

The Commission noted in its June 19, 1995 Order that Piedmont's currently approved rates are lower than Frontier's anticipated rates and that this factor favored Piedmont. Upon further reflection, the Commission concludes that this advantage is offset by Piedmont's plans to serve far fewer customers and communities in the Four-County area. Piedmont's lower rates would, in effect, benefit significantly fewer customers while many more in the Four-County area would be left with no service at all under Piedmont's proposal.

The Commission therefore concludes that the factors cited herein favor Frontier and that these factors outweigh the factors favoring Piedmont. Further, Frontier witness Oxford indicated that Frontier is willing to provide $4 million in security as additional assurance that the resources are available to operate the system should there be any unanticipated interim need. The Public Staff testified that it supports Frontier's proposal to provide security. This security provides an appropriate balance to the inherent risks associated with a start-up company and provides some measure of assurance of service to customers.

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

These findings, which are primarily conclusions of law, are based upon the preceding findings and discussions of evidence, and the testimony of the Public Staff witnesses and Piedmont witness Killough.

The Public Staff concluded that Frontier had made a prima facie case that it can successfully provide natural gas service to the Four-County area and should, therefore, be given the opportunity to show that it can finalize the necessary studies and make the definite capacity, financing, and other arrangements that could not be finalized prior to a certificate being granted. The Public Staff testified

that Frontier had provided considerable information in support of its application; however, it noted that Frontier must expend substantial amounts of additional money to firm up and finalize its plans Examples of the steps still to be taken include contracts for firm gas supply and transportation and a detailed economic feasibility study of the project by an independent consultant as would be required by potential investors. Therefore, the Public Staff recommended that Frontier be given some assurance that it will receive its certificate if it spends the money needed to complete and finalize the necessary studies and make the definite capacity, financing, and other arrangements for the project. Specifically, the Public Staff recommended that the Commission grant a certificate to Frontier that is subject to revocation if certain conditions and deadlines are not met.

The Commission agrees with the Public Staff's recommendation. The Commission concludes that, for the reasons stated above, the issuance of a certificate with conditions to Frontier at this time is reasonable, supported by the evidence in this docket, and in the public interest.

If Frontier can finalize its plans to construct the system it proposes, to serve the number of customers it projects, and to finance the system entirely by investor financing, the Commission should give it that opportunity. To do otherwise could discourage any new company from coming to North Carolina to provide utility service to citizens of our State who are now without service. Witnesses Oxford and Shute and the other witnesses testifying on behalf of Frontier are credible and experienced in the natural gas industry. Moreover, the stated corporate purpose and philosophy of Frontier, to provide natural gas to rural areas, matches the needs of a primarily rural region like the Four-County area. If Frontier can finalize its plans to serve the Four-County area, the supplier refunds held in escrow by Piedmont can be used to expand service to other unserved areas of our State or returned to customers, all as will be determined by this Commission in other dockets.

If, on the other hand, Frontier cannot finalize its plans to serve the Four-County area as it proposes, Piedmont stands ready, willing, and able to serve this area, financed in part by an expansion fund, as stated in its Response to the Commission's June 19, 1995 Order, and the Commission would expect it to do so. The Commission does not believe that allowing Frontier 90 days to finalize its plans will significantly delay service to an area that has waited for natural gas for forty years.

In rebuttal testimony filed by its witnesses, Piedmont characterized the Public Staff's proposal as recognizing that Frontier had failed to carry its burden of proof on a number of issues, including potential customers, system design, reliability, construction costs, gas supplies and pipeline capacity, rates, feasibility, operating manuals, financing, and experience. The Public Staff disagreed with this characterization. The Public Staff's actual position, as expressed in their own testimony, was that Frontier had, in fact, provided at this stage of the proceedings reasonable and sufficient information on each of these items. The Commission concludes that Frontier has carried its burden of proof in these proceedings. Neither applicant had finalized all of its studies, designs and arrangements at the time of hearing. Piedmont witness Killough admitted at the hearing that Piedmont had encountered changing factors that were continuing to impact decisions on routes, design and schedule. He also testified that Piedmont's analyses were still in development as of the hearing. The further proceedings ordered herein involve finalizing plans, not making up for a burden of proof that has not been met.

Generally, procedure before the Commission is not as strict as in Superior Court, nor is it confined by technical rules. Substance, not form, is controlling. In the absence of statutory inhibition, the Commission may regulate its own procedures within broad limits. Utilities Commission v. Telephone Co. 260 N.C. 369 (1963). The Commission therefore concludes that it has authority to order further proceedings in these dockets as hereinafter provided. The Commission further concludes that it has the statutory authority to issue a certificate with conditions, subject to revocation, as recommended by the Public Staff, pursuant to G.S. §§ 62-110 and 62-113(a) and the case law interpreting those statutes. State v. Carolina Coach Co. 260 N.C. 43 (1963); State v. Southern Bell, 88 N.C. App 153 (1987).

IT IS, THEREFORE, ORDERED as follows:

1. That a certificate of public convenience and necessity, subject to the conditions and proceedings hereinafter set forth, is hereby granted to Frontier Utilities of North Carolina, Inc., for the construction and operation of an intrastate pipeline and local distribution system to provide natural gas service to Surry, Watauga, Wilkes, and Yadkin Counties.

2. That as conditions of this certificate, Frontier must complete and file with the Commission the following, all of which shall be in substantial compliance with the proposal that Frontier has presented in its testimony:

(1) a detailed market study by a qualified independent consultant evaluating the potential customers and loads in the Four-County area and the likelihood that these potential customers and loads could be converted to natural gas at the full range of rates and rate designs that Frontier proposes for approval;

(2) a detailed design of the gas transmission and distribution mains that would be eventually constructed to serve the Four-County area, showing the pipeline route, pipe sizes, length of all pipe sizes, pipeline flows at all critical points including junctions and city gates, and cathodic protection requirements;

(3) an opinion letter from a qualified independent engineer as to the adequacy and reliability of the system design;

(4) guaranteed pipe, materials, and construction contracts with reputable and qualified contractors and suppliers for the construction of the transmission and distribution mains described in detail in response to (2) above;

(5) a detailed presentation of the arrangements that have been made for the delivery of sufficient gas supplies to the Four-County area on satisfactory terms, including commitments from suppliers of the gas and the pipeline capacity required to deliver supplies to the Four-County area with sufficient details for the Commission to evaluate the reliability of the suppliers of the gas and pipeline capacity;

(6) just and reasonable proposed rates, tariffs, and service rules;

(7) a detailed economic feasibility study of the project by a qualified independent consultant;

(8) an operating manual;

(9) evidence of Frontier's ability to arrange security in the amount of $4 million, in a form acceptable to the Commission, to make available additional resources, to be used should the need arise, and to provide additional assurance that the proposed natural gas system will be constructed and operated in a safe and reliable manner consistent with all applicable federal and state statutes, the rules and regulations of the Commission, and industry standards, practices and procedures; and

(10) a preliminary financing plan to (a) secure debt and equity capital on reasonable terms to construct and initially operate the system and (b) increase its equity ratio to the 35% range within a reasonable period of time.

3. That the hearing in these proceedings shall remain open for the receipt of evidence as to whether Frontier has met these conditions. In order to fulfill these conditions, no later than ninety (90) days from the date of this Order, Frontier must file testimony and supporting documentation showing that conditions (1) through (10) have been met. Frontier will not need to sign gas supply and transportation contracts in order to satisfy condition (5), but Frontier will need to show evidence of commitments for gas supply and transportation with all details that would be contained in a subsequent contract, including warranties, amounts, and price.

The Public Staff and other parties may file testimony within 30 days following Frontier's filing and a hearing shall be set 20 days from this intervenor filing date. The purpose of this hearing will be limited to determining the adequacy of the information filed by Frontier to satisfy these conditions. Frontier's filing will not be found to be inadequate merely by a showing that alternative or different approaches, methods, arrangements, or plans are available to Frontier, Piedmont, or any other person.

If Frontier presents adequate testimony and supporting documentation to meet conditions (1) through (10), the Commission will then issue a final order finding that the conditions have been met, granting an unconditional certificate to Frontier, and denying Piedmont's application.

If Frontier cannot provide adequate evidence to meet these requirements, the Commission shall revoke Frontier's certificate and set a hearing within 30 days, the purpose of which will be to determine whether a certificate should be issued to Piedmont for the Four-County area and the terms and conditions, if any, of such a certificate, based upon all of the evidence presented in these proceedings.

The time period set forth in this order may be extended only upon a showing, by clear and convincing evidence, that the events that are required to be completed within that time period could not be completed because of unforeseen circumstances beyond Frontier's power to control.

4. That Piedmont's application for a certificate of public convenience and necessity shall be held in abeyance, pending the outcome of the further hearing scheduled herein, and a final order will be issued as to Piedmont's application following that hearing.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of July 1995.

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

Former Commissioner Redman did not participate in this decision.
Commissioner Cobb dissents.

COMMISSIONER LAURENCE A. COBB, DISSENTING.

I dissent. I would have granted Piedmont the certificate and allowed the use of expansion funds for construction for the reasons set forth in my concurring opinion to the order previously entered in these dockets on June 19, 1995.

Commissioner Laurence A. Cobb

DOCKET NO. G-3, SUB 186

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Pennsylvania & Southern Gas Company, a Division of NUI Corporation, for (1) an Increase in Its Rates and Charges, and (2) Approval of a Mechanism for the Future Recovery of Manufactured Gas Plant Costs	)))))	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Wrenn Room, Reidsville Branch of the Rockingham Public Library System, 204 West Morehead Street, Reidsville, North Carolina on June 21, 1995

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on June 27, 1995

BEFORE: Commissioner Laurence A. Cobb, Presiding, Commissioners Charles H. Hughes and Judy Hunt

APPEARANCES:

For Pennsylvania & Southern Gas Company, a Division of NUI Corporation:

James H. Jeffries IV, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28655

For the Public Staff:

James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On November 30, 1994, Pennsylvania & Southern Gas Company, a Division of NUI Corporation (Pennsylvania & Southern or the Company), filed a notice of intent to file a general rate case application.

On December 20, 1994, the Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene in Docket No. G-3, Sub 186, and on December 27, 1994, the Commission issued an order granting the petition.

On February 17, 1995, Pennsylvania & Southern filed an application in Docket No. G-3, Sub 186, requesting a general increase in its rates and charges for natural gas service, and for the establishment of a mechanism similar to that approved in Docket Nos. G-5, Sub 327 and G-9, Sub 351 for the future recovery of manufactured gas plant costs.

On March 14, 1995, the Commission declared Pennsylvania & Southern's application to be a general rate case pursuant to G.S. §62-137 and suspended the proposed rates for a period of 270 days from the proposed effective date of March 20, 1995. In that order, the Commission also set the matter for hearing, required Pennsylvania & Southern to give notice of the hearing, and established dates for the prefiling of direct testimony by the intervenors and for the prefiling of rebuttal testimony by Pennsylvania & Southern.

On June 14, 1995, Pennsylvania & Southern and the Public Staff filed a stipulation of settlement (Stipulation) with the Commission, pursuant to which the Company and the Public Staff resolved, as between themselves, all issues in the case.

On June 21, 1995, the matter came on for hearing in Reidsville as scheduled. At the hearing in Reidsville, Donely J. Lathrop testified as a public witness.

On June 27, 1995, the docket came on for hearing as scheduled in Raleigh, at which time the Commission was advised that the Company and the Public Staff had previously entered into a Stipulation. The Commission was further advised that CUCA was not a party to and did not agree with the terms of the Stipulation between the Company and the Public Staff.

At the hearing, and in addition to the Stipulation, the testimony and exhibits of the following witnesses were offered and accepted into evidence:

For the Company: (1) James W. Carl, Vice President of Pennsylvania & Southern; (2) Bernard L. Smith, Vice President of Accounting of Pennsylvania & Southern; (3) Robert F. Lurie, Treasurer of NUI Corporation.

For CUCA: Kevin W. O'Donnell, President of Nova Utility Services, Inc.

Based upon the verified application, the testimony and exhibits received into evidence at the hearings, the Stipulation, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Pennsylvania & Southern is an operating division of NUI Corporation which is a corporation organized under the laws of the state of New Jersey and duly registered to do business in North Carolina.

2. Pennsylvania & Southern is engaged in the business of transporting, distributing, and selling natural gas in a franchised area which consists of all or parts of two counties in the northern Piedmont area of North Carolina.

3. Pennsylvania & Southern is a public utility as defined by G.S. §62-3(23) and is subject to the jurisdiction of this Commission and is lawfully before this Commission upon its application for an adjustment in its rates and charges for retail natural gas service pursuant to G.S. §62-133.

4. Pennsylvania & Southern's application, testimony, exhibits, affidavits of publication and published hearing notices are in compliance with the provisions of the Public Utilities Act and the Rules and Regulations of the Commission.

5. The Company is providing good service to its customers.

6. The appropriate test period for use in this proceeding is the 12 months ended September 30, 1994, adjusted for certain known and measurable changes occurring after the end of the test period and before the conclusion of the hearing as permitted by G.S. §62-133(c).

7. In its initial application, Pennsylvania & Southern sought to increase its revenues attributable to its North Carolina retail rates by $773,503. Pursuant to the Stipulation entered into between the Company and the Public Staff, the Company and the Public Staff have agreed to an increase in rates which would produce an increase in annual revenues attributable to the Company's North Carolina retail operations of $384,771.

Gas Volumes

8. The appropriate level of adjusted sales volumes for use herein is 3,734,362 dekatherms (dts) as set forth on Schedule IV to the Stipulation.

9. The appropriate volume level of lost and unaccounted for gas for use herein is 103,405 dts as set forth on Schedule IV to the Stipulation.

10. The appropriate volume level of company use gas is 642 dts as set forth on Schedule IV to the Stipulation.

11. The gas supply required to generate the appropriate sales level is as follows:

Sales	3,734,362 dts
Lost and unaccounted for	103,405
Company use	642
Gas supply	3,838,409 dts

Investment in Utility Plant/Accumulated Depreciation

12. The appropriate level of gas utility plant in service for use in this proceeding is $16,829,049 as set forth on Schedule I to the Stipulation.

13. The appropriate level of accumulated depreciation for use in this proceeding is $4,811,276 as set forth on Schedule I to the Stipulation.

Allowance for Working Capital

14. The appropriate level of materials and supplies for use in this proceeding is $927,461 as set forth on Schedule I to the Stipulation.

15. The appropriate level of cash working capital for use in this proceeding is $443,575 as set forth on Schedule I to the Stipulation.

16. The appropriate level of tax accruals and customer deposits for use in this proceeding is $186,339 as set forth on Schedule I to the Stipulation.

Deferred Income Taxes/Benefit Accruals

17. The appropriate level of accumulated deferred income taxes for use in this proceeding is $931,166 as set forth on Schedule I to the Stipulation.

18. The appropriate level of cost-free capital related to pension and post-retirement benefit accruals for use in this proceeding is $356,691 as set forth on Schedule I to the Stipulation. .

Calculated Rate Base for Return

19. Pennsylvania & Southern's rate base used and useful in providing natural gas service to its North Carolina customers is $11,914,613 as set forth on Schedule I to the Stipulation, and consists of $16,829,049 utility plant in service less $4,811,276 in accumulated depreciation, plus $1,184,697 in working capital and less $1,287,857 in deferred income taxes and pension and post-retirement benefit accruals.

Operating Revenues/Deductions

20. The appropriate level of operating revenues under present rates for use in this proceeding is $15,912,563 as set forth on Schedule I to the Stipulation.

21. The appropriate level of total cost of purchased gas expense under present rates for use in this proceeding is $9,889,367 as set forth on Schedule I to the Stipulation.

22. The appropriate level of operation and maintenance expense under present rates for use in this proceeding is $3,548,605 as set forth on Schedule I to the Stipulation.

23. The appropriate level of depreciation expense under present rates for use in this proceeding is $595,173 as set forth on Schedule I to the Stipulation.

24. The appropriate level of general taxes under present rates for use in this proceeding is $760,059 as set forth on Schedule I to the Stipulation.

25. The appropriate level of state income taxes under present rates for use in this proceeding is $52,234 as set forth on Schedule I to the Stipulation.

26. The appropriate level of federal income taxes under present rates for use in this proceeding is $202,152 as set forth on Schedule I to the Stipulation.

27. The appropriate level of net operating income under present rates for use in this proceeding is $864,973 consisting of $15,912,563 in operating revenues less $15,047,590 in total operating expenses, all as set forth on Schedule I to the Stipulation.

Capital Structure/Rate of Return

28. The capital structure approved for ratemaking purposes in this case consists of 47.57 percent common equity, 46.49 percent long-term debt and 5.94 percent short-term debt.

29. Witness O'Donnell's applications of the DCF and comparable earnings methods are accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

30. The testimony in support of the Stipulation is accorded the greatest weight in determining the cost of common equity for purposes of this proceeding.

31. The cost of common equity authorized in this proceeding is 11.4 percent.

32. The overall weighted cost of capital to the Company is 9.16 percent.

33. The overall rate of return of 9.16 percent is reasonable and fair.

Additional Revenue Requirement

34. Pennsylvania & Southern should be authorized to increase its annual operating revenues by $384,771 to $16,297,334. This increase will allow the Company a reasonable opportunity to earn the rate of return on its rate base which the Commission has found to be just and reasonable.

Cost of Service/Rate Design

35. Pennsylvania & Southern and CUCA presented the results of cost-of-service studies under both the filed and stipulated rates.

36. The major difference between the cost-of-service studies prepared by Pennsylvania & Southern and CUCA were (1) the allocation of fixed gas costs to the various customer classes and (2) the characterization of firm service fees and sales differential charges as pipeline capacity charges or gas supply costs.

37. CUCA advocated the adoption of and utilized a 100 percent peak day allocation method in its cost-of-service study and treated firm service fees and sales differential charges as pipeline capacity charges. Using its cost-of-service methodology, CUCA calculated the following rates of return for Pennsylvania & Southern's various customer classes under the stipulated proposed rates:

Rate Schedule		Return on Stipulated Rates
101	Residential	1.10%
102	Small General	16.54%
104	Large General	24.25%
105	Interruptible	38.98%

38. Pennsylvania & Southern utilized the Seaboard Method for allocation purposes in its cost-of-service studies attributing 50 percent of fixed gas costs on a peak day basis and 50 percent of fixed gas costs on an average annual sales basis. Pennsylvania & Southern also treated firm service fees and sales differential charges as gas supply costs. Using its cost-of-service methodology, Pennsylvania & Southern calculated the following rates of return for its various customer classes under the stipulated proposed rates:

Rate Schedule		Return on Stipulated Rates
101	Residential	3.68%
102	Small General	23.67%
104	Large General	18.12%
105	Interruptible	19.02%

39. Estimated cost-of-service studies are subjective and judgmental, and while they can provide useful information in the rate design process, they should not be relied upon as the exclusive measure in setting rates. Instead, they should be analyzed in conjunction with other appropriate factors in determining proper rate design. These other appropriate factors include the value of the service to the customer, the type and priority of the service received by the customer, the frequency of interruptions of interruptible service, the quantity of use, the time of use, the manner of service, the competitive conditions related to both the retention of sales to and transportation for existing customers and the acquisition of new customers, the historic rate design and differentials between the various classes of customers, the revenue stability of the utility, and economic and political factors including the encouragement of expansion.

40. It is not appropriate to set rates in this proceeding based solely on any one or more of the estimated cost-of-service studies presented by CUCA and Pennsylvania & Southern.

41. In general, the cost-of-service studies presented in this proceeding show that somewhat higher rates of return exist under the filed and stipulated proposed rates for Large General and Interruptible customers than for Residential customers and that the rate of return on Residential customers is below the total Company returns.

42. CUCA advocates moving to essentially equalized rates of return where the difference in rates of return between Residential and Interruptible customers would be no more than 2.5 percent.

43. Rates to Industrial customers have decreased in the last three Pennsylvania & Southern general rate cases. Rates to Residential customers have historically risen. Pennsylvania & Southern and the Public Staff have agreed to further the trend of greater increases in Residential rates in this general rate case as follows:

Rate Schedule		% Increase from Existing Rates
101	Residential	6.21%
102	Small General	0.98%
104	Large General	0.50%
105	Interruptible	0.00%

44. Pennsylvania & Southern's residential customers, unlike its large commercial and industrial customers, have very little ability to switch to alternate fuels without major expense. Pennsylvania & Southern's residential customers also do not have the ability to negotiate lower rates as do industrial customers and, in fact, bear the risk of being required to make up margin losses from negotiated rates. These factors, among others, justify higher rates of return from Large General and Interruptible customers and lower rates of return from residential customers.

45. Rates based solely on equalized rates of return among customer classes are not reasonable for purposes of this proceeding.

46. The proposed rates set forth on Schedule II of the Stipulation are just and reasonable for purposes of this proceeding and do not subject any customer or class of customers to rate shock or unjust or discriminatory rates.

Transportation Rates

47. The Commission has approved the use of full margin transportation rates for all of the LDCs in North Carolina.

48. The underlying premise of full margin transportation rates is that transportation rates should not provide an incentive or disincentive for an LDC to transport gas rather than sell gas under its filed tariff rate. In order for an LDC to be neutral on this issue, transportation customers must pay the same fixed costs they would pay as sales customers.

Fixed Gas Cost Recovery Rates

49. The fixed gas cost recovery rates (fixed demand and storage costs) set forth on Schedule III of the Stipulation are appropriate for purposes of calculating fixed gas cost recovery rates in the Company's Rider D. These rates are as follows:

Rate 101	Rate 102	Rate 104	Rate 105
$0.9848/dt	$0.9628/dt	$0.5357/dt	$0.2833/dt

50. It is appropriate to modify the Company's Purchased Gas Adjustment Procedures - Rider D in order to allow fixed gas cost changes that occur between general rate cases to be tracked on a percentage basis among the various rate schedules and not on a flat per dekatherm basis as has been done historically.

51. The fixed gas cost recovery apportionments shown on Schedule III to the Stipulation are appropriate for use in this proceeding. These percentages are as follows:

Rate 101	Rate 102	Rate 104	Rate 105
40.16%	23.58%	14.72%	21.54%

52. Pennsylvania & Southern should modify its Rider D language to incorporate the changes discussed in Findings of Fact Nos. 50 and 51.

Weather Normalization Adjustment

53. The "Ri" values set forth on Schedule III to the Stipulation are appropriate for use in Pennsylvania & Southern's Weather Normalization Adjustment in the future.

MGP Costs

54. Pennsylvania & Southern and the Public Staff have stipulated that Pennsylvania & Southern's recovery of manufactured gas plant costs will be governed by the procedures approved by the Commission in Docket G-5, Sub 327. This stipulation is reasonable and appropriate.

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

These findings of facts are jurisdictional and informational and were not contested by any party. They are supported by the Company's verified application, the testimony and exhibits of the various witnesses, the NCUC Form G-1 that was filed with the application, the records of the Commission in other proceedings and the affidavit of publication filed with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The Company filed its application and exhibits using a test period of the twelve months ended September 30, 1994. In its order of March 14, 1995, the Commission ordered the parties to use a test period of the twelve months ended September 30, 1994, with appropriate adjustments. The Stipulation is based upon the test period ordered by the Commission, and this test period was not contested by any party.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

This finding of fact is supported by the Company's application and the Stipulation and is not contested by any party.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-11

In its application, the Company proposed annual sales volumes of 3,738,780 dekatherms.

After audit by the Public Staff and the Company's consideration of adjustments in end of period volumes proposed by the Public Staff, Pennsylvania & Southern and the Public Staff agreed to adjusted sales volumes of 3,734,362 dekatherms, lost and unaccounted for volumes of 103,405 dekatherms and company use volumes of 642 dekatherms. These stipulated volumes yield a cumulative required gas supply of 3,838,409 dekatherms and are set out on Schedule IV to the Stipulation. Company witness Carl testified that these adjusted volumes were reasonable. No other party presented evidence on this issue.

The Commission concludes that the stipulated volumes are reasonable, supported by the evidence and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-13

The reasonable original cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing natural gas utility service to the public within North Carolina, less that portion of the cost that has been consumed by depreciation expense, and as has been agreed to between the Company and the Public Staff, is $12,017,773 as set forth on Schedule I of the Stipulation. The amounts shown on Schedule I are the result of negotiations between Pennsylvania & Southern and the Public Staff, and result in a reduction of utility rate base from that filed by the Company of $1,277,028. Company witness Carl testified that this adjusted utility rate base was reasonable. No other party presented evidence on this issue. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14-16

The stipulated allowance for working capital is shown on Schedule I to the Stipulation and consists of $927,461 in materials and supplies, $443,575 in cash working capital and $186,339 in tax accruals and customer deposits. This allowance is the result of negotiations between Pennsylvania & Southern and the Public Staff and is $2,707 less than filed for by the Company. Company witness Carl testified that this adjusted allowance for working capital was reasonable. No other party presented evidence on this issue. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

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

The stipulated levels of accumulated deferred income taxes and pension and post-retirement benefit accruals are shown on Schedule I to the Stipulation and are $931,166 and $356,691, respectively. These amounts are the result of negotiations between Pennsylvania & Southern and the

Public Staff and result in an additional reduction to rate base of $368,319 from that filed by the Company. Company witness Carl testified that these adjusted levels of deferred income taxes and pension and post-retirement benefit accruals were reasonable. No other party presented evidence on this issue. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The stipulated calculated rate base for return is shown on Schedule I to the Stipulation and consists of investment in utility plant less accumulated depreciation plus allowance for working capital less deferred income taxes and pension and post-retirement benefit accruals. These amounts are the result of negotiations between Pennsylvania & Southern and the Public Staff, yield a calculated rate base for return of $11,914,613 and result in a $1,648,054 reduction to the rate base for return filed by the Company. Company witness Carl testified that this adjusted rate base for return is reasonable. No other party presented evidence on this issue. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20-27

The stipulated level of operating revenues is shown on Schedule I to the Stipulation and without adjustment for the additional revenue request in this case is $15,912,563. This amount is the result of negotiations between Pennsylvania & Southern and the Public Staff and is $12,706 less than filed for by the Company. Company witness Carl testified that these adjustments to current revenues were reasonable. No other party presented evidence on this issue. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket. The Public Staff and the Company have further stipulated to additional revenues of $384,771, a reduction of $388,732 from the Company's filed request.

Pennsylvania & Southern and the Public Staff have also stipulated to certain adjusted deductions to operating revenues which are shown on Schedule I to the Stipulation. These adjusted deductions are the result of negotiations between Pennsylvania & Southern and the Public Staff and are as follows:

Deductions to Operating Revenues	Filed	Stipulated
Cost of purchased gas	$9,898,200	$9,889,367
Operation and maintenance expense	$3,601,164	$3,548,605
Depreciation expense	$628,375	$595,173
General taxes	$744,752	$760,059
State income taxes	$41,733	$52,234
Federal income taxes	$157 840	$202 152
	$15,072,064	$15,047,590

Company witness Carl testified that these adjusted operating expenses were reasonable. No other party presented evidence on this issue. The Commission has carefully reviewed the adjusted and stipulated operating expenses and concludes that they are appropriate for use in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 28-33

The stipulated capital structure agreed to by the Public Staff and Pennsylvania & Southern is set forth at paragraph 2.i. in the Stipulation and consists of 46.49 percent long-term debt, 5.94 percent short-term debt, and 47.57 percent common equity. The Company's filed capital structure consisted of 59.77 percent debt and 40.23 percent common equity. Company witness Lurie testified that the filed capital structure was based on NUI Corporation's (NUI) pro forma or forecasted levels of common equity and senior debt at June 30, 1995.

In his direct prefiled testimony, CUCA witness O'Donnell accepted the Company's filed capital structure. In his prefiled supplemental testimony, Mr. O'Donnell opposed the stipulated capital structure because, in his view, it did not represent the Company's ongoing debt financing activities. In the summary of his prefiled testimony presented at the hearing on June 27, 1995, Mr. O'Donnell, for the first time, proposed a capital structure for the Company consisting of 39.70 percent equity, 37.71 percent long-term debt, and 22.59 percent short-term debt. Mr. O'Donnell testified that this capital structure was based on a 13-month average for NUI ending March 31, 1995, and included total short-term debt at an average daily balance.

Company witness Smith testified that the stipulated capital structure was arrived at as a result of adjustments proposed by the Public Staff and accepted by the Company including the addition of a component of short-term debt, measured on the basis of the value of the Company's gas inventory, as well as adjustments to the levels of long-term debt and common equity based on the use of historical averages. The general methodology for arriving at the stipulated capital structure was derived by looking at recent Commission practice in ratemaking proceedings. Mr. Smith testified that consistent with that practice, the Company and the Public Staff agreed to a capital structure consisting of long-term debt, short-term debt and common equity based on a 13-month average for the period ended March 31, 1995. According to Mr. Smith, the long-term debt and equity components of this capital structure were based on actual NUI averages while the short-term debt component was based on the average values of the Company's gas inventories included in rate base for the same 13-month period. Pennsylvania & Southern Rebuttal Exhibit BLS-1 indicated that the actual equity ratio of NUI, calculated as set forth above, exceeded the stipulated equity ratio of 47.57 percent in 7 of the 13 months used for determining the stipulated capital structure.

With respect to Mr. O'Donnell's recommended capital structure, Mr. Lurie testified that Mr. O'Donnell had overstated the appropriate level of short-term debt that should be included in the capital structure for ratemaking purposes. According to Mr. Lurie's testimony, the Company used short-term debt during the most recent year to finance gas inventory as well as for the temporary financing of capital expenditures. In his opinion, it was reasonable to include the short-term debt which financed the rate base item of gas inventory in the capital structure for ratemaking purposes. However, Mr. Lurie believed it was inappropriate to include the short-term debt in the capital structure for ratemaking purposes which was used to temporarily finance capital expenditures. He

explained that the short-term debt used to finance capital expenditures was being refinanced by the Company in stages and that part of such short-term debt was replaced by long-term debt in early 1995 and the Company intended to refinance the remainder of that short-term debt in fiscal year 1996 with a common equity issue of at least $30 million. Mr. Lurie testified that Mr. O'Donnell's recommended capital structure seriously understated the weighted average cost of capital on a going forward basis for the permanent sources of capital of the Company, and if adopted by the Commission, would understate the reasonable required return on its rate base.

Company witness Smith also testified that other factors supported the use of the stipulated capital structure for purposes of this proceeding. First, he testified that the median equity ratio of the natural gas local distribution companies (LDCs) listed by Edward D. Jones and Company is 47 percent and the mean equity ratio for that group is 46 percent. Second, Standard & Poors average benchmark equity ratio for LDCs such as NUI with a "BBB" bond rating is 47 percent. Third, he also testified that NUI intends to issue approximately $30 million in equity in the upcoming fiscal year which will significantly increase the equity ratio, even as measured by Mr. O'Donnell.

The Commission has carefully considered the testimony of the witnesses and concludes that the appropriate capital structure for use in this proceeding is that set forth in the Stipulation which consists of 47.57 percent common equity, 46.49 percent long-term debt, and 5.94 percent short-term debt. This capital structure is based on the actual average long-term debt and equity figures for the 13-month period ending March 31, 1995, and includes short-term debt at a level equal to the average values of gas inventory included in rate base over the same 13-month period. The capital structure recommended by CUCA witness O'Donnell, consists of 39.70 percent common equity, 37.71 percent long-term debt, and 22.59 percent short-term debt. CUCA's recommended capital structure is also based on the average long-term debt and equity for the 13-month period ending March 31, 1995, but includes the total short-term debt at an average daily balance over the identical 13-month period. The essential difference between the capital structure contained in the Stipulation and the capital structure recommended by CUCA is the level of short-term debt included in each proposal and the resulting capital structure ratios.

The Commission concludes from the evidence in this proceeding that the proper level of short-term debt to include in the capital structure for ratemaking purposes equals the amount of gas inventory included in rate base. Such level of short-term debt reasonably matches the amount of short-term financing needed to finance rate base assets on an ongoing basis. While CUCA contends that total short-term debt should be included in the capital structure for ratemaking purposes, Company witnesses Smith and Lurie testified that part of the Company's short-term debt is employed as a temporary means of financing capital investment. According to their testimony, short-term debt used for this purpose is replaced with permanent or long-term capital, i.e., common equity and long-term debt. For example, in February 1995, part of the short-term debt of NUI was replaced with the proceeds of a $50 million issue of medium-term notes according to the testimony of Company witness Smith. In addition, Mr. Smith testified that the level of short-term debt employed by NUI during the last year was abnormally high. Mr. Lurie also testified that the level of the Company's short-term debt during the test period was something of an aberration that is not expected to persist, and in fact, does not currently exist. In this regard, the Commission notes that CUCA Smith Cross-Examination Exhibit No. 1 clearly shows that although NUI's short-term debt averaged $84 million during the 13

months ending March of 1995, the short-term debt had been reduced and equaled only approximately $11.5 million in the month of March, 1995. The methodology used to determine the capital structure approved herein is also generally consistent with that approved by the Commission in prior natural gas rate cases. The Commission further notes that evidence in the record in this case shows that the 47.57 percent equity ratio in the approved capital structure is consistent with the 47 percent median equity ratio and the 46 percent average equity ratio of the LDCs listed by Edward D. Jones and Company and is also consistent with Standard & Poor's average benchmark equity ratio of 47 percent for LDCs such as NUI with a "BBB" bond rating. The common equity ratio of 39.70 percent included in the capital structure recommended by CUCA, is unreasonably low in these comparisons. Based on these conclusions, the Commission finds that the capital structure contained in the Stipulation is just and reasonable to employ for ratemaking purposes in this case.

The Company originally requested a 13.34 percent return on common equity. According to the direct prefiled testimony of Company witness Lurie, his cost of equity recommendation was based on a discounted cash flow (DCF) analysis used with the Company's filed capital structure which consisted of 40.23 percent common equity and 59.77 percent long-term debt. The requested overall rate of return sought in the Company's filed case equaled 9.65 percent. Later, pursuant to the Stipulation filed in this docket, the Company agreed to a lower rate of return on equity of 11.4 percent and an overall rate of return of 9.16 percent. Company witness Lurie testified that the reduced rates of return, in conjunction with the overall settlement reached with the Public Staff, were just and reasonable.

CUCA witness O'Donnell recommended to the Commission that the Company's allowed rate of return on equity should be 10.55 percent. His recommended return on equity consisted of a true cost of equity of 10.4 percent combined with a flotation cost adjustment of .15 percent to account for the issuance of public stock. Mr O'Donnell's recommended 10.4 percent cost of equity was derived using the DCF method as his primary method and the comparable earnings method was used to check the results of his DCF method. According to his testimony, the DCF method produced a cost of equity range of 9.9 percent to 10.4 percent for NUI and a range of 10.2 percent to 10.7 percent for a group of comparable risk companies. His estimate of the cost of equity using the comparable earnings method was 10.0 percent to 11.0 percent. The overall rate of return recommended by Mr. O'Donnell was 8.45 percent.

The Commission has a number of concerns with the testimony of CUCA witness O'Donnell. First, many of the growth rates employed by Mr. O'Donnell in his DCF analysis and all of the data used in his comparable earnings analysis were historical in nature. While historical data is useful in evaluating the appropriate current cost of equity, over-reliance on such data can skew the cost of equity. Mr. O'Donnell himself testified that recent financial problems experienced by NUI and companies in his comparable risk group required investors to discount historical performance and concentrate on future prospects. Yet, in what appears to be a contradiction with his own testimony, Mr. O'Donnell determined that a 4.0 percent to 4.5 percent growth rate was appropriate to employ in his cost of equity estimate based on his DCF analysis even though the average forecasted growth rate was 5.0 percent for the comparable group and 5.1 percent for NUI. The Commission notes that had he employed these forecasted growth rates combined with his 13-week average dividend yields, the DCF result would have been 11.0 percent for NUI and 11.2 percent for his comparable group.

Further, this same contradiction is present in his comparable earnings analysis, given his testimony that he based the lower end of his 10.0 percent to 11.0 percent cost of equity estimate on the 10.0 percent average earned return of his comparable group over the most recent four years. Second, Mr. O'Donnell's testimony with regard to why he chose the 4.0 percent to 4.5 percent growth rate employed in his DCF estimate was simply not clear or convincing. Exhibit No. KWO-3 shows growth rates ranging from negative 35.0 percent to 19.0 percent. Exhibit No. KWO-4 shows average growth rates ranging from negative 1.6 percent to 5.1 percent. Of the various average growth rates appearing of Exhibit No. KWO-3, only five of the 72 values fell within the 4.0 percent to 4.5 percent range. Finally, evidence in the record suggests Mr. O'Donnell's recommended return is unduly low. For example, Company witness Lurie testified that Mr. O'Donnell's recommended return on equity of 10.55 percent in combination with his recommended capital structure and debt cost rates would result in a pre-tax interest coverage of 2.63 times. According to Mr. Lurie's testimony, the average pre-tax interest coverage ratio used by Standard & Poor's as a criterion for a "BBB" debt rating equals 2.75 times. It was Mr. Lurie's opinion that a pre-tax interest coverage ratio of 2.63 times was too low for NUI and would threaten the bond rating of NUI and its ability to attract capital. In addition, Mr. O'Donnell's recommended equity return of 10.55 percent is quite low in comparison to recently allowed rates of return on equity for LDCs on a nationwide basis in the last quarter of 1994 which averaged 11.64 percent. Based on these conclusions with regard to his testimony and the evidence of record, the Commission concludes that witness O'Donnell's applications of the DCF and comparable earnings methods should be accorded only minimal weight in determining the cost of equity for purposes of this proceeding.

As previously discussed, the Company's filed case sought an allowed rate of return on common equity of 13.34 percent. Company witness Lurie testified that the 11.4 percent stipulated return on equity, in conjunction with the overall settlement with the Public Staff, was just and reasonable. Undisputed testimony in the record shows that the 11.4 percent stipulated return is lower than the 11.64 percent average allowed return in 16 LDC rate cases across the nation in the last quarter of 1994, lower than the 11.87 percent return on equity allowed Public Service Company by this Commission in October of 1994 and lower than the 11.75 percent return on equity allowed United Cities Gas Company by the South Carolina Public Service Commission as recently as February of 1995. While not significantly probative of the appropriate result in this docket, these comparisons tend to support the reasonableness of the stipulated return on equity. The Commission also notes that the stipulated rate of return is lower than any of the currently authorized rates of return for all other North Carolina LDCs. Further, according to the Stipulation agreement and the testimony of Company witness Carl, the stipulated return of equity of 11.4 percent, combined with other aspects of the settlement, produces additional operating revenues to the Company of $384,771 in comparison to the filed requested increase of $773,503. Based on the evidence, the Commission concludes and finds that the testimony in support of the Stipulation should be accorded the greatest weight in determining the cost of common equity for purposes of this proceeding. The Commission therefore finds the cost of common equity for purposes of this proceeding to be 11.4 percent.

The stipulated overall rate of return on the cost of the Company's used and useful property is set forth on Schedule I of the Stipulation and is 9.16 percent. This rate of return is the result of negotiations between the Public Staff and Pennsylvania & Southern and is the product of their agreement on capital structure, rate of return on common equity and the cost of debt. Company

witnesses Smith and Lurie testified that in conjunction with the Stipulation this rate of return is reasonable. CUCA witness O'Donnell testified that under his analysis and based on his proposal for an allowed return on equity of 10.55 percent, the overall rate of return for the Company should be 8.45 percent. The Commission has considered the evidence and has carefully reviewed the stipulated rate of return. After careful consideration, the Commission finds that the overall weighted cost of capital to the Company is 9.16 percent. The Commission also finds that the overall rate of return of 9.16 percent is reasonable and will allow the Company by sound management the opportunity to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34

The stipulated revenue increase of $384,771 is shown on Schedule I of the Stipulation. This revenue increase is the result of negotiations between Pennsylvania & Southern and the Public Staff and is the product of the approved rate base, operating expenses and overall rate of return discussed above. The stipulated revenue increase is $388,732 less than the Company's filed request. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

The following schedules summarize the gross revenue and the rate of return which the Company should have a reasonable opportunity to achieve based upon the determinations made herein. These schedules illustrate the Company's gross revenue requirement and incorporate the findings and conclusions made by the Commission in this Order.

SCHEDULE 1
NORTH CAROLINA GAS SERVICE
PENNSYLVANIA & SOUTHERN GAS COMPANY DIVISION
NUI CORPORATION
DOCKET NO. G-3, SUB 186
STATEMENT OF NET OPERATING INCOME FOR RETURN
For the Test Year Ended September 30, 1994

Item	Present Rates	Approved Increase	Approved Rates
Gas operating revenue	$15,912,563	$384,771	$16,297,334
Operating revenue deductions:			
Cost of gas	9,889,367	0	9,889,367
Operation and maintenance	3,548,605	0	3,548,605
Depreciation	595,173	0	595,173
General taxes	760,059	12,717	772,776
State Income taxes	52,234	28,834	81,068
Federal Income taxes	202,152	116,695	318,847
Total operating revenue deductions	$15,047,590	$158,246	$15,205,836
Net operating income for return	$ 864,973	$226,525	$ 1,091,498

SCHEDULE 2
NORTH CAROLINA GAS SERVICE
PENNSYLVANIA & SOUTHERN GAS COMPANY DIVISION
NUI CORPORATION
DOCKET NO. G-3, SUB 186
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended September 30, 1994

Item	Amount
Gas plant in service	$16,829,049
Accumulated depreciation	(4,811,276)
Net gas plant in service	12,017,773
Gas in storage inventory	642,373
Materials and supplies	285,088
Cash working capital	443,575
Customer deposits	(92,330)
Tax accruals	(94,009)
Pension and post retirement benefit related cost-free capital	(356,691)
Accumulated deferred income taxes	(931,166)
Rate base	$11,914,613
Rates of return:	
Present rates	7.26%
Approved rates	9.16%

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 35-46

Pennsylvania & Southern witness Carl filed several cost of service studies with the application in this docket. These studies varied only as to the method in determining the demand and customer cost components: the "minimum pipe size" method or the "zero-intercept" method. CUCA witness O'Donnell did not file a cost-of-service study; however, he did adopt the Company's 2-inch "minimum pipe size" study and he calculated class rates of return based on the reallocation of fixed gas costs on the basis of that study.

The principal difference between witness Carl's 2-inch "minimum pipe size" study and witness O'Donnell's conclusions was the allocation of fixed gas costs. Witness Carl allocated those costs using the Seaboard Method by attributing 50 percent to peak day and 50 percent to annual usage. Witness Carl testified that this method more fairly allocated costs on the basis of how the gas was actually used. Witness O'Donnell allocated those costs using the Peak Responsibility Method by attributing 100 percent of those costs on a peak day basis. Witness Carl and witness O'Donnell also differed in their characterization of firm service fees and sales differential charges. Witness Carl treated these as gas supply costs, while witness O'Donnell treated them as pipeline capacity costs.

Witness O'Donnell urged the Commission to adopt a single cost-of-service study and utilize it for setting rates in this proceeding. Witness Carl testified that although they were useful in designing rates, in his view, no single cost-of-service study should be adopted by the Commission. Witness Carl also testified that cost-of-service studies were subjective in nature and that they were not the sole factor the Commission should consider in setting rates.

Both witness Carl and witness O'Donnell calculated customer class rates of return on both the Company's filed rates as well as the stipulated rates. The results of these studies indicated that the highest rate of return was for Rate Schedule 105 Interruptible customers and that the rates of return for that class of customer under the stipulated rates varied between 38.98 percent and 19.02 percent depending upon how fixed gas costs were allocated. The lowest rate of return was for Rate Schedule 101 Residential customers and varied between 1.10 percent and 3.68 percent depending on the same factor of allocation of fixed gas costs.

CUCA witness O'Donnell also recommended the adoption of a customer class rate differential table which, over the Company's next two rate cases would, in effect, equalize rates of return between customer classes. Witness O'Donnell's recommendation in this regard was based on his conclusion that the relative risks of serving the various customers classes did not justify the current rate of return differential. Mr. Carl testified that, in his view, CUCA's focus was too narrowly directed on cost of service in arguing for equalized, or nearly equalized, rates of return and that the Commission should look at other factors such as competition, supply availability, supply security, customer demands, and historical rate design, in setting rates. Mr. Carl also demonstrated that the suggested rate differential which Mr. O'Donnell proposed would result in a significant shortfall in the operating revenues which Mr. O'Donnell testified the Company should receive.

Mr. Carl also testified that the Company had actively pursued adjustments in class rates of return in its last several rate cases in an attempt to reduce the rate of return paid by industrial customers and

that this trend had been continued in the Stipulation. Mr. Carl indicated that the stipulated rates resulted in no increase in the rates paid by Interruptible customers and increases of less than 1 percent for Small General and Large General customers. Finally, Mr. Carl testified that residential customers had less flexibility than industrial customers who could switch fuels and negotiate rates and that these differences in characteristics between the customer classes, along with a number of other factors, justified varying rates of return.

The Commission has consistently held that it is not appropriate to design rates solely on the basis of cost-of-service studies. Further, the Commission and the North Carolina Supreme Court have identified several factors other than cost of service which may and should properly be considered when designing rates, including those identified by Company witness Carl. The Commission has seen no evidence in this case which persuades it to abandon this precedent and ignore these additional factors for purposes of evaluating the stipulated rates in this docket.

With respect to equalized rates of return, the Commission continues to believe that factors such as fuel switching and the ability to negotiate discounted rates justify a higher rate of return for industrial customers in conjunction with an evaluation of the other approved factors to be utilized in setting rates. The Commission concludes that it is not appropriate to adopt the equalized rates of return recommendation put forth by witness O'Donnell.

The Commission has carefully considered the arguments and testimony of CUCA and the Company relating to cost of service studies and rate design. After doing so, the Commission concludes that the stipulated rates shown on Schedule II to the Stipulation are just and reasonable and do not subject any customer class to either rate shock or unfair or discriminatory rates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 47-48

The Company proposes to continue its use of full margin transportation rates. CUCA witness O'Donnell testified that such rates were unfair because they forced transportation customers to pay a portion of the Company's fixed gas costs. Company witness Carl testified that pipeline capacity costs incurred by the Company support not only peak deliverability but also seasonal and annual deliverability and storage injections as well.

The Commission has addressed the issue of full margin transportation rates on many prior occasions, and has approved the use of such rates for each of the LDCs now operating in the State. The Commission continues to believe that such rates are reasonable and appropriate for purposes of this docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 49

Pennsylvania & Southern and the Public Staff have agreed to fixed gas costs and accompanying volumes which are used in calculating the fixed gas cost recovery rates by rate schedule. These values are a result of negotiations between the Company and the Public Staff and involve an agreement of the allocations of various fixed gas costs contained in the approved cost of gas schedule.

CUCA witness O'Donnell offered fixed gas cost recovery rates that differ from those contained in the Stipulation. The Commission notes that Mr. O'Donnell utilized the Peak Responsibility Method, which allocates fixed gas costs on the basis of peak day demand only in allocating various fixed gas costs among rate schedules. Witness Carl, on the other hand, utilized the Seaboard Method which allocates fixed gas costs on the basis of 50 percent peak day demand and 50 percent normalized annual volumes. While not adopting a specific cost-of-service study in this docket, the Commission accepts the fixed gas cost recovery rates contained in the Stipulation which utilized the Seaboard Method for the derivation of these recovery rates. The Commission concludes that the Seaboard Method more accurately depicts how these various gas services are utilized and is the best available tool in determining these values.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 50-52

In agreeing on the derivation of the fixed gas costs among the various rate schedules, Pennsylvania & Southern and the Public Staff have also agreed with the fixed gas cost apportionments assigned to the rate schedules. Although witness O'Donnell did not agree with the fixed gas cost apportionments contained in the Stipulation, he did agree with the concept of establishing different percentages for the various rate schedules. The Commission agrees that the percentages contained in the Stipulation should be used in tracking fixed gas cost changes between rate cases. The Commission finds that these percentages should also be used to establish subsequent temporary increments and decrements for the various rate schedules for all items in the Company's All Customers' Deferred Account except for Company use gas and lost and unaccounted for gas, which should be allocated on an equalized per dekatherm basis. The Commission also notes that in the last general rate cases for both Public Service Company of North Carolina, Inc. (Docket No. G-5, Sub 327) and Piedmont Natural Gas Company, Inc. (Docket No. G-9, Sub 351), the Commission established fixed gas cost apportionments to the various rate schedules. The Commission so concludes that the Company should modify its Rider D language to incorporate the changes as discussed herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 53

Pennsylvania & Southern and the Public Staff have agreed to "Ri" values to be used by the Company in future weather normalization adjustments and such values are set forth on Schedule III to the Stipulation. These values are the result of negotiations between the Company and the Public Staff. Company witness Carl testified that these values were reasonable. No other party presented evidence on this issue. The Commission has reviewed these values and concludes that they are reasonable and appropriate for use by the Company in future weather normalization adjustments.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 54

Pennsylvania & Southern and the Public Staff have agreed that the Company may utilize the procedures established in Docket G-5, Sub 327 with respect to the accrual and future recovery of manufactured gas plant (MGP) costs by Pennsylvania & Southern. Company witness Carl testified that the Company has no current MGP costs but anticipates that it may incur such costs in the future. The procedures established by the Commission in Docket G-5, Sub 327 for Public Service Company

were also approved for Piedmont Natural Gas Company in Docket G-9, Sub 351. The Commission concludes that it is reasonable and appropriate for these same procedures to apply to attempts by Pennsylvania & Southern to recover such costs in the future.

IT IS, THEREFORE, ORDERED as follows:

1. That Pennsylvania & Southern is hereby authorized to adjust its rates and charges to increase its annual revenues by $384,771 effective for service rendered on and after the date of this Order.

2. That Pennsylvania & Southern shall file appropriate tariffs to comply with paragraph 1 of this Order within ten (10) days from the date of this Order.

3. That the changes to Pennsylvania & Southern's Purchased Gas Adjustment Procedures - Rider D are approved as discussed herein and shall be effective for service rendered on and after the date of this Order. The Company shall file revised Purchased Gas Adjustment Procedures - Rider D as approved herein within ten (10) days from the date of this Order.

4. That Pennsylvania & Southern shall use the "Ri" values set forth on Schedule III to the Stipulation in its future Weather Normalization Adjustments.

5. That Pennsylvania & Southern shall accrue and defer costs it incurs related to manufactured gas plant cleanup, and may seek recovery of such sums in future proceedings, in accordance with the procedures established in Docket No. G-5, Sub 327.

6. That Pennsylvania & Southern shall send the notice attached hereto as Appendix A to its customers as a bill insert in the next billing cycle after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION
This the 20th day of September, 1995.

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

Appendix A

DOCKET NO. G-3, SUB 186

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Pennsylvania & Southern Gas	)	
Company, a Division of NUI Corporation, for	)	
(1) an Increase in Its Rates and Charges, and	)	PUBLIC NOTICE
(2) Approval of a Mechanism for the Future	)	
Recovery of Manufactured Gas Plant Costs	)	

The North Carolina Utilities Commission issued an Order on September 20, 1995, allowing Pennsylvania & Southern Gas Company, a division of NUI Corporation (Pennsylvania & Southern), to increase its rates and charges by approximately $384,771 annually, or 2.4 percent overall effective on and after the date of the Order.

Pennsylvania & Southern's application for a rate increase was filed with the Commission on February 17, 1995. In its application, Pennsylvania & Southern requested an increase of approximately $773,503 annually or 4.9 percent. The increase approved by the Commission was the result of hearings conducted by the Commission.

In its application, Pennsylvania & Southern stated that the rate increase was needed because it has experienced increases in operating expenses and has expended $3,446,330 in utility plant investment since its last general rate case.

The Commission notes that the increase to specific classes of customers will vary in order to have each customer class pay its fair share of the cost of providing service.

The new rates will increase the average residential bill by $5.44 per month from $78.57 to $84.01 for the winter period (November through March) and will increase the average residential bill by $0.78 per month from $18.30 to $19.08 for summer period (April through October). This average bill is based on residential year-round average usage of 131 therms per month during the winter period and 23 therms per month during the summer period.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of September, 1995.

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

DOCKET NO. G-3, SUB 189

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Pennsylvania & Southern Gas	)	ORDER ON ANNUAL
Company, for Annual Review of Gas Costs	)	REVIEW OF GAS COSTS
Pursuant to G.S. 62-133.4(c) and Commission	)	
Rule R1-17(k)(6)	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on September 6, 1995.

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioner Allyson Duncan and Commissioner Ralph Hunt.

APPEARANCES:

For Pennsylvania & Southern Gas Company, a Division of NUI Corporation:

James H. Jeffries IV, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

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

BY THE COMMISSION: On July 3, 1995, Pennsylvania & Southern Gas Company, a Division of NUI Corporation (Pennsylvania & Southern or the Company), filed testimony and exhibits relating to the annual review of its gas costs under G.S. §62-133.4(c) and Commission Rule R1-17(k)(6).

On July 7, 1995, the Commission issued its Order Scheduling Hearing and Requiring Public Notice. This Order established a hearing date of Wednesday, September 6, 1995, set prefiled testimony dates, and required Pennsylvania & Southern to give notice to its customers of said hearing.

On August 4, 1995, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene, and the Petition was subsequently granted by the Commission on August 21, 1995.

The direct prefiled testimony and exhibits of Company witness James W. Carl were filed on July 3, 1995. Witness Carl prefiled supplemental testimony on September 1, 1995. The direct prefiled testimony and exhibits of Public Staff witnesses Kirk Kibler and Jeffrey L. Davis were filed on August 22, 1995. CUCA did not file testimony.

On September 6, 1995, the matter came on for hearing as scheduled in Raleigh, at which time the Commission was advised that the Company and the Public Staff had reached agreement on all issues in the case as reflected in the parties' prefiled testimony, that the Public Staff agreed that Pennsylvania & Southern's gas costs were properly accounted for and prudently incurred and that CUCA did not dispute these conclusions. The Commission was further informed that the Company, CUCA and the Public Staff had waived their right to cross-examine witnesses and had stipulated to the admission of prefiled testimony and exhibits into the record without the necessity for live testimony. Thereafter, counsel for the Company and the Public Staff offered, and the Commission accepted into evidence, the prefiled testimony and exhibits of:

For the Company: James W. Carl, Vice President.

For the Public Staff: (1) Kirk Kibler, Staff Accountant, Accounting Division (2) Jeffrey L. Davis, Utilities Engineer, Natural Gas Division.

Based on the testimony and exhibits received into evidence in this proceeding and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Pennsylvania & Southern is an operating division of NUI Corporation which is a corporation organized under the laws of the state of New Jersey and duly registered to do business in North Carolina.

2. Pennsylvania & Southern is engaged in the business of transporting, distributing, and selling natural gas in a franchised area which consists of all or parts of Rockingham and Stokes Counties in the northern piedmont area of North Carolina.

3. Pennsylvania & Southern is a public utility as defined by G.S. §62-3(23) and is subject to the jurisdiction of this Commission and is lawfully before this Commission upon its application for annual review of gas costs pursuant to G.S. §62-133.4(c) and Commission Rule R1-17(k)(6).

4. Pennsylvania & Southern's testimony, exhibits, affidavits of publication and published hearing notices are in compliance with the provisions of the North Carolina General Statutes and the Rules and Regulations of this Commission.

5. The test period for review of gas costs in this proceeding is the 12 months ended April 30, 1995.

6. During the period of review, the Company incurred total gas costs of $9,570,163, consisting of $2,160,165 of demand and storage costs, $6,267,470 of commodity costs and $1,142,528 of other gas costs.

7. During the same period, the Company over-collected $1,953,381 in revenues attributable to commodity and fixed gas costs.

8. During the period of review, Pennsylvania & Southern incurred $643,183 in negotiated sales losses, returned $186,000 to its customers through existing temporary decrements, accrued $28,592 in interest income, and incurred $61,925 in excess company use and unaccounted for gas costs.

9. Pennsylvania & Southern's gas purchasing policies are prudent and Pennsylvania & Southern's gas costs and collections from customers during the review period were prudently incurred and properly accounted for.

10. Pennsylvania & Southern should be permitted to recover 100 percent of its prudently incurred gas costs.

11. At April 30, 1995, Pennsylvania & Southern had a credit balance of $680,879 in its deferred accounts made up of a $653,337 credit balance in the sales customers' only deferred account and a $27,542 credit balance in the all customers' deferred account.

12. Pennsylvania & Southern currently has in place a temporary increment of $0.2966/dt relating to sales only customers and a temporary decrement of ($0.1936)/dt relating to all customers.

13. Based upon the balances of the Company's deferred accounts at April 30, 1995, the current temporary decrement and increment in Pennsylvania & Southern's rates should be discontinued and new decrements of ($0.1906)/dt for sales only customers and ($0.0080)/dt for all customers should be instituted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

The evidence supporting these findings of fact are jurisdictional and informational and were not contested by any party. They are supported by the testimony and exhibits of the various witnesses, the records of the Commission in other proceedings and the Affidavit of Publication filed with the Commission in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The review period for annual prudency periods is established by Commission Rule R1-17. The review period designated for Pennsylvania & Southern under Rule R1-17(k)(6)(a) in this proceeding is the 12-month period ending April 30, 1995.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-8

The amounts of total gas costs of $9,570,163, demand and storage costs of $2,160,165, commodity costs of $6,267,470, and other gas costs of $1,142,528 were presented in the testimony of Public Staff witness Kibler and Company witness Carl. These amounts are uncontested.

The amount of over-collection from customers for commodity and fixed gas costs during the review period was $1,953,381 as testified to by Company witness Carl. No other party presented evidence on this issue.

Company witness Carl initially testified that the amount of funds returned to customers through the existing temporary decrement during the review period was $174,098. After review of the Company's records by the Public Staff, Company witness Carl revised this amount to $186,000 in his supplemental testimony. No other party presented evidence on this issue.

Company witness Carl also testified that the proper amounts for use in this proceeding for excess company use and unaccounted for gas, negotiated sales losses and accrued interest income were as follows:

Excess Company Use and Unaccounted for Gas	$ 61,295
Negotiated Sales Losses	$643,183
Accrued Interest Income	$ 28,592

No other party presented evidence on these issues.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-10

Company witness Carl testified that Pennsylvania & Southern accounted for its gas costs in accordance with Commission Rules. Public Staff witness Kibler testified that the Company properly accounted for its gas costs during the review period. No evidence was presented to the contrary.

Company witness Carl testified that Pennsylvania & Southern's gas purchasing policy was to arrange for reasonably priced secure supplies and firm pipeline capacity sufficient to meet the needs of its firm market. Company witness Carl also testified that Pennsylvania & Southern's gas costs during the review period were consistent with this policy and were prudent. During the period of review, Pennsylvania & Southern's gas supplies were provided primarily through long-term firm supply contracts whose pricing was tied to a spot market index. Public Staff witness Davis testified that he conducted a review of Pennsylvania & Southern's gas purchases during the period of review, including Pennsylvania & Southern's gas purchasing practices and philosophies, and concluded that the Company's gas costs were prudent.

No other evidence was presented on these issues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witness Carl testified that the account balances for the all customer deferred account and the sales only deferred account at April 30, 1995, were $27,542 and $653,337, respectively. Public Staff witness Davis testified that adding the effect of gross receipts tax to these balances resulted in balances of $28,458 and $675,074 for the all customers and sales customers deferred account. No other party presented evidence on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-13

Public Staff witness Davis testified that the existing deferred account temporary adjustments were an increment of $0.2966/dt for sales customers only and a decrement of ($0.1936)/dt for all customers. This testimony is undisputed.

Public Staff witness Davis testified that based on the Company's deferred account balances at April 30, 1995, the existing increment/decrement should be discontinued and new temporary decrements of ($0.1906)/dt for sales customers and ($0.0080)/dt for all customers should be instituted.

In his supplemental testimony, Company witness Carl agreed with the temporary decrements proposed by the Public Staff.

No other party presented evidence on this issue.

IT IS, THEREFORE, ORDERED as follows:

1. That the $9,570,163 in gas costs incurred by Pennsylvania & Southern during the period of review be, and they hereby are, determined to be prudently incurred.

2. That Pennsylvania & Southern's accounting for all such gas costs as set forth in this Order be, and the same hereby is approved.

3. That Pennsylvania & Southern be, and it hereby is, authorized to recover 100 percent of its prudently incurred gas costs during the period of review.

4. That Pennsylvania & Southern shall implement in its next billing cycle after the date of this Order temporary decrements in its rates of ($0.0080)/dt for all customers and ($0.1906)/dt for its sales only customers in place of its current temporary decrement and increment for those customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of October, 1995.

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

DOCKET NO. G-5, SUB 327

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Public Service Company of North Carolina, Inc., for an Adjustment of its Rates and Charges	))))	ORDER GRANTING FURTHER RATE INCREASE

HEARD: Wednesday, January 25, 1995, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Laurence A. Cobb, Presiding, and Commissioners Charles H. Hughes and Ralph A. Hunt

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

William A. Davis, II, Brooks, Pierce, McLendon, Humphries & Leonard, L.L.P., Attorneys at Law, P. O. Box 1800, Raleigh, North Carolina 27602

J. Paul Douglas, Vice-President - Regulatory Counsel, Public Service Company of North Carolina, Inc., P. O. Box 1398, Gastonia, North Carolina 28053, pro hac vice

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., P. O. Drawer 1269, Morganton, North Carolina 28680-1269

For the City of Durham:

William I. Thornton, Jr., City Attorney, 101 City Hall Plaza, Durham, North Carolina 27701

For the Using and Consuming Public:

Vickie L. Moir, Staff Attorney, Public Staff — North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520

Margaret A. Force and J. Mark Payne, Assistant Attorneys General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602-0629

BY THE COMMISSION: By Order Granting Certificate And Ruling On Complaints (Certificate Order) issued July 1, 1994, in Docket Nos. G-37 and G-5, Sub 330, the Commission issued a certificate of public convenience and necessity to Cardinal Pipeline Company, LLC (Cardinal) to operate the intrastate pipeline facilities described in Cardinal's application, approved the financing arrangement and ratemaking treatment of Cardinal as described in the application and that order, and ordered that the revenue requirement issues concerning Cardinal and the rates to be charged by Public Service Company of North Carolina, Inc. (PSNC) and Piedmont Natural Gas Company, Inc. (Piedmont) to their customers would be determined in the individual rate cases of PSNC and Piedmont.

On October 7, 1994, the Commission issued its Order Granting Partial Rate Increase (Rate Order) in this docket, which approved an annual increase of $10,763,226 in PSNC's revenue requirement. The Commission provided by Ordering Paragraph 6 that the record in this docket would be reopened for the sole purpose of receiving evidence on Cardinal and further directed PSNC to file, as soon as possible after Cardinal was placed into service, testimony as to "Cardinal's in-service status, the actual costs incurred in constructing Cardinal and the updated costs of operating Cardinal."

On January 11, 1995, PSNC filed the supplemental testimony of Jerry W. Richardson and the supplemental testimony and exhibit of Robert D. Voigt. This supplemental testimony and exhibit set forth the information required to be submitted under Ordering Paragraph 6.

On January 24, 1995, a stipulation entered into by PSNC and the Public Staff (Stipulation) was filed with the Commission. The Stipulation addresses the items required to be addressed by Ordering Paragraph 6.

PSNC's supplemental case in chief came on for hearing in Raleigh on January 25, 1995. The parties stipulated to the admission, without objection and cross-examination, of the prefiled supplemental testimony of Jerry W. Richardson and supplemental testimony and Exhibit No. 2 of Robert D. Voigt of PSNC.

Based on the applications described above, the supplemental testimony and exhibit, Stipulation, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The Commission has made findings concerning Cardinal and PSNC in the Certificate Order and the Rate Order, and incorporates those findings herein by reference.

2. The supplemental testimony of Jerry W. Richardson and the supplemental testimony and Exhibit No. 2 of Robert D. Voigt set forth the information required to be submitted by PSNC under Ordering Paragraph 6.

3. The Stipulation executed by PSNC and the Public Staff is not opposed by any party. The Stipulation settles all matters related to the impact of Cardinal on PSNC's rates and services as set forth in Ordering Paragraph 6.

4. Cardinal was placed in service on December 31, 1994, and as required by G.S. § 62-133(b)(1), the Commission has ascertained the reasonable original cost of PSNC's property related to Cardinal used and useful in providing natural gas utility service within North Carolina, less that portion of the cost which has been consumed by depreciation expense, all as set forth in paragraphs 6, 7 and 9 of the Stipulation and as further set forth below. These amounts are appropriate for use in this docket.

5. The cost of constructing Cardinal is $26,053,920. PSNC also expended some $257,000 in constructing its measuring and regulating station. PSNC states that it will be invoiced for some additional costs, which PSNC anticipates will not be significant, at later dates, and PSNC will include these costs in its filing in its next rate case.

6. PSNC's share of the total cost of constructing Cardinal is approximately 63.7%, which is $16,603,920.

7. As required by G.S. § 62-133(b)(2), the Commission has determined PSNC's end-of-period pro forma revenues under PSNC's rates without Cardinal and with Cardinal, as set forth in Voigt Exhibit 2, Schedule 2, p. 1 (Stipulation paragraph 10). These amounts are appropriate for use in this docket.

8. As required by G.S. § 62-133(b)(3), the Commission has ascertained PSNC's reasonable operating expenses related to Cardinal, including actual investment currently consumed through reasonable actual depreciation; these expenses are set forth in the supplemental testimony and exhibits of Jerry W. Richardson and Robert D. Voigt and supported by the Stipulation, paragraph 8. These amounts are reasonable for use in this docket.

9. Based on the foregoing and the findings and conclusions in the Rate Order, and as provided in the Stipulation, the required increase in PSNC's annual revenues to recover the costs associated with Cardinal is $3,062,620.

10. The rates set forth in Voigt Exhibit No. 2, Schedule 1, which were agreed to in the Stipulation, will produce the required annual revenues including Cardinal. The Commission further finds that these rates were derived using the rate design methodology set forth in the Rate Order. Accordingly, the rates set forth in Voigt Exhibit No. 2, Schedule 1, are just and reasonable and should be approved for purposes of this proceeding.

11. All of the provisions of the Stipulation are fair and reasonable under the circumstances of this proceeding and should be approved.

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

These findings are not contested, and are set forth in, and supported by, the Certificate Order, the Rate Order, the Commission's files and records, and the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 AND 5

Finding of Fact No. 4 as to Cardinal's in-service date of December 31, 1994, is supported by Jerry W. Richardson's supplemental testimony.

Finding of Fact No. 5 as to the cost of constructing Cardinal and PSNC's share thereof is supported by the supplemental testimony and exhibits of Jerry W. Richardson and Robert D. Voigt. PSNC also expended some $257,000 in constructing its measuring and regulating station. PSNC anticipates that it will be invoiced for some additional costs, which PSNC anticipates will not be significant, at later dates, and PSNC will include these costs in its filing in its next rate case.

Finding of Fact No. 5 as to the reasonable original cost of PSNC's property related to Cardinal used or useful in providing natural gas utility service in North Carolina is supported by the supplemental testimony of Jerry W. Richardson and Robert D. Voigt.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Finding of Fact No. 6 as to PSNC's share of the cost of constructing Cardinal is supported by the supplemental testimony of Jerry W. Richardson and the supplemental testimony and exhibit of Robert D. Voigt.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Finding of Fact No. 7 as to PSNC's end-of-period pro forma revenues under PSNC's rates without Cardinal and with Cardinal is supported by Robert D. Voigt's supplemental testimony.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Finding of Fact No. 8 as to PSNC's reasonable operating expenses related to Cardinal, including actual investment currently consumed through reasonable actual depreciation, is supported by Robert D. Voigt's supplemental testimony and the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Finding of Fact No. 9 as to the increase in PSNC's annual revenues of $3,062,620 necessary to produce the additional revenue requirement related to Cardinal is supported by Robert D. Voigt's supplemental testimony.

The Commission in the Rate Order determined the fair rate of return which PSNC should be afforded an opportunity to earn in this proceeding. The following schedules summarize the gross revenue and the rate of return which PSNC should have a reasonable opportunity to achieve, including its investment and expenses in Cardinal. The schedules, illustrating the PSNC's gross revenue requirement, incorporate the findings and conclusions made by the Commission in the Rate Order and in this Order:

(FOR COPIES OF SCHEDULES SEE OFFICIAL COPY OF ORDER IN CHIEF CLERK'S OFFICE.)

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Finding of Fact No. 10 as to the rates necessary to produce the required revenues is supported by Robert D. Voigt's supplemental testimony and the Stipulation. The Commission finds that these rates were derived using the rate design methodology set forth in the Rate Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

For the reasons set forth in the foregoing paragraphs, the Commission concludes that the Stipulation provides a just and reasonable resolution of all the issues in this case related to Cardinal and that the provisions of the Stipulation, taken together, are fair and reasonable under the circumstances of this proceeding and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation is hereby approved;

2. That PSNC is hereby authorized to adjust its rates and charges in accordance with this Order effective for service rendered on and after January 26, 1995;

3. That PSNC shall file appropriate tariffs to comply with this Order within ten (10) days from this date; and

4. That PSNC shall prepare a notice for its customers of the rate changes ordered herein and shall give public notice by appropriate bill insert in its next billing cycle.

ISSUED BY ORDER OF THE COMMISSION
This the 26th day of January, 1995.

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

DOCKET NO. G-5, SUB 346

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Public Service Company of North Carolina, Inc., for Annual Review of Gas Costs Pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6)	))))))	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD: Tuesday, August 8, 1995, at 10:00 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Laurence A. Cobb, Presiding, and Commissioner Charles H. Hughes and Commissioner Judy Hunt

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

Wayne Logan, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602

and

J. Paul Douglas, Vice President-Corporate Counsel, Public Service Company of North Carolina, Inc., 400 Cox Road, Post Office Box 1389, Gastonia, North Carolina 28053-1398

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28655

For the Using and Consuming Public:

Gina C. Holt, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On June 1, 1995, Public Service Company of North Carolina, Inc. (PSNC or Company), filed the direct testimony and exhibits of Franklin H. Yoho, Senior Vice President of Marketing and Gas Supply, and Danny G. Smith, Manager, Market Analysis and Planning of PSNC relating to the annual review of PSNC's gas costs pursuant to N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On June 8, 1995, the Commission issued an order scheduling a public hearing for August 8, 1995, setting dates for pre-filed testimony and intervention and requiring public notice.

On June 9, 1995, PSNC filed a Motion to Permit Limited Practice by Out-of-State Attorney, and on June 15, 1995, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. By Order dated June 16, 1995, the Commission granted PSNC's Motion and CUCA's Petition.

The matter came on for hearing as scheduled. The Public Staff presented the testimony of Julie G. Perry, Staff Accountant with the Public Staff's Accounting Division, and Jan A. Larsen, Utilities Engineer with the Public Staff's Natural Gas Division. PSNC presented the testimony of Mr. Yoho and Mr. Smith.

On August 25, 1995, CUCA filed a Motion requesting the Commission to enter an order admitting CUCA Larsen Cross-Examination Exhibit No. 1 into evidence. It its Motion, CUCA stated that it had taken all the necessary steps at the August 8, 1995, hearing for the admission of the exhibit into evidence except for a formal request that it be done. Such Motion is hereby granted.

Based on the testimony and exhibits and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. PSNC is a public utility as that term is defined in Chapter 62 of the North Carolina General Statutes.

2. PSNC is engaged primarily in the purchase, distribution and sale of natural gas (and in some instances, the transportation of customer-owned gas) to approximately 282,000 customers in the state of North Carolina.

3. PSNC has filed with the Commission and submitted to the Public Staff all of the information required by N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The review period in this proceeding is the twelve months ended March 31, 1995.

5. During the review period, PSNC incurred gas costs of $122,507,749, and recovered $111,082,702 related to gas costs through its rates. This resulted in an underrecovery of $11,425,047.

6. During the review period, PSNC realized net compensation of $2,832,308 from buy/sell agreements and $147,940 from capacity release transactions. The ratepayer portions of the net compensation from these transactions are $2,549,077 and $133,146, respectively. These amounts were credited to PSNC's All Customers Deferred Account pursuant to procedures established in Docket No. G-100, Sub 63.

7. At March 31, 1995, PSNC had a net credit balance (payable from PSNC to its customers) of $3,493,610 in its deferred accounts, consisting of a debit balance (payable from the customers to PSNC) of $300,990 in the Sales Only Deferred Account and a credit balance of $3,794,600 in the All Customers Deferred Account.

8. PSNC properly accounted for its gas costs during the review period.

9. PSNC proposed to refund the balance of $3,794,600 in the All Customers Deferred Account uniformly to all customer classes based on throughput.

10. The Public Staff recommended that, except for the dollars related to Company Use and Lost and Unaccounted For Gas (CU & LUAF), rate changes be calculated by individual rate classes based on the fixed gas apportionment and associated volumes of each rate class as determined by the Commission in PSNC's last general rate case, Docket No. G-5, Sub 327, and the Company's Rider D. The total refund balance in the All Customers Deferred Account is $4,111,156.

11. The Public Staff recommended that the increment for CU & LUAF be calculated based on throughput and not allocated by rate class using the fixed gas cost percentages. The amount attributable to CU & LUAF to be collected from all customers is $316,556.

12. Since the Company's Rider D specifically identifies and sets out only CU & LUAF for separate treatment in the calculation of demand and storage charges, it is appropriate to separate out CU & LUAF and calculate this item based on throughput. The Public Staff's treatment of CU & LUAF is also consistent with the manner in which the Company has computed its benchmark changes in its Purchased Gas Adjustments (PGAs) since the last general rate case.

13. It is inappropriate to dissect the All Customers Deferred Account balance and attempt to determine allocation factors for each type of transaction.

14. PSNC agreed with the Public Staff's recommendations as they relate to the calculation of the increments and decrements.

15. PSNC has transportation and supply contracts with the interstate pipelines which transport gas directly to PSNC's system and long term supply contracts with other suppliers.

16. PSNC's gas costs during the review period were prudently incurred.

17. PSNC should be permitted to recover 100% of its prudently incurred gas costs.

18. PSNC proposed to refund the balance in the All Customers Deferred Account beginning with the first billing cycle of the month that follows the date of the Commission's order in this docket. PSNC did not propose to collect the balance in its Sales Only Deferred Account because of the small balance in this account.

19. As of the date of the hearing, PSNC had a temporary increment of $0.0706/dt in its Sales Only Deferred Account and a temporary decrement of $0.0976/dt in its All Customers Deferred Account, both of which were approved by Commission Order in Docket No. G-5, Sub 332, dated October 7, 1994.

20. Refunding the March 31, 1995, balance in the Company's All Customers Deferred Account should be accomplished by implementing the following decrements, which were recommended by the Public Staff and agreed to by the Company, for each rate schedule:

Rate 105*	Rate 110	Rate 125	Rate 130	Rate 145	Rate 150
($0.0962)/dt	($0.1099)/dt	($0.0820)/dt	($0.1102)/dt	($0.0529)/dt	($0.0364)/dt

* Includes Rate 120

21. The rate changes associated with the removal with the existing temporaries approved in Docket No. G-5, Sub 332, and the implementation of the temporaries recommended by the Public Staff and agreed to by PSNC, will have the following net effect on the Sales Rate Schedules:

Rate 105*	Rate 110	Rate 125	Rate 130	Rate 145	Rate 150
($0.0692)/dt	($0.0829)/dt	($0.0550)/dt	($0.0832)/dt	($0.0259)/dt	($0.0094)/dt

* Includes Rate 120

22. The rate changes associated with the removal with the existing temporaries approved in Docket No. G-5, Sub 332, and the implementation of the temporaries recommended by the Public Staff and agreed to by PSNC, will have the following net effect on the Transportation Rate Schedules:

Rate 145	Rate 150
$0.0447/dt	$0.0612/dt

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

The evidence supporting these findings is contained in the official files and records of the Commission and the testimony of PSNC witness Yoho. These findings are essentially informational, procedural or jurisdictional in nature and are based on evidence uncontradicted by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence supporting these findings is contained in the testimony of PSNC witnesses Yoho and Smith.

N.C.G.S. 62-133.4 requires that each natural gas utility submit to the Commission information and data for an historical twelve-month test period concerning its actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. In addition, Commission Rule R1-17(k)(6)(c) requires the filing of information and data showing weather-normalized sales volumes, workpapers, and direct testimony and exhibits supporting the information.

Mr. Yoho testified that Commission Rule R1-17(k)(6) required PSNC to submit to the Commission on or before June 1, 1995, the required information based on a twelve-month test period ending March 31, 1995. He stated that PSNC complied with the filing requirements of N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k)(6). Mr. Smith also testified that PSNC filed with the Commission and submitted to the Public Staff throughout the review period complete monthly accounting of the computations required by Commission Rule R1-17(k)(5)(c). Ms. Perry confirmed that the Public Staff had reviewed the filings and that they complied with the Rules.

The Commission therefore concludes that PSNC has complied with all of the procedural requirements of N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k) for the review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-8

The evidence supporting these findings is contained in the testimony of PSNC witness Smith and Public Staff witnesses Perry and Larsen.

Mr. Smith testified that, as of March 31, 1995, PSNC had a net credit balance (payable from PSNC to its customers) of $3,493,610 in its deferred accounts. This credit balance consisted of a debit balance (payable from the customers to PSNC) of $300,990 in the Sales Only Deferred Account and a credit balance of $3,794,600 in the All Customers Deferred Account.

Ms. Perry testified that PSNC entered into buy/sell and capacity release arrangements during the review period and recorded net compensation to the ratepayers of $2,549,077 and $133,146, respectively. She stated that these amounts represent 90% of the net compensation recognized from the buy/sell and capacity release transactions during the review period pursuant to procedures established in Docket No. G-100, Sub 63. Ms. Perry also testified that the Public Staff had examined PSNC's accounting for gas costs during the review period and determined that PSNC had properly accounted for these costs.

Based upon the testimony and exhibits of the witnesses, the monthly filings by PSNC pursuant to Commission Rule R1-17(k)(5)(c), and the findings of fact set forth above, the Commission concludes that PSNC properly accounted for gas costs during the review period and that the deferred account balances as reported are correct.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-14

The evidence for these findings is contained in the testimony of Company witness Smith and Public Staff witnesses Larsen and Perry.

PSNC's Rider D states that the Company may file to adjust its rates to refund or collect balances in the All Customers Deferred Account through decrements or increments to current rates. It further states that the decrements or increments should be based on the percentages for all affected rate classes approved by the Commission in the Company's most recent general rate case, unless otherwise ordered by the Commission.

In his prefiled testimony, Mr. Smith calculated a decrement for the All Customers Deferred Account, including Company Use and Lost and Unaccounted For (CU & LUAF), by allocating the balance in the account to the various rate classes based on throughput from PSNC's most recent rate case, Docket No. G-5, Sub 327. Mr. Larsen testified that he calculated the decrement based on the Company's Rider D by allocating the All Customers Deferred Account balance, except for CU & LUAF, using the fixed gas cost percentages approved in the previous rate case. He stated that he computed an increment for the CU & LUAF portion of the account balance based on annual throughput from the rate case for each rate class. He further stated that, although different rate decrements are produced by the Public Staff's methodology, the overall effect to the Company is the same total dollar refund as would have been determined based on throughput. Mr. Smith testified at the hearing that he agreed with Mr. Larsen's allocation methodology.

Mr. Larsen testified that the Company has had two PGA filings (Docket No. G-5, Subs 335 and 336) since its last general rate case and that in these filings CU & LUAF was allocated to the rate classes based on annual throughput. Mr. Larsen explained that he treated CU & LUAF differently than the rest of the All Customers Deferred Account balance because CU & LUAF was allocated on

annual throughput in the determination of the fixed gas cost percentages for each rate class in the Company's last general rate case. He further explained that the reason CU & LUAF is recorded in the All Customers Deferred Account is so that all customers, not just sales customers, pay into or receive refunds from that account.

The Commission notes that no party opposed allocating CU & LUAF on the basis of annual throughput in this proceeding or in PSNC's two prior PGA proceedings. Historically, the effects of benchmark changes on CU & LUAF gas costs have affected all customers, including transportation customers. Changes in these gas costs are a function of both the prevailing market price for gas supply and throughput on the Company's system. Because the CU & LUAF costs are incurred by the Company to serve all customers on its system, not only sales customers, it is appropriate to allocate these costs to all customers based on annual throughput. The unresolved issue is whether the remaining balance of the All Customers Deferred Account should be allocated based on the fixed gas cost percentages determined in the Company's last rate case or some other allocation factors.

Mr. Larsen testified that he allocated the remainder of the All Customers Deferred Account balance based on the fixed gas cost percentages. He stated that many new types of transactions are recorded each review period and that, if these transactions were to be allocated individually, separate accounts might need to be maintained for each item. He also stated that he did not determine how to allocate each component individually and did not want to have to guess at which allocation factor to use and that separate accounts would cause "an accounting nightmare."

On cross-examination, CUCA attempted to establish that the assignment of a number of other components of PSNC's end-of-period All Customers Deferred Account balance should be assigned among customer classes on a basis other than the percentage allocation factors approved by the Commission in PSNC's last general rate case. In essence, CUCA argued that those portions of the Company's end-of-period All Customers Deferred Account balance involving net buy/sell and capacity release revenues and claim of right tax credits should not be assigned among customer classes on the basis of the percentage allocation factors approved by the Commission in the Company's last general rate case since these components of the deferred account balance did not constitute fixed gas costs and since the allocation factors utilized to support the allocation method supported by PSNC and the Public Staff related exclusively to fixed gas costs. Instead, CUCA contended that the only portion of PSNC's end-of-period All Customers Deferred Account balance which should be assigned among customers classes using the percentage allocation factor developed in the Company's last general rate case were those directly attributable to fixed gas cost underrecoveries or overrecoveries.

In the Company's last general rate case, Docket No. G-5, Sub 327, the Public Staff recommended that the Company record a $731,503 supplier refund claim of right credit in its deferred gas cost account for refund to ratepayers in the same manner that gas cost overcollections are refunded to ratepayers. In the Commission's Order in that docket dated October 7, 1994, the

Commission concluded that the Company should refund the supplier refund claim of right credit to ratepayers by recording a $731,503 credit in its deferred gas cost account. Accordingly, the Commission concludes that such balance be refunded based on the fixed gas cost percentages as recommended by the Public Staff so that such credit will be refunded in the same manner that gas cost overcollections are refunded.

On cross-examination by CUCA, Mr. Larsen testified that the net compensation from buy/sell and capacity release transactions should be allocated to the rate classes based on the fixed gas cost percentages. The Commission concludes that such allocation is appropriate. Buy/sell and capacity release transactions involve the selling of unutilized capacity rights by the LDCs, and thereby provide the LDCs with a tool for capacity management. It is reasonable and appropriate that the net compensation received on the sale of the capacity rights be refunded in the same proportions as the cost of the capacity is charged to the rate schedules. This is also consistent with the Commission's July 22, 1994, Order in Docket No. G-100, Sub 63, which adopted accounting procedures for buy/sell and capacity release transactions. In that Order, the Commission stated,

> that the LDCs shall record 90% of the net compensation on buy/sell transactions and capacity release transactions entered into on and after August 30, 1993, in their respective deferred accounts as a reduction of demand and storage charges for the purposes of computing the demand and storage charge true-up required by Commission Rule R1-17(k) (4) (a) as hereinabove provided.

84 NCUC 22 (1994). The Commission concludes that it is appropriate to allocate the net compensation on buy/sell and capacity release transactions to the rate schedules in the same manner as demand and storage charges.

The Commission has evaluated the appropriateness of allocating amounts in the All Customers Deferred Account other than those relating to fixed gas costs based on the fixed gas cost percentages determined in the Company's last rate case or some other allocation factors. We recognize that many issues would probably be raised as to which allocation basis is appropriate for each transaction. Furthermore, the Commission typically does not adopt any particular cost of service study in general rate cases, because it does not determine rates based solely on a cost of service study. The Commission also recognizes that the administrative burden of attempting to allocate each type of deferred account transaction could be overwhelming to the Company, the Public Staff, the Commission Staff, and the Commission. The separate allocation approach suggested by CUCA's cross-examination of Mr. Larsen would require the Commission to make a number of difficult determinations, including whether transactions that are presently recognized as one journal entry should be dissected into their many components; whether separate deferred accounts should be maintained for each different type of transaction; whether separate increments and decrements should be maintained for each deferred account; whether these changes would enhance the ability of customers to understand their rates; and whether, if these changes would be beneficial, they would justify the cost of implementation. The Commission acknowledges that new types of transactions are recorded in the deferred accounts during each review period. If the Commission is required to determine a separate allocation basis for each transaction, issues will probably be raised in each annual review proceeding as to which allocation basis is appropriate for the new types of transactions. In

order to keep up with the cumulative balance for each different allocation basis, separate deferred accounts would have to be maintained for each basis utilized. The additional accounts would significantly increase the complexity of the deferred account calculations. In addition, the Company's rates and tariffs would become more complex because temporary increments and decrements applicable to each rate schedule would need to be calculated and tracked for each allocation basis.

The Commission believes that due to the significant, additional administrative burden and the considerable uncertainty involved in determining a proper allocation basis for each transaction, it is inappropriate and impractical to allocate each type of deferred account transaction to the rate schedules on a specific allocation basis. The Commission rejects the idea of dissecting the All Customers Deferred Account and analyzing every type of transaction to determine what allocation factor best suits that particular item. The Commission concludes that the method used by the Public Staff is accurate, practical, consistent, logical, nondiscriminatory, and can be administered without unreasonable effort.

Further, CUCA asserts in its proposed order that there exists a balance of $1,245,468 in the Company's All Customers Deferred Account as of March 31, 1995, which consists of unrefunded fixed gas cost overcollections related to the prior review period. CUCA takes the position that this balance constitutes an amount which has not been completely refunded to customers through the decrement established in Docket No. G-5, Sub 332, dated October 7, 1994, and should be refunded to the Company's customers on an equal per dekatherm basis. The Commission notes that the decrement approved in the Company's last annual review proceeding, Docket No. G-5, Sub 332, was implemented pursuant to the Order issued on October 7, 1994, and has continued in place until changed by the provisions of this Order. Accordingly, the Commission is of the opinion that the refund authorized in Docket No. G-5, Sub 332 has been accomplished on an equal per dekatherm basis as intended and rejects CUCA's recommendation in this regard.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-17

The evidence supporting these findings is contained in the testimony of PSNC witnesses Yoho and Smith, and Public Staff witness Larsen.

Mr. Yoho testified that the most appropriate description of PSNC's gas supply policy is a "best cost" supply strategy. Mr. Yoho stated that, in developing the Company's gas supply strategy, there are three areas of emphasis: supply security, operational flexibility, and cost of gas. He further stated that the primary area of concern is security of gas supply. According to Mr. Yoho, to maintain the necessary supply security for the Company's firm customers, all of PSNC's firm interstate pipeline transportation capacity is backed up by either supply contracts providing delivery guarantees or by storage. He stated that the rationale for this requirement is driven by the fact that, during design peak conditions, interruptible markets would most likely be curtailed. He also stated that the Company has executed long-term supply agreements and supplemental short-term agreements with a variety of suppliers including producers, interstate pipeline affiliates, and independent marketers and that potential suppliers are evaluated on a variety of factors, including past performance and gas deliverability capability.

Mr. Yoho testified that the second area of concern is the necessity of maintaining the operational flexibility of the Company's gas supply portfolio. He stated that such flexibility is required because of the daily changes in PSNC's market as a result of weather, operating schedules of industrial customers, and the impact of fluctuating alternate fuel prices. With respect to the third area of emphasis, Mr. Yoho stated that PSNC is committed to acquiring the most cost effective supplies of natural gas available for its customers while maintaining the necessary security and flexibility to serve its market.

Witness Yoho also testified that, while Transcontinental Gas Pipe Line Corporation (Transco) is still PSNC's primary interstate pipeline supplier, PSNC executed service agreements with CNG Transmission Corporation (CNG) which became effective November 1, 1993. He further testified that the Company also executed agreements with the following interstate pipelines which deliver gas into CNG's system: Texas Eastern, Tennessee Gas Pipeline, and Texas Gas Transmission.

According to Mr. Yoho's testimony, PSNC currently has approximately 213,000 dt/day under long-term supply contracts with six major producers and four interstate pipeline marketing affiliates, which supply PSNC's FT contracts. He also stated that most of these contracts have provisions which ensure that the price paid stays market sensitive. Additionally, Mr. Yoho testified that, to meet the winter season and peak day demands of PSNC's growing firm markets along with its interruptible industrial market during non-peak periods, PSNC has contracted for the following additional capacity: (1) an additional 44,627 dt/day of service under Transco's SE94 and SE95/96 expansion projects, which replaced the former Blue Ridge Pipeline project, and (2) an additional 10,000 dt/day of transportation capacity on CNG Transmission, effective with the 1996-97 winter heating season.

Mr. Larsen testified that in addition to reviewing responses to the data requests posed to PSNC, the Public Staff examined PSNC's gas purchase and transportation contracts and reviewed any reservation or fixed costs fees. He stated that he considered other information to anticipate the Company's requirements in relation to future need such as: design day estimates; forecasted load duration curves; forecasted gas supply needs; customer load profile changes; and projections of capacity additions and supply changes. In addition, pursuant to a stipulation entered into by PSNC and the Public Staff in Docket No. G-5, Sub 332, regarding PSNC's future long-term supply arrangements, PSNC provided information pertaining to potential sources of gas supply evaluated by the Company but not selected, including requests for proposals and proposals received in response. The information that PSNC provided was subject to the same confidentiality agreements and protective orders to which executed contracts are subject. Based on all of this information, Mr. Larsen stated that, in the Public Staff's opinion, PSNC's purchasing practices were reasonable and prudent.

The Commission therefore concludes that PSNC's gas costs during the review period were reasonably and prudently incurred and should be recovered.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-22

The evidence supporting these findings is contained in the testimony of PSNC witness Smith and Public Staff witness Larsen.

Mr. Smith testified that, as of the date of the hearing, PSNC had a temporary increment of $0.0706/dt in its Sales Only Deferred Account and a temporary decrement of $0.0976/dt in its All Customers Deferred Account. Both the Sales Only Deferred Account increment and the All Customers Deferred Account decrement were approved by Commission Order in Docket No. G-5, Sub 332, dated October 7, 1994. Mr. Smith also stated that PSNC requests that the increment and decrement approved by the Commission in that docket be discontinued and that there be no increment for the small balance in the Sales Only Deferred Account. He stated that PSNC further requests that the balance in the Sales Only Deferred Account remain in the deferred account and be considered as part of the activity in PSNC's next annual gas cost review.

Mr. Larsen presented an exhibit showing his calculation of the rate changes relating to the balance in the All Customers Deferred Account at March 31, 1995. According to this exhibit, the following decrements should be implemented:

Rate 105*	Rate 110	Rate 125	Rate 130	Rate 145	Rate 150
($0.0962)/dt	($0.1099)/dt	($0.0820)/dt	($0.1102)/dt	($0.0529)/dt	($0.0364)/dt

* Includes Rate 120

The Commission notes that removing the existing temporaries approved in Docket No. G-5, Sub 332, and implementing the temporaries recommended by the Public Staff and agreed to by PSNC in this case will have the following net effects on the Sales and Transportation Rate Schedules:

SALES RATE SCHEDULES

Rate 105*	Rate 110	Rate 125	Rate 130	Rate 145	Rate 150
($0.0692)/dt	($0.0829)/dt	($0.0550)/dt	($0.0832)/dt	($0.0259)/dt	($0.0094)/dt

* Includes Rate 120

TRANSPORTATION RATE SCHEDULES

Rate 145	Rate 150
$0.0447/dt	$0.0612/dt

The Commission believes that it is appropriate to discontinue the increment and decrement approved in Docket G-5, Sub 332, and that no increment should be established to recover the small balance owed to PSNC in the Sales Only Deferred Account. The balance should remain in the deferred account and be considered as part of the activity in PSNC's next annual gas cost review. The Commission also believes that the temporary increments and decrements proposed by the Public Staff and agreed to by PSNC are just and reasonable to collect and simultaneously refund the balances in the deferred accounts until further order by the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That PSNC's accounting for gas costs during the twelve month period ended March 31, 1995, is approved.

2. That PSNC is authorized to recover 100% of its gas costs incurred during the twelve months ended March 31, 1995.

3. That PSNC shall implement the following temporary decrements to refund the credit balance related to the All Customers Deferred Account beginning with the first billing cycle of the month following the date of this order:

Rate 105	Rate 110	Rate 125	Rate 130	Rate 145	Rate 150
($0.0962)/dt	($0.1099)/dt	($0.0820)/dt	($0.1102)/dt	($0.0529)/dt	($0.0364)/dt

4. That no increment shall be established to recover the small debit balance in the Sales Only Deferred Account and that the balance shall remain in the deferred account and be considered as part of the activity in PSNC's next annual gas cost review.

5. That the existing increment to sales customers and the decrement to all customers approved in Docket No. G-5, Sub 332, shall be discontinued.

6. That PSNC shall give notice to all of its customers of the changes in rates approved in this order by appropriate bill inserts in the first billing cycle following the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of November 1995.

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

DOCKET NO. G-9, SUB 351

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Natural Gas Company, Inc., for (1) a General Increase in Its Rates and Charges to Cover the Costs (Including a Return on Investment) of Additional Plant Constructed to Expand and Improve Natural Gas Services in North Carolina and (2) Approval of New Rate Design to Accommodate Changes in the Natural Gas Industry Resulting from FERC Order No. 636	ORDER GRANTING FURTHER RATE INCREASE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, February 9, 1995

BEFORE: Commissioners Allyson K. Duncan, William W. Redman, Jr., and Laurence A. Cobb,

APPEARANCES:

For the Applicant:

Jerry W. Amos, Post Office Box 26000, Greensboro, North Carolina 27420

For the Public Staff:

Paul L. Lassiter, Gina C. Holt, and James D. Little, Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the North Carolina Department of Justice:

Margaret A. Force, Assistant Attorney General and J. Mark Payne, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27514

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28655

BY THE COMMISSION: By Order Granting Certificate and Ruling on Complaints (Certificate Order) issued July 1, 1994, in Docket Nos. G-37 and G-5, Sub 330, the Commission issued a certificate of public convenience and necessity to Cardinal Pipeline Company, LLC (Cardinal) to operate the intrastate pipeline facilities described in Cardinal's application, approved the financing arrangement and ratemaking treatment of Cardinal as described in the application and that Order, and ordered that the revenue requirement issues concerning Cardinal and the resulting rates to be charged by Piedmont Natural Gas Company, Inc. (Piedmont) and Public Service Company of North Carolina, Inc. (PSNC) to their customers be determined in the individual rate cases of Piedmont and PSNC.

On October 19, 1994, the Commission issued its Order Approving Settlement (Rate Order) in this docket, which approved an annual increase of $5,200,000 in Piedmont's revenue requirement. The Commission provided, by Ordering Paragraph 9, that the record in this docket would be reopened for the sole purpose of receiving evidence on Cardinal and further directed Piedmont to file, as soon as possible after Cardinal was placed into service, testimony as to "Cardinal's in-service status, the actual cost incurred in constructing Cardinal and the updated costs of operating Cardinal."

On January 17, 1995, Piedmont filed the testimony and schedules of David R. Carpenter which set forth the information required to be submitted under Ordering Paragraph 9 of the Rate Order.

On February 8, 1995, a stipulation entered into by Piedmont and the Public Staff (Stipulation) was filed with the Commission. The Stipulation and accompanying schedules address the items required to be addressed by Ordering Paragraph 9 of the Rate Order.

Piedmont's supplemental case in chief came on for hearing in Raleigh on February 9, 1995. The parties stipulated to the admission, without objection or cross-examination, of the prefiled testimony and schedules of David R. Carpenter of Piedmont.

Based on the applications and orders described above, the testimony of David R. Carpenter, the Stipulation and schedules attached thereto, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The Commission has made findings concerning Cardinal and Piedmont in the Certificate Order and the Rate Order, and incorporates those findings herein by reference.

2. The testimony and schedules of David R. Carpenter set forth the information required to be submitted by Piedmont under Ordering Paragraph 9 of the Rate Order.

3. The Stipulation executed by Piedmont and the Public Staff is not opposed by any party. The Stipulation settles all matters related to the impact of Cardinal on Piedmont's rates and services as set forth in Ordering Paragraph 9 of the Rate Order.

4. Cardinal first delivered gas to Piedmont on January 4, 1995. As required by G.S. §62-133(b)(1), the Commission has ascertained the reasonable original cost of Piedmont's property related to Cardinal used and useful in providing natural gas utility service within North Carolina, less that portion of the cost which has been consumed by depreciation expense, all as set forth in paragraphs 5, 6 and 7 of the Stipulation and as further set forth below. These amounts are appropriate for use in this docket.

5. Piedmont's share of the total cost of constructing Cardinal is $9,750,736. Included in this amount is $300,756 Piedmont has expended for constructing its measuring and regulating station. Piedmont states that it will be invoiced for some additional costs, which Piedmont anticipates will not be significant, at later dates, and Piedmont will include these costs in its next rate case filing.

6. As required by G.S. §62-133(b)(2), the Commission has determined Piedmont's end-of-period pro forma revenues under Piedmont's rates without Cardinal and with Cardinal, which revenues are reflected in Schedule I attached to the Stipulation and supported by the Stipulation at paragraph 9. These amounts are appropriate for use in this docket.

7. As required by G.S. §62-133(b)(3), the Commission has ascertained Piedmont's reasonable operating expenses related to Cardinal, including actual investment currently consumed through reasonable actual depreciation. These expenses are set forth in the testimony of David R. Carpenter and supported by the Stipulation and Schedule I attached thereto. These amounts are reasonable for use in this docket.

8. Based on the foregoing and the findings and conclusions in the Rate Order, and as provided in the Stipulation, the increase in Piedmont's annual revenues required to recover the costs associated with Cardinal is $1,818,714.

9. The rates set forth in Schedule II attached to the Stipulation, will produce the required annual revenues including Cardinal. The Commission finds that these rates were derived using the rate design methodology set forth in the Rate Order. Accordingly, the rates set forth in Schedule II of the Stipulation are just and reasonable and should be approved for purposes of this proceeding.

10. All of the provisions of the Stipulation are fair and reasonable under the circumstances of this proceeding and should be approved.

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

These findings are not contested, and are set forth in, and supported by, the Certificate Order, the Rate Order, the Commission's files and records, and the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 AND 5

Finding of Fact No. 4 as to Cardinal's in-service date of January 4, 1995, is supported by David R. Carpenter's testimony at page 2.

Finding of Fact No. 5 as to the cost of constructing Cardinal and Piedmont's share thereof is supported by the testimony of David R. Carpenter. Piedmont also expended some $300,756 in constructing its measuring and regulating station. Piedmont anticipates that it will be invoiced for some additional costs, which Piedmont anticipates will not be significant, at later dates, and Piedmont will include these costs in its next rate case filing.

Finding of Fact No. 5 as to the reasonable original cost of Piedmont's property related to Cardinal used or useful in providing natural gas utility service in North Carolina is supported by the testimony of David R. Carpenter.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Finding of Fact No. 6 as to Piedmont's end-of-period pro forma revenues under Piedmont's rates without Cardinal and with Cardinal is supported by David R. Carpenter's testimony and Schedule I of the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Finding of Fact No. 7 as to Piedmont's reasonable operating expenses related to Cardinal including actual investment currently consumed through reasonable actual depreciation is supported by David R. Carpenter's testimony and Schedule I of the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Finding of Fact No. 8 as to the increase in Piedmont's annual revenues of $ 1,818,714 necessary to produce the additional revenue requirement related to Cardinal is supported by David R. Carpenter's testimony and Schedule I of the Stipulation.

The Commission in the Rate Order determined the fair rate of return which Piedmont should be afforded an opportunity to earn in this proceeding. The schedule attached hereto summarize the gross revenue and the rate of return which Piedmont should have a reasonable opportunity to achieve, including its investment and expenses in Cardinal. The schedule, illustrating Piedmont's gross revenue requirement, incorporate the findings and conclusions made by the Commission in the Rate Order and in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Finding of Fact No. 9 as to the rates necessary to produce the required revenues is supported by the Stipulation and Schedule II attached to the Stipulation. The Commission finds that these rates were derived using the rate design methodology set forth in the Rate Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

For the reasons set forth in the foregoing paragraphs, the Commission concludes that the Stipulation provides a just and reasonable resolution of all the issues in this case related to Cardinal and that the provisions of the Stipulation, taken together, are fair and reasonable under the circumstances of this proceeding and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation is hereby approved;

2. That Piedmont is hereby authorized to adjust its rates and charges and the related "R" factor for its Weather Normalization Adjustment in accordance with this Order effective for services rendered on and after the date of this Order;

3. That Piedmont shall file appropriate tariffs to comply with this Order within ten (10) days from this date; and

4. That Piedmont shall prepare a notice to its customers of the rate changes ordered herein to be included in its next billing cycle by appropriate bill insert.

ISSUED BY ORDER OF THE COMMISSION
This the 10th day of February, 1995

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

(FOR SCHEDULE SEE OFFICIAL COPY OF ORDER IN CHIEF CLERK'S OFFICE.)

DOCKET NO. G-9, SUB 356

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Piedmont Natural Gas Company, Inc., for Annual Review of Gas Costs Pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6)	))))	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 4, 1994.

BEFORE: Chairman Hugh A. Wells, Presiding, and Commissioners William W. Redman and Judy Hunt

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Esq., Post Office Box 787, Greensboro, North Carolina 27402

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Bryd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

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 Attorney General:

Margaret A. Force, Assistant Attorney General, Department of Justice, Post Office Box 629, Raleigh, North Carolina 27626

BY THE COMMISSION: On August 1, 1994, Piedmont Natural Gas Company, Inc. (Piedmont), filed testimony and exhibits relating to the annual review of its gas costs under G.S. 62-133.4(c) and NCUC Rule R1-17(k)(6). The Commission issued its Order Scheduling Hearing and Requiring Public Notice on August 9, 1994. This Order set the hearing date for Tuesday, October 4, 1994, set pre-filed testimony dates, and required Piedmont to give notice to its customers of said hearing.

A petition to intervene was filed by Carolina Utility Customers Association, Inc. (CUCA), on September 1, 1994, and the petition was granted by the Commission on September 8, 1994.

On September 15, 1994, the Public Staff filed a motion for an extension of time to file testimony. The Commission issued an Order on September 16, 1994, authorizing an extension of time to and including September 23, 1994, for the Public Staff's testimony.

The direct testimony of Company witnesses Ware F. Schiefer and Ann. H. Boggs was filed on August 1, 1994. Witness Boggs filed rebuttal testimony on September 30, 1994. The direct testimony of Public Staff witnesses James G. Hoard and Eugene H. Curtis, Jr., was filed on September 23, 1994.

Based on the testimony and exhibits received into evidence in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont is a public utility as defined in Chapter 62 of the North Carolina General Statutes.

2. Piedmont primarily is engaged in the purchase, distribution, and sale of natural gas, and the transportation of customer-owned gas to some 485,000 customers in the Piedmont region of North Carolina, South Carolina, and the metropolitan area of Nashville, Tennessee.

3. Piedmont has filed with the Commission and submitted to the Public Staff all of the information required by N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The test period for review of gas costs in this proceeding is the twelve months ended May 31, 1994.

5. During the period of review, the Company incurred costs of $203,668,259 and received $199,402,443 through rates. The under-collection of $4,265,816 was recorded as a debit to the deferred account.

6. At May 31, 1994, Piedmont had a credit balance of $2,387,938 in its deferred accounts made up of a $3,538,960 debit balance in the sales only customers' deferred account and a $5,926,898 credit balance in the all customers' deferred account.

7. Columbia Gas Transmission Corporation (Columbia) is an interstate pipeline that supplied gas to Piedmont. Columbia is regulated by the Federal Energy Regulatory Commission (FERC).

8. Piedmont's gas costs and collections from customers during the review period were prudently incurred.

9. The Public Staff took two exceptions to the Company's accounting for gas costs and recoveries during the review period. The first exception dealt with the manner in which Piedmont allocated its Columbia Account 191 direct bill charges between North and South Carolina. The second exception dealt with the manner in which Piedmont accrued interest on its Columbia direct billed amounts for collection purposes.

10. The National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts describes its Account 191 as "Unrecovered Purchased Gas Costs."

11. Columbia was required as part of its restructuring in response to FERC Order 636 to get out of the business of buying gas for sale to its customers and, as a result, to terminate its Purchased Gas Adjustment (PGA) clause.

12. Effective November 1, 1993, Columbia restructured its services in response to FERC Order 636. As the result of this Order 636 restructuring, Columbia has unbundled its transportation and gas sales services. Prior to November 1, 1993, Columbia provided transportation and gas sales services on a bundled basis only.

13. In accordance with Section 39 of Columbia's tariffs, the FERC has permitted Columbia to direct bill Piedmont and other customers for their respective shares of Columbia's PGA Account, Account 191. FERC has permitted Columbia's customers the option of paying the charges either in a one-time payment or by installments over a twenty-four month period. The interest rate applicable to the installment payment option is the FERC interest rate, which is computed quarterly based on the average prime rate.

14. The October 31, 1993, balance of Columbia's Account 191 was $58,670,054, which was composed of a $61,001,920 debit related to commodity costs, and a $2,331,866 credit related to demand costs.

15. During the month of April 1994, Columbia direct billed Piedmont $2,080,158 for unrecovered balances in its Purchased Gas Adjustment account - Account 191, related to Piedmont's North and South Carolina operations.

16. The $2,080,158 direct bill amount is composed of a $2,113,624 charge related to Account 191 commodity costs, and a $33,466 credit related to Account 191 demand costs.

17. Piedmont chose to pay the Columbia Account 191 charges by the one-time payment option. During the month of April 1994, Piedmont charged its all customers deferred account for the Columbia Account 191 charges. Piedmont determined the North Carolina portion of the charges by using the allocation factor for assigning demand charges between North and South Carolina. Use of this allocation factor resulted in assigning North Carolina 78%, or $1,622,523 of the $2,080,158 of Columbia Account 191 charges for the two states.

18. The Commission finds no appropriate basis on which to question Piedmont management's decision to pay Columbia's direct bill with a one-time payment.

19. Commission Rule R1-17(k)(4)(d), entitled "Supplier Refunds and Direct Bills" states, "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."

20. Commission Rule R1-17(k)(2)(f), entitled "Commodity and Other Charges" defines such charges as "...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."

21. Commission Rule R1-17(k)(2)(g), entitled "Demand Charges and Storage Charges" defines such charges as "...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..."

22. Commission Rule R1-17(k)(4)(a) entitled "Demand Charges and Storage Charges" states, "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)."

23. The Commission concludes that Rules R1-17(k)(4)(d), R1-17(k)(4)(a), R1-17(k)(2)(f) and R1-17(k)(2)(g) provide adequate guidance to properly assign these costs.

24. The commodity portion of the Columbia Account 191 charges relate to volumes of gas supply and should be allocated to North Carolina on the basis of sales between North and South Carolina.

25. The North Carolina sales allocation factor appropriate for allocating the commodity portion of Columbia Account 191 charges to North Carolina is 74.44% as approved in the Commission's Order in Docket No. G-9, Sub 309. Applying this factor to the $2,113,624 of Columbia Account 191 commodity charges results in North Carolina being assigned $1,573,382 of the costs.

26. The demand credit portion of the Columbia Account 191 charges relate to capacity and should be allocated to North Carolina on the basis of demand between North and South Carolina.

27. The North Carolina demand allocation factor appropriate for allocating the demand credit portion of Columbia Account 191 charges to North Carolina is the allocation percentage used for assigning demand and storage charges to North Carolina, which is 78.00%. Applying this factor to the $33,466 of Columbia Account 191 demand credits results in North Carolina being assigned $26,103 of the credit.

28. The commodity portion of Piedmont Columbia Account 191 charges to North Carolina should be assigned to sales customers.

29. The Producer Settlement Payments (PSPs) charged by Transcontinental Gas Pipeline Company to Piedmont were assigned by this Commission to transportation customers, as well as to sales customers.

30. The PSPs were buy-downs on contracts that Transco had with suppliers and did not relate to volumes of gas actually taken by Transco for its customers.

31. The PSPs were substantially different from the Account 191 charges and the regulatory treatment of PSPs by this Commission is not an appropriate guide for the allocation of Account 191 charges among North Carolina customers.

32. The demand portion of Piedmont Columbia Account 191 charges to North Carolina should be assigned to all customers.

33. Piedmont has adopted a "best cost" gas purchasing policy consisting of 1) the price of gas, 2) the security of the gas supply, 3) the flexibility of the gas supply, 4) gas deliverability, and 5) supplier relations.

34. Piedmont purchases gas from two entirely different sources--the spot market (purchases made with a term of 30 days or less) and the long-term market.

35. Piedmont should be permitted to recover 100% of its prudently incurred gas costs.

36. Piedmont currently has in place a decrement of $.0699/dt relating to all sales customers and a decrement of $.0994/dt relating to transportation customers. For Rate Schedules 101 and 102, offsetting entries have been ordered by the Commission in Docket No. G-9, Sub 339 in its Order

Modifying Refunds dated February 10, 1994. Currently, Rate Schedules 103 and 104 have a decrement of $.0699/dt and Rate Schedules 113 and 114 have a decrement of $.0994/dt.

37. For the purpose of determining rate adjustments in this proceeding, $140,121 of Commission-approved refunds made by Piedmont subsequent to the review period pursuant the Commission's March 8, 1994, Order in Docket Nos. G-9, Subs 300, 306, and 308, should be excluded from the May 31, 1994, balance of the all customers' deferred account.

38. Within 30 days, Piedmont should adjust its deferred accounts to reflect the appropriate allocation of the Columbia Account 191 charges to North Carolina and submit to this Commission proposed rate decrements/increments based on the findings in this Order.

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

The evidence for these findings of fact is contained in the official files and records of the Commission. These findings are essentially informational, procedural or jurisdictional in nature and are uncontradicted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence for these findings of fact is contained in the testimony of Company witnesses Schiefer and Boggs and Public Staff witnesses Hoard and Curtis, and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

N.C.G.S. 62-133.4 requires that Piedmont submit to the Commission the required information based on a twelve-month test period ending May 31, 1994. This information includes the Company's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes and transportation volumes. In addition to such information, Commission Rule R1-17(k)(6)(c) requires that there be filed weather-normalized sales volume data, workpapers, and direct testimony and exhibits supporting the information filed.

Witness Boggs testified that Piedmont had complied with Commission Rule R1-17(k) and filed with the Commission and Public Staff a complete monthly accounting of the computations under the Commission approved procedures for the twelve-month test period ending May 31, 1994. Witness Hoard confirmed that Piedmont had complied with the Commission Rules.

The Commission concludes that Piedmont has complied with all the procedural requirements of N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k) for the twelve-month review period ended May 31, 1994.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 - 9

The evidence supporting these findings of fact is found in the testimony of Company witness Boggs and Public Staff witness Hoard.

Piedmont witness Boggs testified that the Company incurred gas costs of $203,668,259 and received through rates $199,402,443 during the twelve-month period ended May 31, 1994. The under-collection of $4,265,816 was recorded as a debit to the deferred account. At May 31, 1994, Piedmont had a credit balance of $2,387,938 in deferred accounts made up of a debit balance of $3,538,960 in the sales only customers' deferred account and a credit balance of $5,926,898 in the all customers' deferred account.

Witness Hoard testified that the Public Staff had examined the Company's accounting for gas costs during the review period and concluded, with the exception of Columbia Account 191 charges, that the Company had properly accounted for its gas costs during the period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 - 17

The evidence for these findings of fact is found in the testimony of Public Staff witness Hoard and Piedmont witness Boggs and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18 - 23

Public Staff witness Hoard testified that his recommended accounting for Columbia Account 191 direct bill adjustment is based upon Commission Rule R1-17(k)(4)(a), which addresses the demand and storage charge true-up, but that the issue would probably be addressed more distinctly by Commission Rule R1-17(k)(4)(d), since that section addresses direct bill charges.

Commission Rule R1-17(k)(4)(d) states,

> (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.

The Commission concludes that Rules R1-17(k)(4)(d), R1-17(k)(4)(a), R1-17(k)(2)(f) and R1-17(k)(2)(g) provide adequate guidance to properly assign these costs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24 - 32

The issues in question regarding the Columbia Account 191 direct bill charges are as follows:

(1) What portion of the charges should be assigned to North Carolina?

(2) Which customer group(s) should bear cost responsibility for the charges?

(3) Should interest be accrued on the charges based on the one-time payment option or the installment payment option?

The evidence for these findings of fact is found in the testimony and exhibits of Public Staff witness Hoard and Piedmont witness Boggs.

ASSIGNMENT OF THE COLUMBIA GAS CHARGES TO NORTH CAROLINA

The Company assigned 78% or $1,622,523 of the Columbia Account 191 charges to North Carolina. Public Staff witness Hoard recommends that North Carolina be assigned 72.71% or $1,512,483 of the charges. Public Staff witness Hoard testified that the Company assigned the charges to North Carolina based on the demand allocator, whereas he assigned the charges based on the sales allocator. Mr. Hoard testified that the charges should be allocated to North Carolina based on the sales allocator because almost all of the charges relate to gas supply. Piedmont recommends that 74.44% would be the appropriate factor to use if the Commission were to classify the Columbia Account 191 charges as commodity charges based on the rate case then in effect.

Mr. Hoard explained that the first step in assigning these costs between the states is to figure out whether the charges are related to gas supply costs or related to the pipeline capacity. He further explained that once the character of the costs has been determined, the appropriate allocation factor is applied.

Mr. Hoard testified that not all demand and storage charges are priced on fixed basis, and not all commodity charges are billed on a volumetric basis. Mr. Hoard cited supplier demand charges as an example of a fixed cost that is considered to be a commodity charge because it relates to gas supply.

Mr. Hoard testified that the $2,080,158 of Columbia Account 191 direct bill charges related to Piedmont's North and South Carolina operations was composed of $2,113,624 of commodity charges and $33,466 of demand credits. He further testified that the commodity charges relate to gas supply. Mr. Hoard stated that it would be appropriate to allocate the demand credit to North Carolina based on the demand allocator but that he did not do that because the difference in allocation factors as applied to the demand credit was insignificant.

Mr. Hoard testified that the commodity charges were allocated to Columbia's customers based on the amount of their gas purchases. Mr. Hoard stated that the Piedmont volumes used in the allocation were the volumes actually taken from Columbia during the period. He also testified that the Account 191 commodity charges would have been passed through to Piedmont as a gas supply cost had it not been for the Order 636 restructuring. In addition, Mr. Hoard stated that based on information that he had read and discussions he had had with Columbia personnel, he determined that the costs were related to gas supply.

At the request of counsel for Piedmont, Mr. Hoard read the following highlighted portion of the FERC Order, dated September 21, 1994, in Docket Number RP 94-158:

> The Commission (FERC) finds that its rehearing Order in Docket Number RP 94-158-001 properly applied Order 636, Account 191 direct bill policy to Columbia, that is sales contract demand billing determinants are to be used to allocate direct bill related Account Number 191 costs to former sales customers.

Mr. Hoard explained that the FERC was addressing a contention by Dayton Power that it should not be billed these Account Number 191 charges because they were subscribing to WS service and that WS service was not a sales service. Mr. Hoard further explained that FERC ultimately denied Dayton Power's challenge and that the FERC upheld the original Order regarding the allocation of Account 191 direct bill charges.

The Commission has evaluated the evidence presented regarding the character of the Account 191 charges. North Carolina customers should not be required to pay more of the Account 191 costs solely because the costs were billed as a direct bill. The allocation of these costs to North Carolina should be based upon the character of the costs as being related to either supply or capacity. If Columbia's PGA had continued, North Carolina ratepayers would have been allocated the Account 191 commodity charges based on the volumes of gas sold through the Company's commodity true-up, and the demand credit would have been allocated to North Carolina based on the demand allocator through the Company's demand and storage charge true-up. The Commission concludes that the Account 191 commodity charges are a gas supply cost, and that the demand credit is related to capacity.

In the Commission's Order in Piedmont's general rate case in Docket No. G-9, Sub 351, the North Carolina percentage of total North and South Carolina sales was 72.71%. However, the Commission's Order Approving Settlement in Docket No. G-9, Sub 351 was issued on October 19, 1994. The Piedmont general rate case in effect at the time the docket now before the Commission was heard was Docket No. G-9, Sub 309. The North Carolina percentage of total North and South Carolina sales in that docket was 74.44%.

Based on the foregoing, we conclude that the North Carolina portion of the Columbia Account 191 charges is $1,547,279, which is composed of $1,573,382 of commodity costs, and $26,103 of a demand credit. The North Carolina commodity costs is calculated by applying the North Carolina sales allocator of 74.44% in effect at the time to the $2,113,624 commodity portion of Columbia Account 191 charges. The demand credit is calculated by applying the North Carolina demand allocator of 78% to the $33,466 portion of Columbia Account 191 charges.

RESPONSIBILITY FOR COLUMBIA CHARGES

Once the North Carolina share has been determined, the next step is to determine which customer group(s) should bear cost responsibility for the charges. Both the Company and the Public Staff have assigned the charges to both sales and transportation customers (all customers), whereas CUCA argues that sales customers should be assigned the commodity costs and all customers should be assigned the demand credit.

Public Staff witness Hoard testified that sales customers should not be assigned all of the cost responsibility for the Columbia Account 191 commodity charges because "...just like the PSP, all customers should be required to pay this charge since all customers, including transportation customers, benefit from Columbia's restructuring in response to FERC Order 636."

On cross examination by CUCA, Mr. Hoard admitted that PSPs (Producer Settlement Payments) were buy-downs on contracts that Transco had with suppliers. Prior to the Order 636 unbundling, interstate pipelines had an obligation to stand ready to meet their customers' gas supply needs. At that point in time, all customers of a local distribution company received gas purchased by interstate pipelines. The PSP charges arose because interstate pipelines purchased gas supplies at high prices in order to meet their gas supply obligations. Situations changed as a result of deregulation and other factors. The interstate pipelines needed to get out of the high-priced contracts. Settlements were made with the producers with whom the interstate pipelines had those contracts. With proper regulatory approval, a portion of those settlement payments were then passed through to LDCs who passed them through to their own customers. The Commission finds that PSPs were substantially different from the Account 191 charges and the regulatory treatment of PSPs by this Commission is not an appropriate guide for the allocation of Account 191 charges among North Carolina customers.

Public Staff's remaining argument to support the position that all customers should absorb the Account 191 costs is that transportation customers benefit from unbundling and therefore should share the burden. No attempt is made by the Public Staff to quantify the value to the transportation customer of unbundling. This leaves a proposal to spread the Account 191 commodity charges to all customers looking arbitrary and capricious. On cross examination by CUCA, Mr. Hoard testified that, if unbundling had not occurred and the Columbia PGA had not been terminated, then in the next PGA, the commodity amounts would have been assigned to the sales customers and the demand amounts would have been assigned to all customers. The Public Staff wishes to relieve sales customers of a portion of the commodity burden on the basis of unquantified future benefits to transportation customers. The Commission finds that Account 191 commodity charges should be placed in the sales account and the Account 191 demand credits should go into the all customer account.

PIEDMONT'S CHOICE OF ONE-TIME PAYMENT OPTION

Piedmont had the option of paying the Account 191 charges by a one-time payment or by installment payments over a maximum of twenty-four months, with interest accrued at the FERC rate. Piedmont chose to pay the charges by a one-time payment.

Public Staff witness Hoard testified that the lower cost option for ratepayers is the installment payment option because the FERC interest rate, which is the quarterly average prime rate, is less than the ten percent interest rate which is applied to Piedmont's deferred account. Mr. Hoard recommended that the Company recognize the interest rate differential resulting from paying the charges on the installment basis instead of by a one-time payment in the deferred account over the remainder of the installment period. Mr. Hoard testified that he did not adjust the deferred account balance to remove the one-time payment because doing so would have resulted in refunding the Columbia Account 191 charges to ratepayers over the next twelve months, and then have required the Company to collect those same charges from ratepayers over the ensuing period.

During cross-examination by counsel for Piedmont, Mr. Hoard testified that the Company was faced with a situation of paying $2 million (of Columbia Account 191 charges) today or paying it over a period of 24 months at the prime rate. Mr. Hoard explained that because the cost of capital to the

ratepayers on the deferred account is ten percent, and that rate is higher than the prime rate, the best option is to take the charge over a twenty-four month period. Mr. Hoard testified that had the prime rate been 12% (instead of 6%), he would not have made the same recommendation.

After careful consideration of the arguments put forward by Mr. Hoard, the Commission finds no appropriate basis for making the interest adjustment as recommended by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 33 - 35

The evidence supporting these findings of fact is found in the testimony of Piedmont witness Schiefer and Public Staff witness Curtis.

Witness Schiefer testified that Piedmont's gas purchasing policy is best described as a "best cost" policy. This policy consists of five components: 1) the price of gas; 2) the security of gas supply; 3) the flexibility of gas supply; 4) gas deliverability; and 5) supplier relations. Mr. Schiefer testified that all of these components are interrelated and that Piedmont considers and weighs each of these five factors.

Mr. Schiefer testified that Piedmont purchases gas from two entirely different sources. These two sources are described as the spot market and the long-term market. Spot gas is purchased under a contract with a term of 30 days or less while long-term gas is purchased under a contract with a term greater than 30 days and usually in multiple years. The spot gas is not regarded as a particularly reliable or secure source of gas but is generally cheaper than long-term gas. The long-term supplies are usually more expensive and offer less flexibility; however, long-term supplies are a more reliable and secure source of gas.

Mr. Schiefer testified that Piedmont sells its gas to two distinct markets - the firm and the interruptible market. Firm sales are principally the residential, commercial, and the small firm industrial customers. Interruptible customers consist of principally large industrial customers. The firm market generally had no alternative source of fuel and depends entirely on gas. The interruptible market has alternative sources of energy and will refuse to buy gas when its alternative fuel is cheaper.

Testimony was also offered by Mr. Schiefer as to how the five factors interrelate as to what gas should be purchased for each market under the company's "best cost" policy. This testimony described how Piedmont attempts to match its supply with its sales market. The long-term contracts generally are aligned with the firm market, and the short-term spot gas generally serves the interruptible market. In order to weigh and consider the five factors, Piedmont must be kept informed about all aspects of the natural gas industry. Piedmont therefore stays abreast of current issues by intervening in all major proceedings affecting pipeline suppliers, attending conferences, and subscribing to industry literature.

Mr. Schiefer testified that Piedmont's greatest obstacle in applying its "best cost" policy is in dealing with future uncertainties. Future demand for gas is affected by economic conditions, weather patterns and housing starts, just to name a few factors. The future availability and price of gas

supplies is affected by numerous factors, including decisions made by the OPEC cartel. Future regulatory policies depend upon decisions of individuals yet to be elected or appointed.

Mr. Schiefer testified that Piedmont had taken steps to keep its gas costs as low as possible consistent with its "best cost" policy. Piedmont has 1) participated in matters before the FERC, 2) worked with industrial customers to transport customer-owned gas, 3) set up a committee to oversee major gas supply decisions, 4) continued to utilize the flexibility available within its gas contracts to purchase and dispatch gas in the most cost effective manner by balancing high dependability with low purchase obligations, 5) actively sought load growth from the "year around" markets which will tend to decrease the average cost of gas, and (6) utilized futures pricing to "lock-in" prices for a period of time.

Public Staff witness Curtis testified that he had reviewed the Company's gas supply contracts to determine how the commodity and variable costs were determined. He then reviewed the fixed gas costs that apply and compared the capacity available with the annual gas supply requirements. In examining the information, Mr. Curtis testified that he reviewed 1) design day information, 2) historical and forecast load duration curves, 3) historical and forecast gas supply requirements, 4) the Company's purchasing practices, and 5) projections of capacity addition and supply charges.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 36 - 38

The evidence supporting these findings of facts is found in the Commission Order in Docket No. G-9, Sub 339 dated February 10, 1994, in its Order Modifying Refunds and its Order Approving Settlement dated February 8, 1994. The Commission authorized offsetting increments to the decrements ordered in the prudence review for sales customers on Rate Schedules 101 and 102. These offsetting increments and decrements are being handled in Piedmont's deferred accounts on a monthly basis. These offsetting entries will be completed January 31, 1995. Rate Schedules 103 and 104 were ordered to be reduced by a decrement of $.0699 and Rate Schedules 113 and 114 to be reduced by $.0994 effective February 10, 1994.

Based upon its investigation, the Public Staff concluded that all gas costs during the review period were prudently incurred.

Based upon the foregoing, the Commission concludes that the gas costs incurred by the Company during the twelve-month review period ended May 31, 1994, were reasonable and prudently incurred.

IT IS, THEREFORE, ORDERED as follows:

1. That the $203,668,259 of gas costs incurred by Piedmont during the period of review be, and they hereby are, determined to be prudently incurred.

2. That Piedmont's accounting for all such gas costs as set forth in this Order be, and the same hereby is approved, except to the extent as adjusted herein.

3. That Piedmont be, and it hereby is, authorized to recover 100% of its prudently incurred gas costs during the period of the review.

4. That Piedmont be, and it hereby is, directed to adjust its deferred accounts to reflect the appropriate allocation of the Columbia Account 191 charges to North Carolina and submit within 30 days for Commission approval increments/decrements calculated pursuant to the findings in this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January 1995.

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

DOCKET NO. G-21, SUB 331

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Natural	)	ORDER ON
Gas Corporation for Annual Review of	)	ANNUAL REVIEW
Gas Costs Pursuant to G.S. 62-133.4(c)	)	OF GAS COSTS
and Commission Rule R1-17(k)(6)	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 11, 1995, at 10:00 a.m.

BEFORE: Commissioner Ralph A. Hunt, Presiding and Commissioners Allyson K. Duncan and Judy Hunt

APPEARANCES:

For North Carolina Natural Gas Corporation:

Jeffrey N. Surles, Attorney at Law, McCoy, Weaver, Wiggins, Cleveland and Raper, Post Office Box 2129, Fayetteville, North Carolina 28302

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Whisnant, McMahon & Ervin, Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel and Gina C. Holt, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On February 1, 1995, North Carolina Natural Gas Corporation (NCNG or Company) filed the direct testimony and exhibits of John M. Monaghan, Jr., Vice President of Gas Supply and Transportation for NCNG, and Gerald A. Teele, Senior Vice President, Treasurer and Chief Financial Officer of NCNG, relating to the annual prudence review of NCNG's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On February 10, 1995, the Commission issued its Order scheduling a public hearing for April 11, 1995, setting dates for pre-filed testimony and intervention in this docket and ordering NCNG to publish notice of these matters in a form of notice attached to the Commission's Order.

On February 8, 1995, Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene which petition was allowed by the Commission on February 10, 1995.

The Public Staff filed the direct testimony of Windley E. Henry, Staff Accountant with the Public Staff's Accounting Division, and Jan A. Larsen, Utilities Engineer with the Public Staff's Gas Division, on March 27, 1995. CUCA did not pre-file testimony in this proceeding. NCNG witnesses John M. Monaghan and Gerald A. Teele and Public Staff witnesses Windley E. Henry and Eugene H. Curtis, Jr., Director of the Public Staff's Natural Gas Division, adopting the testimony of Jan A. Larsen, testified at the public hearing on April 11, 1995. NCNG filed Affidavits of Publication evidencing the publishing of the notices required by the Commission and such Affidavits were entered into evidence at the start of the hearing.

Based on the testimony and exhibits and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG is a public utility as that term is defined in Chapter 62 of the North Carolina General Statutes.

2. NCNG is engaged in the purchase, distribution and sale of natural gas (and in some instances, the transportation of customer-owned gas) to more than 135,000 customers in south central and eastern North Carolina.

3. NCNG has filed with the Commission and submitted to the Public Staff all of the information required by G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The test period for review of gas costs in this proceeding is the eleven months ended October 31, 1994. The reason for an eleven-month review period is to avoid having a review period with a "split winter." Subsequent review periods will be 12-month periods ending October 31 of each year.

5. During the period of review, NCNG incurred gas costs of $94,779,089, and recovered $102,052,177 of gas costs through its rates. This resulted in an overrecovery of $7,273,088.

6. During the period from August through October 1994, NCNG recorded gross compensation of $1,067,092 pursuant to buy/sell and capacity release agreements. The Company credited 90% ($960,383) of the net compensation from these transactions to its all customers deferred account pursuant to the Commission's Order in Docket No. G-100, Sub 63.

7. At October 31, 1994, NCNG had a credit balance of $3,013,268 in its deferred accounts, consisting of a credit balance of $3,872,313 in the commodity deferred account (sales customers only) and a debit balance of $859,045 in the demand deferred account (all customers). The rate changes associated with the balances in the Company's deferred account at October 31, 1994, would be a temporary decrement of $0.1234/dt to rates paid by sales only customers and a temporary increment of $0.0198/dt to rates paid by all customers.

8. The Public Staff took no exceptions to NCNG'S accounting for gas costs and recoveries during the period of review.

9. Effective November 1, 1993, Columbia Gas Transmission Corporation (Columbia) restructured its services in response to the Federal Energy Regulatory Commission's (FERC) Order 636. As the result of this Order 636 restructuring, Columbia has unbundled its transportation and gas sales services. Prior to November 1, 1993, Columbia provided transportation and gas sales services on a bundled basis only.

10. Columbia was required, as part of its restructuring in response to Order 636, to terminate its purchased gas adjustment (PGA) clause.

11. FERC has permitted Columbia to direct bill NCNG and other customers for their respective shares of Columbia's PGA Account, Account 191. FERC has permitted Columbia's customers the option of paying the charges either in a one-time payment or by installments over a twenty-four month period.

12. The October 31, 1994, balance of Columbia's Account 191 charges directly billed to NCNG was $74,415, which was composed of a $88,359 debit related to commodity costs and a $13,944 credit related to demand costs.

13. NCNG chose to pay the Columbia Account 191 charges by the installment method over a twenty-four month period. During the review period, NCNG paid $18,414 for unrecovered balances in Columbia's Account 191. This $18,414 amount is composed of a $21,864 charge related to commodity costs and a $3,450 credit related to demand costs.

14. During the review period, NCNG charged its all customers deferred account for the Columbia Account 191 charges.

15. NCNG has properly accounted for its gas costs; with the exception of Columbia Account 191 charges, during the period of review.

16. It is appropriate to charge the commodity portion of Columbia Account 191 charges to sales customers.

17. It is appropriate to charge the demand portion of Columbia Account 191 charges to all customers.

18. NCNG has transportation and supply contracts with the interstate pipelines which transport gas directly to NCNG's system and long term supply contracts with 10 other suppliers.

19. Based on NCNG's contracts with gas suppliers, the gas costs incurred by NCNG during the period of review were prudently incurred.

20. NCNG should be permitted to recover 100% of its prudently incurred gas costs.

21. At the time of the hearing, NCNG did not propose to change its rates.

22. As of the date of the hearing, NCNG had a temporary decrement of $0.1465/dt for sales only customers and a temporary decrement of $0.1424/dt for all customers. The sales only decrement was approved by Commission Order in Docket No. G-21, Sub 329, effective January 1, 1995; and the all customers decrement was approved by Commission Order in Docket No. G-21, Sub 327, effective May 1, 1994.

23. Sales only rates would increase $0.1855/dt and transportation rates would increase $0.1617/dt if the temporaries were adjusted in this proceeding.

24. It is just and reasonable to continue the current temporaries until further order of the Commission.

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

The evidence for these findings of fact is contained in the official files and records of the Commission and the testimony of NCNG witness Monaghan. These findings are essentially informational, procedural or jurisdictional in nature and are facts uncontradicted by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence for these findings of fact is contained in the testimony of NCNG witnesses Monaghan and Teele and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

G.S. 62-133.4 requires that NCNG submit to the Commission information and data for a historical twelve-month test period which information and data include NCNG's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes and transportation volumes. In addition to such information, Commission Rule R1-17(k)(6)(c) requires that there be filed weather-normalized sales volume data, work papers, and direct testimony and exhibits supporting the information filed.

Witness Monaghan testified that Commission Rule R1-17(k)(6) required NCNG to submit to the Commission on or before February 1, 1995, the required information based on a eleven-month test period ending October 31, 1994. Witnesses Monaghan and Teele testified that, based upon the recommendation of the Public Staff in NCNG's last annual review of gas costs in Docket No. G-21, Sub 323, the Commission shortened NCNG's 1993-1994 review period to eleven months so as to avoid "splitting" a winter heating season between two review periods. Mr. Monaghan testified that NCNG complied with the filing requirements of G.S. 62-133.4 (c) and Commission Rule R1-17(k)(6) and an examination of witness Monaghan's and Teele's testimony and exhibits confirms the same. Mr. Teele also testified that NCNG filed with the Commission and submitted to the Public Staff throughout the review period complete monthly accountings of the computations required by Commission Rule R1-17(k)(5)(c). Public Staff witness Henry confirmed that the Public Staff had reviewed the filings and that they complied with the Rules.

The Commission concludes that NCNG has complied with all the procedural requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k) for the eleven-month review period ended October 31, 1994.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-7

The evidence supporting these findings of fact is found in the testimony of NCNG witness Teele and Public Staff witnesses Henry and Curtis.

NCNG witness Teele testified that as of October 31, 1994, NCNG had a credit balance of $3,013,268 in its deferred accounts. This credit balance consists of a credit balance of $3,872,313 in the commodity deferred account (sales customers only) and a debit balance of $859,045 in the demand deferred account (all customers).

Witness Curtis testified that NCNG entered buy/sell agreements and had recorded net compensation of $1,067,092 during the review period pursuant to these agreements. Mr. Curtis stated that as a result of the buy/sell arrangements, the firm market ratepayers received approximately $960,383, or 90%, of the net compensation as a gas cost reduction.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the testimony of Public Staff witness Henry and Company witness Teele and is uncontroverted.

Witness Henry testified that the Public Staff had examined NCNG's accounting for gas costs during the review period and determined that NCNG had properly accounted for its gas costs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-17

The evidence supporting these findings of fact is found in the testimony of NCNG witness Teele and Public Staff witness Henry. Both the Company and the Public Staff have assigned the Columbia Account 191 charges to both sales and transportation customers (all customers), whereas CUCA argues that sales customers should be assigned the commodity costs and all customers should be assigned the demand credit.

Company witness Teele testified that Columbia's merchant function ceased to exist as a result of implementing FERC Order 636. This resulted in Columbia becoming only a transporter of gas. Columbia still had gas supply contracts overhanging, and it had to work its way out of them.

FERC has allowed Columbia the opportunity to recover costs incurred as a result of implementing Order 636. These costs include unrecovered gas costs or credits remaining in Columbia's (PGA) Account 191 when Columbia terminated its PGA. Under market-based rates, the pipelines no longer recover gas costs through a PGA mechanism. FERC permitted Columbia to direct bill its Account 191 balance to former bundled, firm sales customers.

Effective November 1, 1993, Columbia restructured its services to conform with the requirements of FERC Order 636. Prior to this restructuring, Columbia offered service only under a bundled basis and, therefore, transportation customers were unable to receive gas via the Columbia system. The unbundling of the Columbia system opens up significant additional capacity which transportation customers may now use.

Public Staff witness Henry testified that all customers should be required to pay Columbia Account 191 commodity charges, because all customers, including transportation customers, benefit from Columbia's restructuring in response to FERC Order 636. Mr. Henry stated that as a result of the restructuring, transportation customers can now buy their own gas supplies and have them transported on Columbia's system which results in lower gas costs to transportation customers. NCNG's sales customers also benefit from the unbundling of the Columbia system, because NCNG is now able to negotiate directly with gas suppliers feeding into the Columbia system at prices lower than those that were previously offered by Columbia.

The Commission, in Docket No. G-9, Sub 356, involving Piedmont Natural Gas Company, Inc., found that Account 191 commodity charges should be placed in the sales only deferred account and the Account 191 demand credits should go into the all customers account. Public Staff witness Henry testified that, in making this decision, the Commission focused on the original character of the Account 191 charges to Columbia instead of focusing on the character of the charges to NCNG and the ratepayers of North Carolina after the restructuring. According to witness Henry, as a result of implementing FERC Order 636, the balance in Account 191 was no longer strictly demand or commodity costs, but transition costs. Mr. Henry stated that these transition costs exist because FERC Order 636 terminated Columbia's Account 191 mechanism.

The position of NCNG and the Public Staff in this proceeding is indistinguishable from that rejected by the Commission in Docket No. G-9, Sub 356, and should be rejected in this proceeding as well. Such positions ignore the nature of the costs in question. If unbundling had not occurred and the Columbia PGA had not been terminated, the commodity amounts would have been assigned to the sales customers and the demand amounts would have been assigned to all customers in the Company's next PGA proceeding. The Commission concludes that the Account 191 commodity charges should be placed in the sales account and the Account 191 demand credit should be placed in the all customers account.

Accordingly, NCNG should adjust its deferred accounts to reflect the appropriate allocation of the Columbia Account 191 charges at issue herein paid to Columbia during the test period and future test periods consistent with the provisions of this Order.

Based upon the testimony and exhibits of the witnesses, the monthly filings by NCNG as required by Commission Rule R1-17(k)(5)(c) and the findings of fact set forth above, the Commission concludes, with the exception noted above, that NCNG has properly accounted for gas costs during the period of review.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-20

The evidence supporting these findings of fact is found in the testimony of NCNG witnesses Monaghan and Teele and Public Staff witness Curtis.

Witness Monaghan testified that the primary objective of NCNG's Board of Directors' gas supply acquisition policy is to insure that the Company has adequate volumes of competitively priced natural gas to meet the peak day demands of all firm customers on its system and to provide the maximum service possible to all customers during other times throughout the year. The key features of the policy include the requirement of a "portfolio mix" of long-term supply contracts, the maintenance of a backup of peak gas supplies (mainly in the form of gas in storage), the provision for periodic renegotiation of long-term contracts to keep them market-responsive and the requirement of firm gas supplies primarily to meet peak season firm requirements.

NCNG sells or transports gas to two markets. Its firm market is principally residential, commercial and small industrial and electric power generation interruptible customers. NCNG's firm market also includes customers who have firm contracts for the purchase or transportation of certain volumes of gas and demand charges in their rates, including NCNG's four municipal customers. Witness Monaghan testified that NCNG believes that spot market purchases are more appropriate in the summer months when it is serving primarily an interruptible market.

Witness Monaghan testified that NCNG has 10 long-term supply contracts, including the Transco FS sales service contract, representing a total firm supply of 182,607 dekatherms per day for winter delivery and lesser amounts in the remainder of the year. Mr. Monaghan also testified that of these 10 contracts, three are multi-year, winter only contracts which are utilized only during the five winter

months when the demand is the greatest, and the reservation fees are also payable only during the five winter months. Mr. Monaghan further stated that three of the remaining contracts provide higher quantities in the winter months than the summer months and that the remaining four contracts have a level contract quantity year-round.

Mr. Monaghan testified that he believes it is prudent to have long-term supplies equal to NCNG's interstate transportation capacity rights in the winter and to retain some, but not all, of its interstate capacity in the summer months. According to Mr. Monaghan, NCNG purchased 7,760,000 dts during the review period in the spot market for system supply and storage injection requirements.

Public Staff witness Curtis stated that, in addition to reviewing responses to the data requests posed to NCNG, the Public Staff reviewed gas purchase and transportation contracts; reservation or fixed cost fees, design day estimates, forecasted load duration curves, forecasted gas supply needs, customer load profile changes, and projections of capacity additions and supply changes. Based upon the examination of the data which the Public Staff had, Mr. Curtis testified that in the Public Staff's opinion, NCNG's purchasing practices were reasonable and prudent.

The Commission concludes that the gas costs incurred by NCNG during the review period ended October 31, 1994, were reasonable and prudently incurred, and NCNG should be permitted to recover 100% of its prudently incurred gas costs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-24

Witness Teele testified that as of the date of the hearing NCNG had in its rates a temporary decrement of $0.1465/dt for sales only customers and a temporary decrement of $0.1424/dt for all customers. The sales only decrement was approved by Commission Order in Docket No. G-21, Sub 329, effective January 1, 1995; and the all customers decrement was approved by Commission Order in Docket No. G-21, Sub 327, effective May 1, 1994.

CUCA Larsen Cross Examination Exhibit No. 1 reflects that sales only rates would increase $0.1855/dt and transportation rates would increase $0.1617/dt if the temporaries were adjusted in this proceeding. Witness Teele stated that although there is a debit balance and a rate decrement currently in the all customers deferred account, the decrements have not yet run their full course and the biggest overcollections of the year are still ahead, that is for gas usage billed in January and February 1995. Mr. Teele further stated that NCNG should keep this current rate decrement in the rates to return to all customers the projected overcollections. Mr. Teele also testified that rate changes are not now needed since rates were adjusted as recently as January 1, 1995. Further, witness Teele testified that in the event the Commission concludes that the Account 191 charges should be treated consistent with the Piedmont decision, he would still not recommend instituting any rate changes at this time.

The Commission believes that it is just and reasonable to continue the $0.1424/dt decrement in NCNG's all customers account, and the $0.1465/dt decrement in NCNG's sales customers only account until further order by the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's accounting for gas costs and recoveries during the eleven-month period of review ended October 31, 1994, is approved except to the extent adjusted herein;

2. That NCNG is authorized to recover 100% of its gas costs incurred during the eleven-month period of review ended October 31, 1994, as the same were reasonable and prudently incurred;

3. That NCNG be, and is hereby, directed to adjust its deferred accounts to reflect the allocation of the Columbia Account 191 charges at issue herein during the test period and future test periods consistent with the provisions of this Order; and

4. That the increments and decrements presently in NCNG's rates remain unchanged until further order of the Commission.

ISSUED BY ORDER OF THIS COMMISSION.
This the 15th day of June 1995.

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

DOCKET NO. G-21, SUB 334

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Natural Gas Corporation for an Adjustment to Its Rates and Charges	)))))	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Council Chambers, City Hall, 207 East King Street, Kinston, North Carolina, on Tuesday, September 12, 1995, at 11:00 a.m.

Old Cumberland County Courthouse, Hearing Room 3, 130 Gillespie Street, Fayetteville, North Carolina, on Wednesday, September 13, 1995, at 11:00 a.m.

Cameron Auditorium, Cameron Hall, UNC-Wilmington, 601 College Road, Wilmington, North Carolina, on Wednesday, September 13, 1995, at 7:00 p.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 5, 1995, at 9:30 a.m.

BEFORE: Commissioner Laurence A. Cobb, presiding; and Commissioners Charles H. Hughes and Ralph A. Hunt

APPEARANCES:

For North Carolina Natural Gas Corporation:

Jeffrey N. Surles, McCoy, Weaver, Wiggins, Cleveland & Raper, 202 Fairway Drive, Post Office Box 2129, Fayetteville, North Carolina 28302

For the Public Staff - North Carolina Utilities Commission:

James D. Little, Staff Attorney and Robin B. Cauthen, Jr., Staff Attorney, Public Staff- North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-5020

For the North Carolina Department of Justice:

Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, Utility Division, Post Office Box 629, Raleigh, North Carolina 27514

For Aluminum Company of America:

Coralyn Benhart, General Attorney, Aluminum Company of America, 425 Sixth Avenue, Suite 1261 - ALCOA Building, Pittsburgh, Pennsylvania 15219

David R. Poe, LeBoeuf, Lamb, Greene & MacRae L.L.P., 1875 Connecticut Avenue N.W., Washington D.C. 20009

For Carolina Utility Customers Association Inc.:

Sam J. Ervin IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, Post Office Drawer 1269, Morganton, North Carolina 28655

For Federal Paper Board Company Inc.:

Ralph McDonald, Bailey & Dixon L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

For Hoechst Celanese Polyester Intermediates:

Ralph McDonald, Bailey & Dixon L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

For Public Works Commission of the City of Fayetteville, N.C.:

Gearold L. Knowles, Schiff Hardin & Waite, 1101 Connecticut Avenue N.W., Suite 600, Washington D.C. 20036

Marland C. Reid, Reid, Lewis, Deese, Nance & Person, Post Office Box 1358, Fayetteville, North Carolina 28302

For Wiccacon Project Inc.:

Gary E. Guy, Bruder, Gentile & Marcoux, 1100 New York Avenue N.W., Suite 510 East, Washington D.C. 20005-3934

Frank A. Schiller, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

BY THE COMMISSION: On May 2, 1995, North Carolina Natural Gas Corporation (NCNG) filed an Application for Adjustment of its Rates and Charges, requesting that the North Carolina Utilities Commission (Commission) grant it authority to adjust its rates and charges for retail and wholesale natural gas service in North Carolina; add certain new rate schedules; approve changes in its rate design and approve certain changes to NCNG's general rules and regulations and tariff riders.

By Order dated May 24, 1995, the Commission declared the matter a general rate case pursuant to N.C.G.S. § 62-137; suspended the proposed rates for a period of 270 days from the proposed effective date of June 1, 1995; scheduled public hearings in Kinston, Fayetteville, Wilmington and Raleigh, North Carolina; declared the test period to be the twelve months ended December 31, 1994; required NCNG to give notice to its customers and publish notice of the case within its service territory and required the parties to prefile direct and rebuttal testimony by certain dates. On June 20, 1995, the Commission rescheduled the Raleigh hearing from October 3, 1995, to October 5, 1995.

Motions to Intervene were filed by Carolina Utility Customers Association, Inc. (CUCA); the Aluminum Company of America (ALCOA); the Public Works Commission of the City of Fayetteville (PWC); Federal Paper Board Company, Inc. (Federal); Hoechst Celanese Polyester Intermediates (Hoechst Celanese); and Wiccacon Project Inc. (Wiccacon), and all such motions were allowed.

The Public Staff - North Carolina Utilities Commission (Public Staff) intervened as allowed by law as did the North Carolina Attorney General.

On September 29, 1995, NCNG filed Affidavits of Publication from newspapers throughout its service territory confirming the publication of the Notice of Hearing required by the Commission's Order of May 24, 1995, as revised by the order of June 20, 1995, and confirmed that NCNG had enclosed the required notice as a bill insert to its customers in accordance with the Commission's Order and the rules and regulations of the Commission. Such Affidavits were received into evidence as NCNG Exhibit 1 at the start of the hearing in Raleigh, North Carolina.

No public witnesses appeared at the public hearings in Kinston, Fayetteville and Raleigh. At the public hearing in Wilmington, North Carolina, on September 13, 1995, Esther Murphey appeared and testified as a public witness.

On October 4, 1995, a Stipulation of the Parties joined into by NCNG, the Public Staff, CUCA, PWC, Federal, ALCOA, Hoechst Celanese, and Wiccacon was filed with the Commission. The Stipulation settled all issues between these parties in this proceeding except one dealing with Paragraph 3.9 of Rider B concerning the calculation of increments or decrements for fixed gas costs (all customers). NCNG, the Public Staff and CUCA differed in their prefiled testimony on this issue and the parties reserved their right to pursue this issue in proposed orders or briefs.

On October 5, 1995, the case in chief came on for hearing as scheduled in Raleigh, at which time the Commission received the Stipulation into evidence and was advised that the Attorney General did not oppose the settlement of the issues as set forth in the Stipulation. All parties waived cross-examination of the various witnesses who had prefiled testimony. With the consent and support of all parties, the prefiled testimony and exhibits of the following witnesses were offered and accepted into evidence:

For NCNG:

1. Calvin B. Wells, Chairman of the Board, President and Chief Executive Officer of NCNG (Direct Testimony and Exhibits);

2. Gerald A. Teele, Senior Vice President, Treasurer and Chief Financial Officer of NCNG (Direct and Rebuttal Testimony, Supplemental Testimony in Support of Stipulation and Exhibits as updated);

3. Fredrick W. Hering, Director - Rates and Budgets for NCNG (Direct Testimony and Supplemental Testimony in Support of Stipulation and Exhibits as updated); and

4. Frank J. Hanley, President, AUS Consultants - Utility Services (Direct Testimony and Exhibits).

The Public Staff presented the testimony and exhibits of the following witnesses:

1. James G. Hoard, Supervisor of Natural Gas Section, Accounting Division of the Public Staff (Direct Testimony and Exhibits);

2. Thomas W. Farmer, Jr., Public Utilities Financial Analyst Director, Economic Research Division of the Public Staff (Direct Testimony and Exhibits);

3. Bridget Celeste Szczech, Staff Accountant in the Accounting Division of the Public Staff (Direct Testimony and Exhibits);

4. Jeffrey L. Davis, Public Utilities Engineer, Natural Gas Division of the Public Staff (Direct Testimony and Exhibits); and

5. Jan A. Larsen, Public Utilities Engineer, Natural Gas Division of the Public Staff (Direct Testimony and Exhibits).

The intervenors presented the testimony and exhibits of the following witnesses:

1. Donald W. Schoenbeck for CUCA (Direct Testimony);

2. Michael J. Martinelli, Director of Purchases for Libby-Owens-Ford Company, appearing on behalf of CUCA (Direct Testimony);

3. Steven A. Huhman, Coordinator - Regulatory Affairs for the Natural Gas Division of CONOCO Inc., a wholly owned subsidiary of duPont, appearing on behalf of CUCA (Direct Testimony and Exhibits);

4. Si A. Moss, Director of Engineering for Chicopee Inc., appearing on behalf of CUCA (Direct Testimony);

5. David Little, Utility and Environmental Engineer for Collins & Aikman Products Company, appearing on behalf of CUCA (Direct Testimony);

6. Kevin W. O'Donnell, President of NOVA Utility Services, Inc., appearing for CUCA (Direct Testimony and Exhibits);

7. Barry A. Duncan, Southeastern Gas Consulting, appearing on behalf of Hoechst Celanese (Direct Testimony and Exhibits);

8. Paul W. Magnabosco, Director of Energy for Federal Paper Board Company, Inc. (Direct Testimony);

9. William H. Grotewold, Purchasing - Stores Superintendent for Hoechst Celanese (Direct Testimony and Exhibit);

10. Steven K. Blanchard, General Manager for Public Works Commission (Direct Testimony and Exhibits); and

11. Forrest F. Stacy, Senior Vice President for Cogeneration Power Development, appearing for Wiccacon (Direct Testimony).

At the hearing on October 5, 1995, the Commission required proposed orders and briefs to be filed by October 16, 1995. A joint proposed order was filed by the following parties: North Carolina Natural Gas Corporation, the Public Staff and CUCA. The remaining intervenors have advised the Commission that they do not oppose the proposed order.

Based upon the verified application, the testimony and exhibits received into evidence at the hearing, the stipulation of settlement between the parties, the agreement of the Attorney General not to oppose the stipulation of settlement, the proposed orders and briefs submitted by the parties and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

GENERAL

1. NCNG is a Delaware corporation that is authorized to do business in the State of North Carolina and which has its principal place of business located in Fayetteville, North Carolina. NCNG is engaged in the transmission and distribution of natural gas to over 135,000 customers in 63 communities in southcentral and eastern North Carolina, including gas sales and transportation to four municipal gas distribution systems owned by the cities of Greeneville, Monroe, Rocky Mount and Wilson.

2. NCNG is a public utility as defined in N.C.G.S. §62-3(23) and operates under a certificate of public convenience and necessity issued by the Commission on December 7, 1955, as amended from time to time thereafter, and is subject to the jurisdiction of the Commission.

3. NCNG's application, testimony, exhibits, Form G-1, Affidavits of Publication, and the published hearing notices are in compliance with the provisions of Chapter 62 of the General Statutes and the Rules and Regulations of the Commission.

4. The test period for the purposes of this general rate case proceeding is the twelve months ended December 31, 1994, adjusted for actual changes based on circumstances and events occurring through the close of the hearing as permitted by N.C.G.S. §62-133(c).

5. The Commission concludes that NCNG is properly before the Commission for a determination of the justness and reasonableness of its rates and charges as regulated by the Commission under Chapter 62 of the General Statutes of North Carolina.

VOLUMES

6. The appropriate level of adjusted sales and transportation volumes for use herein is 44,670,210 dekatherms (dts) which is comprised of 31,568,330 dts of sales volumes and 13,101,880 dts of transportation volumes. The purchased gas supply required to generate the appropriate sales level is as follows:

Sales and Transportation	44,670,210 dts
Less: Transportation	(13,101,880)
Sales	31,568,330
Lost and Unaccounted For	909,599
Company Use	153,126
Purchased Gas Supply	32,631,055 dts

7. The Commission concludes that for the purposes of the Stipulation and this Order, the level of adjusted sales and transportation volumes are reasonable.

COST OF GAS

8. The benchmark commodity gas cost rate should be set at $2.10 per dt.

9. The reasonable level for the total cost of gas for the purposes of this case and the Stipulation is $94,524,845 determined as follows:

Commodity Cost of Gas	$68,525,213
Fixed Gas Cost (Total Demand and Storage Costs)	26,321,197
Less Company Use Gas	(321,565)
Total Cost of Gas	$94,524,845

DEPRECIATION

10. The parties to the Stipulation of Settlement have agreed that the appropriate depreciation rates for accounts 376 (mains) and 380 (services) are 2.81% and 4.43%, respectively, and the Commission finds and concludes that such rates are appropriate, just and reasonable.

RATE BASE

11. For the purposes of this proceeding, the reasonable rate base used and useful in providing service is $162,944,015 which consists of the following:

Gas Plant in Service	$267,091,338
Accumulated Depreciation	(88,047,934)
Net Plant in Service	179,043,404
Gas in Storage	5,868,452
Materials and Supplies	2,190,070
Other Working Capital Items - Net	(496,701)
Accumulated Deferred Income Taxes	(23,661,210)
Rate Base	$162,944,015

REVENUE REQUIREMENT

12. The appropriate present level of operating revenues under present rates for use in this proceeding is $151,933,457, which is comprised of $151,252,305 of sales and transportation revenues and $681,152 of miscellaneous revenues.

13. The overall level of operating revenue deductions for reasonable operating expenses and taxes under present rates appropriate for use in this proceeding is $137,926,447.

14. As part of the additional revenue requirements and consistent with Exhibit F to the Stipulation setting forth matters agreed to by the Public Staff and NCNG, the Commission finds that NCNG has properly recorded in a separate deferred cost account $226,138 of cost incurred as reasonable expenditures in connection with the investigation and remediation of a manufactured gas plant site owned by the company, and NCNG should be permitted to credit that account $61,680 each year to reflect monthly amortization of the cost to expenses. The parties have agreed and the Commission intends that the accounting and recovery treatment for these manufactured gas plant costs be handled in a manner consistent with that approved in the Public Service Company of North Carolina, Inc., general rate case, Docket G-5, Sub 327.

15. The Commission cannot guarantee that NCNG will, in fact, achieve an overall rate of return on rate base of 10.09% to which the parties have agreed in the Stipulation, but the Commission finds and concludes that such overall rate of return is just and reasonable, should be allowed and will enable the company, by sound management, to produce a fair return for its stockholders, to maintain its facilities and services in accordance with the reasonable requirements of its customers and to compete in the capital markets for funds on terms which are reasonable and fair to its customers and to existing investors.

16. NCNG should be authorized, as part of this proceeding, to increase its annual level of operating revenues through the rates and charges approved in this Order by $4,204,856. After giving effect to this increase, the annual operating revenues for NCNG would be $156,138,313.

RATE DESIGN AND ESTIMATED COST OF SERVICE

17. NCNG, the Public Staff and CUCA are the only parties that performed and presented estimated cost of service studies; however, as part of the Stipulation, the parties have agreed that for the purposes of this general rate case, and in particular, the true-up of fixed gas costs, the cost of service study proposed by NCNG which was updated and attached to the Stipulation as Exhibit B and to NCNG witness Teele's supplemental direct testimony as Teele Exhibit 1, updated, should be used as a guide.

18. The rates agreed to by the parties in the Stipulation, as shown on Exhibit C attached thereto, should produce the revenues shown in the column titled "After Rate Increase".

19. NCNG has proposed to establish new Rate Schedules 11, T-7, ST-1 and S-2 and the parties to the Stipulation have agreed with the same. The Commission finds and concludes that the establishment of these new rate schedules including contract demand levels and demand rates to the extent proposed by NCNG are just and reasonable.

20. As to Rate Schedules 11, T-7 and ST-1, which contain both demand and commodity charges subject to volumetric commitments, the curtailment provisions of NCNG's service rules and regulations should be modified to limit the curtailment of customers on such tariffs at usage levels below their contract demand level to *force majeure* situations.

21. The connection fee charged to new residential and commercial customers pursuant to Section 30 of NCNG's General Rules and Regulations should be increased to $25 from $15 and the Commission concludes that such increase is just and reasonable.

22. The rate schedules reflecting the new volumetric rates, facilities charges and demand charges as shown on Exhibit C to the Stipulation are hereby approved as just and reasonable and the Commission further finds and concludes that the rates set forth therein are just and reasonable to all customer classes.

23. The rates approved in this Order should be placed into effect November 1, 1995.

FIXED GAS COST RECOVERY RATES

24. The parties to the Stipulation have agreed that fixed gas costs shall be allocated in accordance with Teele Exhibit 12 - updated which was attached to the Stipulation as Exhibit D. The Commission finds and concludes that the fixed gas cost recovery rates set forth on that Exhibit are appropriate for the purposes of calculating gas cost recovery in Rider B and for the implementation of the weather normalization adjustment factor (Rider C) as approved in this Order.

25. The Commission concludes that the balance in the All Customers Deferred Account, except for company use and lost and unaccounted for gas costs (CU&LUAF), should be assigned to the rate classes for purposes of determining increments and decrements based on the fixed gas cost apportionment percentages set forth in Exhibit D to the Stipulation in this case. Because most of the dollars that flow through the All Customers Deferred Account relate to fixed gas costs (including the net compensation on buy/sell and capacity release transactions), the Commission finds that assigning the balance of the account based on the fixed gas cost apportionment percentages, as the Public Staff has recommended, strikes an equitable balance between NCNG's desire to minimize its administrative burdens and CUCA's desire to determine a separate increment or decrement by rate class for each type of deferred account transaction.

INDUSTRIAL SALES TRACKER/PRICE SENSITIVE VOLUME ADJUSTMENT

26. The parties have agreed as part of the Stipulation to terminate Rider A Industrial Sales Tracker (IST) and to place a decrement of $0.14 per dt in rates for sales only customers who were not IST customers for a period of four months to disburse balances in the IST deferred account.

27. The Commission finds and concludes that the IST Rider A should be terminated concurrent with the effective date of the tariff rates approved in this Order, November 1, 1995.

28. The $0.14 per dt decrement should be placed into rates as proposed by the parties to become effective November 1, 1995, and continue through February 29, 1996, or until the amount accumulated in the IST deferred account as of October 31, 1995, has been refunded on sales only volumes for customers who were not IST customers. Consistent with the Stipulation, any balances remaining, either positive or negative, in the IST deferred account as of May 1, 1996 should be transferred to the Deferred Gas Account - Sales Only Customers.

29. To replace the IST, the parties have proposed a new rider entitled Price Sensitive Volume Adjustment - Rider A (PSVA) attached to the Stipulation as Exhibit E. The Commission finds and concludes that the PSVA Rider A is a just and reasonable replacement for the former IST Rider A and should be established pursuant to this Order in the form as proposed in the stipulated settlement.

30. Pursuant to the terms of the PSVA Rider A, gross margin realized on PSVA volumes to the eight listed industrial customers who have Number 6 oil as an alternative fuel and are extremely price sensitive, shall be returned to NCNG's customers through a decrement to the extent provided in the rider. A PSVA decrement for all customers should be placed in rates concurrent with the effective date of the rate change authorized by this Order in the amount of $0.045 per dt with such decrement being estimated to continue for twelve months subject to modification in PGA proceedings as experience with the PSVA rider warrants.

MISCELLANEOUS CHANGES TO RIDERS, RULES AND REGULATIONS

31. The changes to the provisions of Rider B as proposed by NCNG and the Public Staff in the form attached to the Settlement Stipulation as part of Exhibit F are approved as just and reasonable consistent with the Commission's finding dealing with Paragraph 3.9 of Rider B (True-Up of Fixed Gas Costs Increments and Decrements) set forth in Finding of Fact No. 25 above.

32. The Commission finds and concludes that the "R" values and usage factors that should be used in NCNG's weather normalization adjustment (WNA) Rider C for the periods subsequent to October 31, 1995, are those "R" values and usage factors set forth in Teele Exhibit 16 which was filed with witness Teele's supplemental testimony in support of the stipulated settlement.

33. The Commission finds and concludes that the changes recommended by NCNG in Teele Exhibits 10 and 11, as updated, to its tariff schedules, riders and general rules and regulations are appropriate, just and reasonable and should be implemented.

34. The Commission finds and concludes that the proposed changes in line extension policies, as contained in Paragraphs 9 and 10 of NCNG's General Rules and Regulations, agreed to by NCNG and the Public Staff are just and reasonable and should be approved. The proposed changes are contained on original sheet numbers 6, 7, and 8 of the General Rules and Regulations submitted by NCNG as a late-filed exhibit. (NCNG witness Teele's Exhibit 11, updated).

35. The Commission finds and concludes that all of the provisions of the Stipulation of the parties settling the issues in this case with the exception of one issue related to Section 3.9 of Rider B are fair, just and reasonable under the circumstances of this proceeding and should be approved.

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

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records regarding this proceeding, the Commission's Order scheduling hearings, the testimony and exhibits of NCNG and the Public Staff and the Stipulation of the parties. These findings of fact are essentially informational and jurisdictional and are uncontradicted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-7

The evidence supporting these findings of fact is found primarily in the direct testimony of Public Staff witness Davis, the direct testimony and supplemental direct testimony of NCNG witness Teele and the Stipulation of the parties. The level of adjusted sales and transportation volumes used in the Stipulation and found to be reasonable by the Commission was a result of the negotiations among the parties and is not opposed by any party. The total amount of 44,670,210 dts is comprised of 13,101,880 dts of transportation service and 31,568,330 dts of sales volumes. This is approximately 1.3 million dts less than NCNG's prefiled position. Witness Teele's supplemental testimony explains the difference using the following tables:

Total Volumes Per Original Filing	45,975,367 dts
High Priority Customer Growth From December 31, 1994 - September 30, 1995	441,063
Increase in Industrial Demand for Settlement Purposes	284,274
Sub-Total	46,700,704 dts
Less:	
Net Reduction in PSVA Volumes Which Had Been Included by NCNG	(2,030,494)
Total Volumes Per Stipulation	44,670,210 dts

Witness Teele explained in his supplemental direct testimony in support of the Stipulation that the PSVA volume adjustment of 2,030,494 dts represented that portion of the total PSVA volumes of 3,675,203 dts for the eight PSVA customers which had not previously been removed by NCNG in its initial prefiled position. In that prefiled position, NCNG had proposed to eliminate 1,644,709 dts for such customers. With this additional adjustment of 2,030,494 dts, the volumes from the eight PSVA customers are eliminated entirely from the rate case and margins earned on sales to such customers will be handled through the PSVA.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-9

The evidence supporting these findings of fact is contained in the Company's application, the supplemental direct testimony of NCNG witness Teele, the direct testimony and exhibits of NCNG

witness Hering, and the direct testimony of Public Staff witness Davis and the Stipulation of the parties. Both the Public Staff and NCNG proposed a benchmark commodity gas cost of $2.10 per dt. No other party presented testimony on this issue and the parties agreed in the Stipulation that such benchmark should be established in this rate case.

NCNG witness Teele testified that a $2.10 per dt benchmark commodity gas cost would be an increase from the existing benchmark of $1.85 per dt and that he felt such benchmark was a reasonable estimate of the commodity gas cost for the winter period. NCNG witness Teele pointed out that the futures market indicates probable increases in gas costs for November, December and January. NCNG witness Teele further testified that NCNG does not believe it will be necessary to increase the benchmark again during the winter months and that a decrease in March may be possible based upon information available at the present time. The Commission has studied the evidence and Stipulation and concludes that it is reasonable to establish a benchmark commodity gas cost rate as part of this Order at $2.10 per dt.

NCNG and the Public Staff initially differed on gas costs primarily due to differences in volume levels with Public Staff witness Davis pointing out the dependency of commodity cost on volume levels. The parties subsequently resolved their differences as part of the settlement. The Commission has carefully reviewed the cost of gas set forth in the Stipulation and finds and concludes that it is set forth at a reasonable level.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding of fact is contained in the direct testimony and exhibits of NCNG witness Hering and the direct testimony and exhibits of Public Staff witness Szczech as well as the Stipulation of the parties. In the direct testimony of NCNG and the Public Staff, the parties agreed that it was appropriate to adjust the depreciation rates for account 376-mains from 2.40% to 2.81% and account 380-services from 3.71% to 4.43%. NCNG witness Hering pointed out that these depreciation rates still would be below what was recommended in the NCNG depreciation study on file with the Commission but equal to the rates currently approved for Public Service Company of North Carolina, Inc. The remaining parties through the Stipulation and their representations to the Commission supported or did not oppose these changes in the depreciation rates. The Commission has carefully reviewed these rates and concludes that they are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence supporting this finding was set forth in the company's original application, the direct testimony and exhibits and supplemental direct testimony and exhibits of NCNG witness Hering, the direct testimony and exhibits of Public Staff witness Szczech and the Stipulation of the parties. The parties have agreed that the original cost rate base at September 30, 1995, is $162,944,015 as shown in the Stipulation. NCNG's application and direct testimony of witness Hering set forth NCNG's original cost rate base at December 31, 1994, at $158,864,422 before accounting and pro forma adjustments and a $162,717,820 pro forma level after such adjustments. In his supplemental direct testimony supporting the stipulated settlement, NCNG witness Hering described the adjustments made to the original cost rate base. The first adjustment was to increase plant in service by

$8,380,403 to the estimated September 30, 1995, plant account balance of $267,091,338 in order to match properly the plant in service with revenues, gas cost and expenses which included projections of certain customer growth through September 30, 1995. An adjustment in accumulated depreciation of $5,637,770 was made to reflect the annualization of depreciation on the September 30, 1995, balances of plant in service, additional plant, non-utility allocations and the higher depreciation rates for accounts 376 and 380. These items resulted in a projected balance of $88,047,934 in accumulated depreciation at September 30, 1995.

Witness Hering testified that as a result of using a thirteen month average of volumes at December 31, 1994, and pricing them at the weighted average cost of the various storage inventories, including line pack, at May 31, 1995, an adjustment was made to reduce natural gas in storage by $517,040. Accumulated deferred income taxes were updated through September 30, 1995, and several other adjustments were made to working capital according to NCNG witness Hering. The Commission has carefully reviewed these adjustments and the proposed rate base level set forth in the Stipulation and concludes that they are appropriate for use in this case.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-16

The evidence for these findings is set forth primarily in the direct and supplemental direct testimony and exhibits of NCNG witness Hering, the direct testimony and exhibits of Public Staff witness Szczech and the Stipulation of the parties. The settlement reached by the parties resolved the differences between them related to revenue issues in this case.

NCNG witness Hering, as part of his supplemental direct testimony in support of the Stipulation, testified concerning the primary adjustments made to revenues, expenses and taxes to determine the pro forma adjustments as stipulated. Witness Hering's Exhibit 8, updated, set forth the agreed upon adjustments in more detail.

NCNG witness Hering and Public Staff witness Szczech presented testimony concerning an adjustment proposed by NCNG for manufactured gas plant (MGP) costs incurred by it in responding to environmental contamination at the site of a former MGP in Kinston, North Carolina. These witnesses explained that although NCNG has incurred $452,275 in clean-up cost, it has reflected only 50% of such total cost in its expenses due to a cost sharing agreement reached by NCNG with a third party. NCNG made a pro forma adjustment to include an annualized level of MGP cost by amortizing 50% of such cost over 44 months (representing the period NCNG incurred these costs - May 1991 through December 1994). Having reviewed NCNG's proposed accounting and recovery treatment of these costs, Public Staff witness Szczech agreed with the same and that position on behalf of the Public Staff was confirmed in Exhibit F to the Stipulation.

The Commission takes judicial notice that it has allowed similar accounting treatment of MGP costs for other North Carolina LDCs and in particular, did so in the last Public Service Company of North Carolina, Inc. general rate case in Docket G-5, Sub 327. The Commission finds and concludes that NCNG acted in a reasonable and prudent manner in responding to the 1991 North Carolina Department of Environment Health and Natural Resources Division of Environmental Management's Notice of Violation of Water Quality Standards as a result of MGP by-products at the Kinston site.

NCNG has recovered a significant portion of its costs from third parties reducing the impact of those costs on its customers. The Commission concludes that the accounting and rate recovery treatment for MGP cost as agreed to in the testimony and as set forth in Exhibit F to the Stipulation are just and reasonable and should be allowed.

The Commission has carefully reviewed the parties' agreement and the evidence related to operating revenue levels, the accounting treatment of the various adjustments and the information set forth in the testimony and Stipulation on operating revenues, operating revenue deductions, rate base and rate of return, and the Commission concludes that the same are just and reasonable to NCNG and all classes of its customers. Schedules I and II attached to this Order summarize the gross revenue, net operating income and rate of return which the Company should have a reasonable opportunity to achieve based upon the determinations made herein. These schedules, illustrating NCNG's gross revenue requirement, incorporate the findings and conclusions made by the Commission in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17-23

The evidence for these findings of fact is contained in the direct, rebuttal and supplemental testimony and exhibits of NCNG witness Teele, the direct testimony and exhibits of Public Staff witnesses Davis and Larsen and the testimony and exhibits of the following intervenor witnesses: Schoenbeck, Blanchard, Martinelli, Stacy, Huhman, Moss, Little, O'Donnell, Duncan, Magnabosco and Grotewold. The findings are supported by and consistent with the Stipulation of the parties settling this issue which Stipulation was received into evidence without objection.

The parties to the Stipulation agreed that, for the purposes of this general rate case, the estimated cost of service study described by NCNG witness Teele in his supplemental direct testimony and designated Teele Exhibit 1, updated, should be used, particularly for the true-up of fixed gas cost. NCNG witness Teele testified that changes to Rider B - PGA procedures (which have been agreed to by the Public Staff and attached to the Stipulation) include tracking future changes in fixed gas cost pursuant to a method based on the allocation of such cost by rate schedules in a cost of service study accepted by the Commission in this docket.

The Commission has reviewed in detail the verified application and supporting work papers, the testimony and exhibits of the parties and the settlement stipulation and concludes that the compromise reached by the parties in the Stipulation concerning rate design is just and reasonable for this case and should be approved. The rate design agreed to by the parties provides for a lower residential rate than that originally proposed by CUCA and NCNG but higher than that originally proposed by the Public Staff. The rate design also provides for generally lower industrial sales and transportation rates, with several exceptions noted by NCNG witness Teele in his supplemental direct testimony in support of the Stipulation. The Commission has carefully reviewed these rates and concludes that the proposed rates included in Teele Exhibit 3, updated, and Exhibit C to the Stipulation are just and reasonable.

As part of NCNG's rate filing, it proposed and supported in testimony, several new sales and transportation rate schedules as follows: Rate 11 (Sales) and Rate T-7 (Transportation) for service to large aluminum operations; Rate S-2, a negotiated economic development rate; and Rate ST-1,

a stand-by on-peak supply service. NCNG witness Teele testified that Rate 11 and Rate T-7 were proposed and supported and consistent with an agreement reached with a major customer in order to avoid losing load. NCNG witness Teele explained the application of negotiated rates under Rate S-2 for economic development and that rate was more particularly described in Teele Exhibit 10. Rate schedule ST-1 represents an unbundled storage service which NCNG proposes to offer to certain industrial customers on a first come, first served basis to provide a peak-day supply service as an alternative to interruption of their natural gas service from NCNG. Wiccacon's witness Stacy questioned the application of and eligibility under this rate schedule. In his rebuttal testimony, NCNG witness Teele acknowledged that NCNG had intended this peak service to be applicable to industrial process and small industrial customers but agreed that to the extent such customers did not sign up for all the available LNG capacity offered through this tariff, it would be made available to other customers in lower priorities such as Wiccacon pursuant to the tariff proposed by NCNG. Such agreement was set forth in Exhibit F to the Stipulation.

Rate Schedules 11 and T-7 contain a two part demand/commodity rate with the volumetric level covered by the demand charge not being subject to curtailment except in the event of *force majeure*. NCNG has agreed to modify its rules and regulations to specify that, as to customers paying demand charges, curtailment of any portion of the contract demand quantity will occur only in *force majeure* situations. The sale or transportation of gas above the contract demand level would be at a 100% load factor rate subject to curtailment. As a result of this settlement stipulation, no party opposes these new tariffs and the Commission concludes that the same are just and reasonable and should be approved.

The parties also have agreed that the connection fee charged to new residential and commercial customers should be increased to $25. No party opposed this increase and the Commission, having examined the facts surrounding the same, concludes that such increase is just and reasonable.

At the time NCNG filed its general rate case, it proposed that the rates be made effective June 1, but the Commission suspended the proposed rates pending this order. Since all issues related to rate design have been settled, the Commission believes that it is appropriate to put the rates into effect promptly. The Commission has been advised that neither the Public Staff nor the intervenors oppose the rates becoming effective November 1, 1995, which is the start of the winter season for NCNG. The Commission concludes that commencement of the rate changes effective November 1, 1995, is just and reasonable and should be so ordered.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-25

The evidence for these findings of fact is found in the direct, rebuttal and supplemental direct testimony and exhibits of NCNG witness Teele, the direct testimony and exhibits of Public Staff witnesses Hoard and Davis and the direct testimony of CUCA witness Schoenbeck as well as the Stipulation of the parties.

The parties have agreed through the Stipulation, or otherwise indicated that they do not object, to fixed gas costs being allocated in accordance with NCNG witness Teele's Exhibit 12, updated, which was attached to the Stipulation as Exhibit B. The Commission has reviewed Teele Exhibit 12,

updated, and concludes that the fixed gas cost recovery rates set forth on that exhibit are appropriate for the purposes of calculating fixed gas cost recovery in Rider B and for implementing the weather normalization adjustment factor (Rider C).

The only issue that was not resolved by the parties pursuant to the Stipulation was a difference between NCNG, the Public Staff and CUCA on whether there should be separate increments or decrements for fixed gas costs applicable to the deferred Gas Cost Account - All Customers addressed in Paragraph 3.9 of Rider B. NCNG, the Public Staff and CUCA all take different positions on this issue in their testimony. In accordance with the Stipulation, NCNG, CUCA, and the Public Staff agreed to address Paragraph 3.9 of NCNG's Purchased Gas Adjustment Procedures - Rider B in proposed orders and briefs. Paragraph 3.9 contains the procedures for determining how the Company will refund or collect balances in its deferred accounts.

NCNG stated that it prefers to apply increments or decrements on a flat per dekatherm basis. Company witness Teele stated in prefiled rebuttal testimony that the flat per dekatherm approach is appropriate primarily because of materiality and administrative feasibility. Witness Teele testified that the amounts of under - or overcollections are relatively small compared to the total amount of fixed gas costs and that the effect of changing individual rate schedules for the annual true-up places an administrative burden on the Company. Mr. Teele further testified that it is the Company's preference to manage its fixed gas costs in a manner so as to avoid significant increments or decrements to rates.

Public Staff witness Davis testified that the balance in the All Customers Deferred Account, except for company use and lost and unaccounted for gas costs (CU&LUAF), should be assigned to the rate classes for purposes of determining increments and decrements based on the fixed gas cost apportionment percentages set forth in Exhibit D to the Stipulation. The Public Staff believes that increments and decrements required to collect or refund balances in the deferred account should be determined in a manner which is consistent with how fixed gas costs are assigned to the rate classes. The Public Staff contends that it would clearly be inappropriate for the Company to collect or refund under - or overcollections of fixed gas costs in a manner which differs from how the fixed gas costs were originally collected from customers. Also, the Public Staff stated that its recommendation is consistent with the PGA procedures that have been approved by the Commission for the other three LDCs.

CUCA witness Schoenbeck provided the following testimony on this issue:

> In subsequent purchase gas cost proceedings, the Commission should recognize and account for the transition from a uniform fixed gas cost increment approach to the class specific concept proposed by NCNG and supported by CUCA in this proceeding. In the next PGA, the fixed gas cost deferred balance as of the date rates from this proceeding become effective should be assigned to customer classes based upon the equal increment (or decrement) method.

The Commission has interpreted Mr. Schoenbeck's reference to the "next PGA" to mean the "next annual review of gas cost proceeding." The Company's next annual review period will be the twelve months ended October 31, 1995; therefore, it is unlikely that much, if any of the next review

period will occur after a rate order in this proceeding. All parties agree that the increments (or decrements) in that annual review proceeding should be determined on a flat per dekatherm basis, which is consistent with the PGA procedures that were in effect for NCNG during the annual review period.

CUCA further recommended that any increments or decrements relating to the balance in the All Customers Deferred Account accumulated after the effective date of the Order in this docket should be based on the fixed gas cost allocations approved by the Commission in the Company's last general rate case except that, to the extent that any component of the balance in the All Customers Deferred Account consists of amounts other than fixed gas cost underrecoveries or overrecoveries, any such non-fixed gas cost amounts should be allocated among customer classes on a basis deemed appropriate by the Commission.

The Commission rejects CUCA's proposal. We believe that subcategorizing the All Customers Deferred Account and determining separate allocation bases for each different type of transaction would place an extremely high administrative burden on the Company, the Public Staff, and the Commission. Subcategorizing the All Customers Deferred Account would require separate accounting for each different allocation basis in order to keep track of each rate class' share of the cumulative balance for each allocation basis used. Also, since each allocation basis would produce a different assignment of costs, increments (or decrements) applicable to each rate class would be a summation of the increments (or decrements) for several allocation bases. Besides imposing substantial accounting and rate administration burdens on the Company and the Public Staff, it is likely that annual review proceedings will become debates over how each new type of transaction should be allocated to the rate classes.

The Commission concludes that the balance in the All Customers Deferred Account, except for CU&LUAF, should be assigned to the rate classes for purposes of determining increments and decrements based on the fixed gas cost apportionment percentages set forth in Exhibit D to the Stipulation in this case. Because most of the dollars that flow through the All Customers Deferred Account relate to fixed gas costs (including the net compensation on buy/sell and capacity release transactions), we believe that assigning the balance of the account based on the fixed gas cost apportionment percentages, as the Public Staff has recommended, strikes an equitable balance between NCNG's desire to minimize its administrative burdens and CUCA's desire to determine a separate increment or decrement by rate class for each type of deferred account transaction.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 26-30

The evidence in support of these findings of fact is in the direct testimony and exhibits of Public Staff witness Davis, the supplemental direct testimony and exhibits of NCNG witness Teele and the Stipulation of the parties.

NCNG proposed to continue the Industrial Sales Tracker (IST) at the time it filed its application and prefiled direct testimony. Public Staff witness Davis proposed to eliminate the IST but replace it with a Price Sensitive Volume Adjustment (PSVA) rider. The parties to the Stipulation agreed to eliminate the IST, place a decrement of $0.14 per dt over a period of four months in rates for sales

only customers who were not IST customers with the balance remaining from the IST, either positive or negative as of May 1, 1996, being transferred to the deferred gas account - sales only customers. The parties further agreed to replace the IST with a PSVA as modified and set forth in NCNG witness Teele's Exhibit 10, updated, and attached to the Stipulation as Exhibit E.

NCNG witness Teele explained in his supplemental direct testimony the difference between the PSVA Rider A as agreed to by the parties and that originally presented by Public Staff witness Davis. The Commission has examined the testimony and exhibits of NCNG and the Public Staff related to the PSVA Rider A and the elimination of the IST and has concluded that the PSVA as proposed by the parties in the Stipulation and as set forth as part of NCNG witness Teele's Exhibit 10, updated, is just and reasonable and should be approved.

As to the IST decrement proposed to be placed into effect, the Commission concludes that the amount of $0.14 per dt is appropriate. At the time of the execution of the Stipulation, the parties assumed as a part of their agreement that changes as a result of the Order in this docket would not be effective until December 1, 1995. The Commission has since been advised that there is no objection to a November 1 effective date and has determined that such changes should be effective on that date and the IST decrement of $0.14 should continue through February 29, 1996. NCNG has revised its estimated amount assumed to be accumulated in the IST deferred account at the termination of the IST to reflect the changed dates. This estimate was set forth in the Stipulation in an amount of $2,138,000 at November 30, 1995,but has been revised by NCNG in the proposed order to an estimated amount of approximately $1,938,000 at October 31, 1995.

The $0.045 per dt decrement for the PSVA proposed and agreed to by the parties also would become effective November 1, 1995, and, there being no objection raised, the Commission finds the same reasonable.

NCNG witness Teele explained in his supplemental direct testimony that no volumes from the eight PSVA customers are included in the determination of revenue requirements, thus all customers' base rates are higher than they otherwise would have been if at least some PSVA volumes had been included. Such increase is mitigated by the PSVA decrement which occurs pursuant to the operation of the PSVA and flows gross margin earned on PSVA volumes back to NCNG's customers consistent with the provisions of the new Rider A. NCNG has expressed its belief that the PSVA rider decrement of $0.045 per dt should be appropriate for 12 months but that the company may propose changes in the decrement at any time it feels such changes are necessary to reflect the experience with the sale and transportation of PSVA volumes.

The Commission, having reviewed all the evidence presented concerning the PSVA Rider A, including the Stipulation and the testimony and exhibits of the witnesses, concludes that the same should be established in this rate case as just and reasonable and that the decrement of $0.045 per dt should be placed into effect November 1, 1995, for an anticipated period of 12 months subject to further Commission Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 31-34

The evidence for these findings of fact is in the direct and supplemental testimony and Exhibits of NCNG witness Teele, the direct testimony and exhibits of Public Staff witnesses Davis and Larsen and the Stipulation of the parties. Exhibit F to the Stipulation provided that NCNG and the Public Staff had resolved their differences regarding the Public Staff's proposed changes in the Company's line extension policies. NCNG incorporated provisions in its residential and small commercial line extension policies which accommodated the Public Staff's concerns. The revisions to original sheet numbers 6, 7, 8 of the General Rules and Regulations were submitted by NCNG to the Commission as a late filed exhibit captioned Exhibit 11, updated.

The Commission has carefully reviewed the evidence of the parties, the Stipulation and the late filed exhibit. No party objects to these settled issues and the Commission concludes that Rider B in the form attached to the Stipulation reflecting the agreed upon changes to the rider should be established as just and reasonable in this docket, the R values and usage factors for NCNG's weather normalization adjustment set forth in Teele Exhibit 16 are appropriate, and the changes to the tariff schedules, riders and general rules and regulations proposed by NCNG and agreed to by the Public Staff should be implemented except as otherwise modified in this order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35

For the reasons set forth in the foregoing paragraphs, the Commission concludes that the Stipulation provides a just and reasonable resolution of all the issues in this case (with the one exception noted in Finding of Fact No. 25), will allow the company a reasonable opportunity to earn a fair return and provides just and reasonable rates to all customer classes. The provisions of the Stipulation, taken together with the evidence, are fair and reasonable under the circumstances of this general rate case and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That North Carolina Natural Gas Corporation is authorized to adjust its rates and charges effective for services rendered on and after November 1, 1995, so as to produce an annual revenue level of $156,138,313 (including $730,392 of other operating revenues) based upon the adjusted test year level of operations found to be reasonable herein. This amount represents an increase of $4,204,856 more than would be produced from the rates in effect prior to this Order, based upon the test year level of operations.

2. That the connection fee charged to new residential and commercial customers pursuant to Section 30 of NCNG's General Rules and Regulations shall be $25 effective November 1, 1995.

3. That the accounting and recovery treatment proposed for MGP costs is approved and NCNG is authorized to credit $61,680 each year to its separate MGP deferred account to reflect monthly amortization of $226,138 in costs to expenses.

4. That the Industrial Sales Tracker - Rider A is terminated effective November 1, 1995, and NCNG is authorized to place a decrement of $0.14 per dt in rates effective November 1, 1995, through February 29, 1996, applicable to sales only customers who were not IST customers. Any balance remaining either positive or negative in the IST deferred account as of May 1, 1996, shall be transferred to the Deferred Gas Cost Account - sales only customers.

5. That the Price Sensitive Volume Adjustment - Rider A in the form attached to the Stipulation as Exhibit E shall be effective for service rendered on and after November 1, 1995.

6. That a PSVA decrement of $0.045 per dt shall be placed into rates for all customers effective November 1, 1995, for a period of 12 months or until further order of the Commission.

7. That the Purchased Gas Adjustment-Rider B in the form attached to the Stipulation, except as modified herein, shall be effective on and after November 1, 1995.

8. That the benchmark commodity gas cost rate shall be $2.10 per dt effective November 1, 1995, until further order of the Commission.

9. That the "R" values and usage factors set forth in Teele Exhibit 16 shall be used in NCNG's WNA Rider C effective for the periods after October 31, 1995.

10. That the changes to the General Rules and Regulations for NCNG are approved as discussed herein and shall be effective for services rendered on and after November 1, 1995.

11. That NCNG shall file its revised Riders A, B and C and its revised General Rules and Regulations as approved herein not later than ten (10) days after the date of this Order.

12. That within five (5) working days after the date of this Order, NCNG shall file appropriate tariffs designed to produce the increase in revenues set forth in decretal Paragraph 1 above in accordance with this Order and Teele Exhibit 3, updated, and such tariffs shall be effective November 1, 1995.

13. That the estimated cost of service study prepared by NCNG as NCNG witness Teele Exhibit 1, updated and attached to the Stipulation as Exhibit B shall be used for the purposes of Rider B, and in particular, the true-up of fixed gas costs effective November 1, 1995.

14. That fixed gas costs shall be allocated in accordance with NCNG witness Teele's Exhibit 12, updated, for the purposes of calculating gas cost recovery in Rider B and for implementation of the weather normalization adjustment factor in Rider C.

15. That the depreciation rates for accounts 376 (mains) and 380 (services) shall be 2.81% and 4.43%, respectively.

16. That NCNG shall notify its customers of the rates, charges and changes to Riders A, B and C approved herein by appropriate bill insert in the next billing cycle. A copy of such proposed bill insert is attached hereto as Appendix A.

17. That the rate design, rate schedules, miscellaneous charges, terms and conditions proposed by the parties in the Stipulation are approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of October, 1995.

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

APPENDIX A

DOCKET NO. G-21, SUB 334

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Natural Gas Corporation) PUBLIC NOTICE
for a General Increase in its Rates and Charges)

The North Carolina Utilities Commission issued an Order allowing North Carolina Natural Gas Corporation (NCNG) to increase its rates and charges by approximately $4.2 million annually, or 2.77% overall, effective November 1, 1995.

NCNG's application for a rate increase was filed with the Commission on May 2, 1995. In its application, NCNG requested an increase of approximately $4.7 million annually. The increase approved by the Commission was the result of a stipulation entered into, or not opposed by, the parties to the proceeding, including the Public Staff of the North Carolina Utilities Commission.

In its application, NCNG stated that the rate increase was needed because it has been adding customers, making capital improvements in its utility properties and obtaining new long-term capital from the sales of securities at very high levels. The reasons cited by NCNG in support of its request for a rate increase were to allow it to maintain its facilities and services in accordance with the reasonable requirements of its customers, to compete in the market for capital funds on fair and reasonable terms and to produce a fair return for its stockholders.

The Commission notes that the increase to specific classes of customers will vary in order to have each customer class pay rates that are more in line with the cost of providing service to each class.

Also included in the rate increase from the rates currently in effect is an increase in the commodity cost of gas of $0.02644 per therm for a change in the estimated cost of purchased gas this winter. The new rates will increase the average residential bill by $8.47 per month for the winter period (November through March) and will increase the average residential bill by $2.81 per month for the summer period (April through October). This average bill is based on residential year-round

average usage of 110 therms per month during the winter period and 31 therms per month during the summer period. The new rates will decrease the bills of industrial customers in varying amounts depending on which of several rate schedules such customers utilize.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of October, 1995.

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

(FOR COPY OF SCHEDULES SEE OFFICIAL COPY OF ORDER IN CHIEF CLERK'S OFFICE.)

Docket No. G-5, Sub 337

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition by Public Service Company of North Carolina, Inc., for Approval of the Use Of Expansion Funds for a Certain Project	))))	ORDER APPROVING EXPANSION PROJECT FOR FUNDING FROM EXPANSION FUND

HEARD: Thursday, June 1, 1995, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Hugh A. Wells, Presiding; Commissioners Charles H. Hughes, Laurence A. Cobb, Allyson K. Duncan, Ralph A. Hunt, and Judy Hunt

APPEARANCES:.

For Public Service Company of North Carolina, Inc.:

William A. Davis, II, Brooks, Pierce, McLendon, Humphries & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602

and

J. Paul Douglas, Vice President–Corporate Counsel, Public Service Company of North Carolina, Inc., Post Office Box 1398, Gastonia, North Carolina 28053

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28655

For McDowell County:

Robert C. Hunter, Hunter & Evans, P.A., Post Office Box 1330, Marion, North Carolina 28752

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, and Paul L. Lassiter, Staff Attorney, Public Staff – North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On May 22, 1992, Public Service Company of North Carolina, Inc. (PSNC) petitioned the Commission in Docket No. G-5, Sub 300 to establish an expansion fund for PSNC and to authorize the initial funding thereof. On June 3, 1993, the Commission issued its Order Establishing Expansion Fund And Approving Initial Funding, which created an expansion fund for PSNC and authorized the transfer of certain supplier refunds to that fund. The North Carolina Supreme Court affirmed that Order. State ex rel. Utilities Commission v. Carolina Utility Customers Association Inc. 336 N.C. 657 (1994).

On January 13, 1995, PSNC filed a petition in this docket requesting permission to use monies from its expansion fund to help fund a project to extend its facilities to provide natural gas service to McDowell County. PSNC's project would consist of a transmission pipeline extending from Black Mountain in Buncombe County easterly to the towns of Old Fort and Marion in McDowell County and basic distribution facilities in these two towns. PSNC estimated the cost of the transmission pipeline at $8,897,758 and the cost of the total distribution facilities including service attachments at $4,759,923, for a total cost of $13,657,681. In its petition, PSNC stated that the negative net present value of the project was $10,657,544, which it proposed to fund with monies from its expansion fund. PSNC proposed to fund the remaining $3,000,137 with its corporate funds.

By the Order Scheduling Public Hearing And Requiring Public Notice issued February 2, 1995, the Commission ordered a hearing on PSNC's petition for approval of its McDowell County project and partial funding of that project from its expansion fund and required public notice. By Order Rescheduling Public Hearing issued February 28, 1995, the Commission rescheduled the hearing from May 23, 1995 to June 1, 1995, in Raleigh, North Carolina.

McDowell County and the Carolina Utility Customers Association, Inc. (CUCA) intervened in this proceeding.

This matter was heard in Raleigh on June 1, 1995. Three public witnesses testified at this hearing. PSNC submitted the testimony of the following witnesses, who appeared as a panel: C. Marshall Dickey, now retired and formerly Senior Vice President – Corporate Development; John H. Stanley, Director – Commercial Marketing; Bill Rayner, Director – Western Engineering Services; and Sharon D. Boone, Director – Corporate Accounting. The Public Staff submitted the prefiled testimony of the following witnesses, who appeared as a panel: Jeffrey L. Davis, Utilities Engineer in the Natural Gas Division of the Public Staff; John R. Hinton, Public Utilities Financial Analyst in the Economic Research Division of the Public Staff; and Julie G. Perry, Staff Accountant in the Accounting Division of the Public Staff. McDowell County submitted the testimony of Charles Abernathy, County Manager for McDowell County, and Jack H. Harmon, Executive Director of the McDowell Economic Development Association, Inc.

At the hearing, PSNC and the Public Staff announced that they had reached a stipulation between themselves with respect to the calculation of the negative net present value of PSNC's proposed project to serve McDowell County. The terms of their stipulation was presented in their testimony.

Based on the petition described above, the testimony and exhibits, the entire record in this proceeding, and matters which may be judicially noticed, the Commission makes the following:

FINDINGS OF FACT

1. Public Service Company of North Carolina, Inc. (PSNC) is a corporation duly organized under the laws of the State of North Carolina having its principal office and place of business in Gastonia, North Carolina. PSNC operates a natural gas system for the transportation, distribution, and sale of natural gas within a franchised area consisting of all or parts of twenty-six (26) counties in central and western North Carolina as designated in PSNC's certificates of public convenience and necessity issued by this Commission, including all of McDowell County.

2. PSNC is engaged in providing natural gas utility service to the public and is a public utility as defined in G.S. § 62-3(23) subject to the jurisdiction of this Commission.

3. PSNC is before the Commission upon its petition for approval of an expansion project filed pursuant to G.S. § 62-158 and Commission Rule R6-84.

4. McDowell County has a land area of approximately 437 square miles and a population of approximately 35,681. Its principal towns are Marion and Old Fort. No natural gas service is currently available in McDowell County.

5. On January 13, 1995, PSNC filed its petition in this proceeding for authorization to disburse funds from its expansion fund to construct facilities to extend its transmission system from Black Mountain in adjoining Buncombe County to Old Fort and Marion and to construct distribution systems within Old Fort and Marion. PSNC proposed to install approximately 20.52 miles of 12.75-inch outside diameter steel transmission pipeline (hereinafter, 12-inch pipe) beginning near Black Mountain and extending to the towns of Old Fort and Marion.

6. The initial proposed distribution system for the town of Marion would be composed of 17,850 feet of 8-inch coated steel main, 31, 000 feet of 6-inch coated steel main, 2,650 feet of 4-inch plastic main, and 14,500 feet of 2-inch plastic main running through the primary commercial districts of the town.

7. The initial proposed distribution system for the town of Old Fort would be composed of 3,900 feet of 6-inch coated steel main and 7,820 feet of 4-inch plastic main.

8. PSNC initially identified through market surveys that it will connect approximately 357 new natural gas customers in the first five years and would sell to, or transport for, these customers approximately 433, 000 dekatherms of natural gas per year.

9. PSNC estimated that the total cost of the project is $13,657, 681 after adjustment for inflation, with the proposed transmission facilities costing $8,897,758 and the proposed distribution facilities costing $4, 759,923, which includes service attachments costing $963,288. PSNC estimated

that the net present value (NPV) of the proposed project would be a negative $10,634,697. PSNC requested that this NPV amount be disbursed from its expansion fund to assist in funding this project, with disbursements and a final accounting calculated in the manner provided in Rule R6-85(b) and (c).

10. The Public Staff estimated the cost of the transmission facilities in PSNC's proposed project to be $7,580,800, after inflation, and the cost of the distribution facilities to be $4,316,300, including service attachments, after inflation, for a total project cost after inflation of $11,897,100. The Public Staff estimated the negative NPV of PSNC's proposed project to be $5,101,500. This amount would be financed through disbursements from PSNC's expansion fund, including $372,100 in assistance payments from local governmental entities that would be paid into that fund and then disbursed to PSNC upon order of the Commission.

11. The difference between PSNC's estimated costs and the Public Staff's estimated costs is due to the Public Staff's use of (I) the cost of 8-inch pipe rather than 12-inch pipe in estimating the cost of the transmission facilities, (ii) an overhead factor of 8.00% rather than the 8.50% used by PSNC, and (iii) additional facilities required to serve additional customers under PSNC's Rate Schedule Nos. 125 and 150.

12. At the commencement of the public hearing, PSNC and the Public Staff announced that they had reached a stipulation between themselves regarding the calculation of the negative NPV of PSNC's proposed project to serve McDowell County. The Public Staff and PSNC agreed that the reasonable negative NPV of the project is $8,193,500 to be funded by disbursements of $7,781,000 from PSNC's expansion fund along with $412,500 in assistance payments from the local governmental entities. The stipulation included adjustments to the Public Staff's NPV calculation as shown on Settlement Exhibit 2 as follows:

a. Reduction of large industrial quantities;
b. Exclusion of four small industrial customers;
c. For purposes of this proceeding, the cost of the transmission system would be increased to reflect the costs associated with a 10-inch transmission pipeline rather than an 8-inch transmission pipeline. The cost of the transmission system after inflation would be $8,219,200; and
d. For purposes of this proceeding, annual operation and maintenance (O&M) expenses would be calculated as follows: $30,000 — Year 1; $75,000 per year — Years 2 through 4; and $190 per customer, escalated at 2.6% per year — Years 5 through 40.

13. For purposes of making the NPV calculation, the appropriate cost of the core distribution system, after adjustment for inflation, is $3,890,803.

14. The Public Staff and PSNC agreed on the proper amounts for net margins, other operating revenues, general taxes, and income taxes. The amounts for these items are reasonable for determining the NPV of the project in this proceeding.

15. The Public Staff and PSNC agreed that the appropriate discount rate to use in the NPV calculation is the 8.67% net-of-tax overall rate of return allowed by the Commission in PSNC's most recent general rate case. This discount rate is reasonable for use in this proceeding.

16. The Public Staff and PSNC agreed that the appropriate inflation adjustment for margins, O&M expenses, and construction costs in the NPV study is an annual increase of 2.6%. This inflation adjustment is reasonable for use in this proceeding.

17. The Public Staff and PSNC agreed upon a growth rate in residential and commercial customers for years 6 through 40 of 2.36% per year, which is reasonable for use in this proceeding.

18. The Towns of Old Fort and Marion and McDowell County have submitted resolutions to provide PSNC five annual payments equal to one hundred percent (100%) of the property taxes collected on natural gas facilities constructed as part of the proposed McDowell County project. These local government assistance payments will act as a direct contribution to PSNC's expansion fund and will be designated as a reimbursement for a portion of the funds expended on the proposed project.

19. The local government assistance payments will be deposited into PSNC's expansion fund as received from the Towns and the County, and the Commission will approve the disbursement of the payments to PSNC through further orders.

20. The local government assistance payments of $412,500 reflected in Settlement Exhibit 1 are reasonable for purposes of determining the NPV of the McDowell County project.

21. The reasonable negative NPV of this proposed project is $8,193,500. The total negative NPV will be satisfied by disbursement of up to $8,193,500 from PSNC's expansion fund, including to the extent received $412,500 in assistance payments from the local governmental entities.

22. The Commission will not condition the approval of this project for funding from PSNC's expansion fund upon a mechanism to review economic development in McDowell County.

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

These findings of fact are jurisdictional in nature and were not contested by any party. They are supported by information in the Commission's public files and records, the Commission's Order scheduling a hearing, PSNC's petition, and the testimony and exhibits filed by the witnesses for PSNC and the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is found in the information contained in PSNC's petition, the Commission's Order scheduling a hearing, the prefiled testimony and exhibits submitted by PSNC, the testimony and exhibits filed by the Public Staff, the testimony and exhibits filed by McDowell County, and matters judicially noticed.

PSNC witness Dickey testified as to PSNC's efforts to extend natural gas service to McDowell County commencing in the 1960s. The testimony of McDowell County's witnesses supports Mr. Dickey's testimony regarding PSNC's efforts to bring natural gas service to McDowell County.

Absent funding from PSNC's expansion fund, the McDowell County project is not economically feasible. The Public Staff also offered testimony that the project would be economically infeasible without assistance from the PSNC's expansion fund.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-7

The evidence for these findings is found in the information in PSNC's petition, the Commission's Order scheduling a hearing, and the prefiled testimony and exhibits submitted by PSNC's witnesses. This finding is also supported in part by the testimony and exhibits filed by the Public Staff's witnesses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in PSNC's petition and the testimony and exhibits of PSNC witnesses Dickey and Stanley.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is supported by information in PSNC's petition, the Commission's Order scheduling a hearing, and the prefiled initial and rebuttal testimony and exhibits filed by PSNC's witnesses. This finding is also supported in part by the testimony and exhibits filed by the Public Staff's witnesses, as revised at the hearing. PSNC's petition filed on January 13, 1995, reflected a negative NPV of $10,657,544, based on PSNC's margins effective October 7, 1994. Since that time, the Commission has authorized PSNC to adjust its rates for PSNC's investment in the Cardinal Pipeline project. Using these new rates, PSNC's revised negative NPV amount is calculated to be $10,634,697. PSNC's revised estimate of the negative NPV of its proposed project is supported by the testimony and exhibits of witness Boone.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is supported by the prefiled testimony of Public Staff witnesses Davis and Perry and revisions submitted at the hearing.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11-13

While there have been prior proceedings involving a local distribution company's (LDC's) request to use monies from its expansion fund to help finance an expansion project, this is the first proceeding in which the Commission has been required to determine the negative NPV of a project for purposes of determining the disbursement from the LDC's expansion fund. In this proceeding, the Public Staff and PSNC reached a stipulation upon many issues that affect the calculation of the

negative NPV of PSNC's proposed project. CUCA did not join in the stipulation. According to G.S. 62-69, "[t]he Commission may make informal disposition of any contested proceeding by stipulation, agreed settlement, consent order or default." Although the Commission may dispense with statutorily-required standards and procedures when all parties join a stipulation or settlement, the same latitude does not exist when some, but not all, parties to a particular proceeding enter into a stipulation. When a party to a proceeding before the Federal Power Commission (hereinafter, FPC) took issue with the FPC's authority to adopt as its order a settlement proposal that lacked unanimous agreement of the parties to the proceeding, the United States Supreme Court stated:

> The Commission clearly had the power to admit the agreement into the record – indeed it was obligated to consider it. That it was admitted for the record did not, of course, establish without more the justness and reasonableness of its terms. But the Commission did not treat it as such. As we have noted, the Commission weighed its terms by reference to the entire record in the Southern Louisiana area proceeding since 1961, and further supplemented that record with extensive testimony and exhibits directed at the proposal's terms. We think that the Court of Appeals correctly analyzed the situation and stated the correct legal principles:
>
> > "No one seriously doubts the power – indeed, the duty – of FPC to consider the terms of a proposed settlement which fails to receive unanimous support as a decision on the merits. We agree with the DC Circuit that even 'assuming that under the Commission's rules [a party's] rejection of the settlement rendered the proposal ineffective as a settlement, it could not, and we believe should not, have precluded the Commission from considering the proposal on the merits.' [citation omitted]."
> >
> > ....
> >
> > "As it should, FPC is employing its settlement power under the APA, 5 U.S.C.A. §554(c), and its own rules, 18 C.F.R. §1.18(a), to further the resolution of area rate proceedings. If a proposal enjoys unanimous support from all of the immediate parties, it could certainly be adopted as a settlement agreement if approved in the general interest of the public. But even if there is a lack of unanimity, it may be adopted as a resolution on the merits, if FPC makes an independent finding supported by 'substantial evidence on the record as a whole' that the proposal will establish 'just and reasonable' rates for the area." 483 F.2d, at 893. (Emphasis in original.)

Mobil Oil Corporation v. Federal Power Commission, 417 U.S. 283, 312-314, 94 S.Ct. 2328, 2348, 41 L.Ed.2d 72, 97-98 (1994). This Commission has utilized the procedure enunciated in Mobil Oil to resolve cases involving agreements among some, but not all, parties on a number of occasions. In such situations, the Commission has weighed the terms of the stipulation in the context of the entire record and proceeded to determine the issues under the applicable statutes on the basis of the entire evidentiary record. The Commission has not uniformly approved such stipulations and has, on occasions, reached a result different than that advocated by the stipulating parties on the basis of its

own analysis of the law and the evidence. In the current proceeding, the Commission has determined the appropriate negative NPV for the proposed McDowell County project in accordance with the provisions of G.S. 62-158(c) and the evidentiary record. The Commission will refer to "Settlement Exhibits" because that is how they were designated at the hearing, but the Commission has not taken them as a settlement of this proceeding. The Commission has not approved any component of the agreement between the Public Staff and PSNC except upon a finding that the record provides adequate justification for that result.

The evidence for these findings of fact is found in the information in PSNC's petition, the Commission's Order scheduling a hearing, the prefiled testimony and exhibits submitted by PSNC's witnesses, the testimony and exhibits filed by the Public Staff's witnesses, the oral testimony of the witnesses for PSNC and the Public Staff presented at the hearing, and Settlement Exhibits 1 and 2. The evidence will be discussed under the following headings:

Cost of Transmission and Distribution Facilities

PSNC witness Rayner prefiled testimony that supported the use of 12-inch pipe for the 20.52 mile transmission pipeline. PSNC witness Boone testified that the cost for a 12-inch pipeline would be $8,897,758 including the effect of inflation.

Public Staff witness Davis testified that he had evaluated the projected load for the project and determined that an 8-inch transmission pipeline was adequate. Mr. Davis indicated that the 8-inch pipeline had sufficient capacity to serve the projected loads not only in year 5 of the life of the project, but also for the 40-year time frame of the NPV study. Mr. Davis stated that he had estimated the construction costs for the 8-inch pipeline to be $7,580,800, which includes the effects of inflation. Mr. Davis testified that PSNC had indicated through testimony and data request responses that other factors besides the project itself, such as future system enhancement, contributed to PSNC's selection of a 12-inch pipeline. He stated that the sizing of the transmission pipeline to an 8-inch was solely for purposes of determining the proper construction costs to use in the NPV analysis, which merely limits the amount that may be distributed from PSNC's expansion fund. He indicated that upon approval of the project, PSNC may still elect to construct a 12-inch pipeline.

PSNC provided rebuttal testimony on this issue through Mr. Rayner. Witness Rayner testified that given the current operating conditions of the existing transmission system, the 12-inch transmission pipeline was selected to minimize the pressure loss from Black Mountain to Marion. Mr. Rayner also indicated the 12-inch transmission pipeline would be needed to accommodate growth in the Asheville area (including McDowell County) through future system enhancement which would consist of another transmission pipeline being constructed from the Mill Spring Station on Transcontinental Gas Pipe Line Corporation's system to Old Fort.

Before the hearing convened, PSNC and the Public Staff stipulated to using the costs for a 10-inch transmission pipeline for purposes of the NPV calculation only. CUCA supports use of an 8-inch pipeline; CUCA argues that use of a 10-inch pipeline is based upon considerations having to do with the adequacy of service in Asheville, rather than in McDowell County. The Commission disagrees. The evidence shows and the Commission recognizes that while an 8-inch pipeline may be

capable of delivering enough capacity for the project, current operating constraints on PSNC's existing transmission facilities compromise the available pressures to the proposed distribution systems in McDowell County. The evidence supports the stipulating parties' concerns regarding excess plant for this project balanced against the need to provide adequate service. That evidence supports the use of a 10-inch pipeline for purposes of the NPV analysis. The Commission concludes that the estimated cost of construction for the 10-inch transmission pipeline of $8,219,200 including the effect of inflation, is appropriate.

Public Staff witness Davis indicated in prefiled testimony that he had revised PSNC's estimate for distribution costs to include two additional large interruptible customers (Rate Schedule No. 150) and seven small general service customers (Rate Schedule No. 125) which PSNC had not included. Witness Davis indicated that he had included additional footage for the additional customers and had changed PSNC's estimate of distribution costs from $3,200,022 to $3,320,895, excluding the effect of inflation.

Upon direct testimony, Mr. Davis stated that due to further investigation after he had prefiled testimony, including reevaluating and resurveying of the customers that had been added, errors were noted in the follow-up responses of some of these potential customers as to anticipated volume levels. Mr. Davis further indicated that because of the alternate fuel prices available to some of the Rate Schedule No. 125 customers (largely those having No. 2 fuel oil as an alternate), those customers would not pay a premium for natural gas. Rate Schedule No. 125 customers, unlike Rate Schedule No. 150 customers, are not permitted to negotiate their tariff rate with PSNC. Mr. Davis indicated that this additional information on volumetric projections and the prices of alternate fuels, required revision of the footage used in the estimation of the distribution cost as well as the volumes used in margin calculations. As a result, the projected volumes for four of these additional seven Rate Schedule No. 125 customers were excluded from the NPV calculation. Mr. Davis also indicated that he had used an incorrect number from a data request which would revise the distribution costs.

Using corrected data, the core distribution costs should be revised to $3,890,803 as compared with PSNC's estimate of $3,796,635, including the effect of inflation. The corrected costs as presented were not controverted, and the Commission finds the appropriate costs for the core distribution systems should be $3,890,803 after applying inflation.

O&M Expenses

PSNC witness Boone and Public Staff witness Perry testified as to the appropriate level of O&M expenses. Ms. Boone applied a historical ratio of company-wide O&M expenses to margins to determine O&M expenses for the project, whereas Ms. Perry reflected only those incremental O&M costs which she considered attributable to the project. Ms. Perry testified that after discussions with PSNC, an agreement was reached as to reasonable levels of annual O&M expenses for the project.

Settlement Exhibit 1 reflects PSNC's and the Public Staff's estimate of O&M expenses which includes $30,000 in year 1, and $75,000 in years 2 through 4. Beginning in year 5, both parties agreed that the O&M expense level should be determined using a per customer ratio of $190,

adjusted for inflation. An annual inflation rate of 2.6% was applied to the O&M expense per customer ratio beginning in year 5 consistent with the Public Staff's prefiled position. Ms. Perry testified that the O&M expense level was increased from the Public Staff's prefiled position to include additional O&M expense for start-up expenses such as marketing, sales, and customer attachment costs.

CUCA argues that the level of O&M expense agreed to by the Public Staff and PSNC is a compromise number that has no support in the record. CUCA argues that the Commission must choose the original recommendation of either the Public Staff or PSNC, and CUCA prefers the Public Staff's original recommendation. PSNC responds that the stipulating parties did not "simply split the difference" in deriving their O&M expense figure, but instead attempted to approximate reasonable anticipated expenses.

The Commission concludes that the O&M expenses reflected in Settlement Exhibit 1 are reasonable, that the evidence supports this level of expense, and that it is appropriate to reflect this O&M expense level in the NPV calculation for the proposed McDowell County expansion project.

New Customers and Volumes

The number of customers and the related quantities of gas that would be consumed by these new customers in McDowell County are established by the stipulation between the Public Staff and PSNC. The Public Staff's estimated consumption for residential customers and adjusted consumptions for commercial and industrial customers reflect a series of contacts with such customers by both PSNC and the Public Staff. PSNC originally contacted numerous commercial and industrial customers to determine the interest in converting to natural gas when it became available, and based on the responses received, calculated the estimated customer levels and consumption. The Public Staff determined that additional commercial and industrial customers might convert and included the estimated customers and added the projected quantities to the estimates of PSNC. Further investigation by PSNC disclosed that some of the additional loads estimated by the Public Staff would not materialize for various reasons. The Public Staff then revised its estimates in light of this new information from PSNC. Thus, the agreed upon commercial and industrial quantities reflect thorough investigations by both PSNC and the Public Staff and should be accepted as reasonable for purposes of this proceeding. The Commission concludes that these proposed quantities and customer levels should be accepted for purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

This finding will be discussed under the following headings:

Net Margins

PSNC witnesses Boone and Stanley and Public Staff witnesses Perry, Davis, and Hinton testified as to the appropriate level of net margins. PSNC and the Public Staff testified to different

levels of usage, customer levels, and the margin rate calculations. The major difference in the margin rates calculated by PSNC and the Public Staff related to gross receipts taxes (GRT). PSNC classified GRT as a general tax item, whereas the Public Staff reflected GRT as a reduction to margins. Settlement Exhibit 1 reflects GRT as a reduction to margins.

Ms. Perry testified that after discussions with PSNC and further investigation, the Public Staff revised its position in two areas related to the net margin calculation as discussed previously: (1) reduction of large industrial volumes, and (2) exclusion of four small industrial customers from the NPV calculation as shown in Settlement Exhibit 2.

The Commission concludes that the agreed upon net margins reflected in Settlement Exhibit 1 are reasonable and that it is appropriate to reflect these net margins in the NPV calculation for the proposed McDowell County expansion project.

Other Operating Revenues

PSNC Boone testified that other operating revenues were estimated for items such as reconnect fees, returned check fees, and late pay charges. She also testified that other operating revenues were included in the NPV calculation as a component of gross margin. Public Staff witness Perry agreed with PSNC's basis for calculating other operating revenues and for including them as a cash inflow in the NPV calculation.

The Commission concludes that the other operating revenues reflected in Settlement Exhibit 1 are reasonable and it is appropriate to reflect these other operating revenues as cash inflows in the NPV calculation for the proposed McDowell County expansion project.

General Taxes

PSNC witness Boone and Public Staff witness Perry testified as to the appropriate level of general taxes for the McDowell County expansion project. PSNC applied a historical ratio of company-wide general taxes to margins to determine general taxes for the project. Ms. Boone testified that general taxes include taxes other than income taxes such as property taxes, state franchise taxes (also referred to as gross receipts taxes), and payroll taxes. Ms. Perry testified that based on Mr. Davis's adjustment to remove the GRT effect from the net margin rate calculation, she calculated general taxes excluding GRT. Ms. Perry also testified that she based her calculation of general taxes on the relationship between general taxes, excluding GRT, and total plant.

PSNC did not offer any evidence contesting Ms. Perry's approach to determining the level of general taxes. Ms. Perry's approach to calculating the level of general taxes is reflected in Settlement Exhibit 1.

The Commission concludes that the general taxes reflected in Settlement Exhibit 1 are reasonable and it is appropriate to reflect this level of general taxes in the NPV calculation for the proposed McDowell County expansion project.

Income Taxes

PSNC witness Boone and Public Staff witness Perry agreed that the amount of allowable tax depreciation of the assets constructed as part of the proposed McDowell County expansion project should be reduced by the amount of disbursements from the Expansion Fund. The present value effect of this reduction in the allowable tax depreciation is called the "loop-around" effect. Commission Rule R6-84 (a) (3) requires recognition of the "loop-around" effect in the NPV calculation. The Commission concludes that it is appropriate to recognize the "loop-around" effect in calculating the NPV for the proposed McDowell County expansion project.

Ms. Perry also testified that she adjusted PSNC's NPV calculation to reflect the state income tax rate at 7.75% and the federal income tax rate at 35%. She testified that the appropriate composite state and federal income tax rate is 40.04% for calculating the NPV of the proposed expansion project over the 40-year study period. PSNC did not contest the appropriateness of the income tax rate reflected by Ms. Perry.

The level of income taxes reflected in Settlement Exhibit 1 is derived from the various components of the NPV calculation that are embodied in the settlement between the Company and the Public Staff. Because the Commission has previously found the components of the NPV calculation reflected in Settlement Exhibit 1 to be reasonable and appropriate, the Commission concludes the income taxes reflected in Settlement Exhibit 1 are reasonable and it is appropriate to reflect this level of income taxes in the NPV calculation of the proposed McDowell County expansion project.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Evidence concerning the appropriate discount rate to employ in the determination of the NPV is found in the testimony of PSNC witness Boone and Public Staff witness Hinton. Both PSNC and the Public Staff recommended using a discount rate equaling 8.67%. This rate represents the net-of-tax overall rate of return allowed by the Commission in PSNC's most recent general rate increase proceeding, Docket No. G-5, Sub 327.

The Commission concludes that 8.67% is the appropriate discount rate to employ in the determination of the NPV for this expansion project.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Both PSNC witness Boone and Public Staff witness Hinton testified on the issue of how the effect of expected inflation should be reflected in the determination of the NPV.

PSNC witness Boone increased the margins, O&M expenses, and the construction cost estimates to recognize the expected effect of inflation. According to her testimony, witness Boone recommended an inflation adjustment for margins and O&M expenses of 5.2% to occur every two years to follow a general history of PSNC's rate case filings. The 5.2% growth rate was derived from

the 2.6% annual change in the Consumer Price Index (CPI) for October 1994. Witness Boone also recommended a 2.6% annual inflation adjustment for construction costs. The annual increases in construction costs were based on the historical five-year average annual increase in total gas plant according to the Handy-Whitman Index of Public Utility Construction Costs.

Public Staff witness Hinton testified that both historical and forecast data for trends in utility costs and inflation rates should be considered. Witness Hinton testified that he reviewed historical inflation rates and Data Resources Incorporated's (DRI) current 25-year inflation forecast. Witness Hinton also reviewed historical utility cost data as well as DRI's 25-year forecast in fixed investment in public utilities. Based on his review, witness Hinton concluded that a 2.6% annual inflation rate for margins, O&M expenses, and construction costs was reasonable for this proceeding.

Prior to the hearing, PSNC and the Public Staff entered into a stipulation whereby they agreed that the 2.6% annual increase is the appropriate inflation rate to adjust margins, O&M expenses and construction costs in the determination of the NPV for this expansion project. The Commission is of the opinion that this inflation rate is fair and reasonable. The Commission also concludes that for purposes of the 40-year NPV calculation, inflation should be applied to margins, O&M expenses, and construction costs. Thus, it is appropriate to reflect the 2.6% inflation adjustment each year to all three components of the cash flow calculation for purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Evidence concerning the appropriate number of customers to reflect in the NPV calculation is found in the original and rebuttal testimony of PSNC witness Stanley and the original and revised testimony of Public Staff witness Hinton.

Witness Stanley testified that by year five of the project, PSNC estimates that it will convert 275 residential customers to natural gas and will connect 73 commercial customers. Mr. Stanley testified that, based on the 10-year census population growth in Marion and Old Fort, it was reasonable to expect the number of residential and commercial customers to grow at 2.36% per year.

Public Staff witness Hinton supported PSNC's initial residential and commercial customer conversions as well as the projected annual growth of these customers of 2.36%. Witness Hinton's supplemental testimony identified additional Rate Schedule No. 125 small industrial customers that would probably convert to natural gas. His testimony also identified eight Rate Schedule No. 150 large industrial customers that would probably convert to natural gas. Witness Hinton testified that information obtained from industrial surveys and follow-up telephone discussions had led to the identification of two additional large industrial customers, which the Company had not identified. These potential customers had indicated a significant interest in using natural gas and were located a reasonably short distance from the proposed gas routes.

In response to questions from the Commission concerning the lack of industrial growth in the NPV calculation, Public Staff witness Hinton testified that although the purpose of the expansion fund legislation is to enhance economic growth, the basis for not including any growth in industrial customers in the 40-year NPV calculation was the lack of any information on any prospective

industrial firms planning to locate in the McDowell County area coupled with PSNC's relatively flat growth in industrial customers. Upon questioning from CUCA's counsel, concerning the correlation of economic growth and the expansion of natural gas service, Mr. Hinton testified that in preparing the biennial natural gas expansion reports, the Public Staff had identified some areas where substantial growth had occurred following natural gas expansion and others where no correlation could be determined. Mr. Hinton concluded that, based on the data available, he could not determine whether there was any direct association with natural gas expansion and economic growth.

The Commission concludes that for purposes of calculating the NPV, it would be appropriate to include the small and large industrial customers identified by Public Staff witness Hinton. Based on the testimony in the whole proceeding, the Commission further concludes that for purposes of calculating the NPV, it would be inappropriate to include any industrial growth without sufficient information on prospective industrial firms planning to locate in Marion or Old Fort or otherwise in McDowell County near the proposed pipeline. While the Commission recognizes that the purpose of natural gas expansion is to foster economic growth in areas where natural gas is not currently available, it would be improper to include any industrial growth in the NPV calculation based solely upon "hoped for" customers.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-20

The evidence for these findings of fact is found in the testimony of PSNC witness Boone and Public Staff witnesses Perry and Hinton. Settlement Exhibit 1 summarizes the agreement between PSNC and the Public Staff which reflects the appropriate and reasonable expansion funds required (the negative NPV) for the McDowell County expansion project of $8,193,500, including $412,500 of local government assistance payments.

The Towns of Old Fort and Marion and McDowell County have submitted resolutions which state that they will assist PSNC by providing five annual payments to the Commission for deposit equal to one hundred percent (100%) of the property taxes collected on the natural gas facilities constructed as part of the proposed McDowell County expansion project. These local government assistance payments when received will act as a direct contribution to PSNC's expansion fund and will be designated as a reimbursement for a portion of the funds expended on the proposed project.

Ms. Perry testified that the local government assistance payments of $412,500 have been included in the determination of the cash inflows in the NPV calculation for the proposed McDowell County project. She testified that the local government assistance payments will be remitted to the State Treasurer by the towns and county. PSNC could then file a request with the Commission to authorize the disbursement of the local government assistance payments to PSNC. Ms. Perry testified that the Commission could authorize the State Treasurer to issue these local government assistance payments in the course of a Staff Conference agenda item.

The Commission concludes that the local government assistance payments reflected in Settlement Exhibit 1 are reasonable and that it is appropriate to reflect these local government assistance payments as cash inflows in the NPV calculation for the proposed McDowell County expansion project. To the extent received, these payments will be deposited into PSNC's expansion fund and disbursed to PSNC, upon further order of the Commission, as reimbursement for a portion of the funds expended on this project.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

This finding of fact is supported by information in PSNC's petition, the Commission's Order scheduling a hearing, and the prefiled initial and rebuttal testimony and exhibits of PSNC's witnesses, the testimony and exhibits filed by the Public Staff's witnesses and the revisions thereto submitted at the hearing, the oral testimony of the witnesses for PSNC and the Public Staff presented at the hearing, Settlement Exhibits 1 and 2, and the preceding findings of fact and related evidence and conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

In its brief, CUCA argues that the expansion fund legislation rests upon the "field of dreams" theory that making natural gas available in unserved areas will stimulate economic development in those areas. CUCA urges the Commission to determine the validity of this theory by conditioning approval of this project upon PSNC's filing of annual reports over the next five years comparing the level of economic development in McDowell County before and after the availability of natural gas service. The Commission will order no such condition.

CUCA's argument is best addressed by citing the language of the North Carolina Supreme Court in upholding the constitutionality of the expansion fund legislation. In that appeal, CUCA argued that the Commission should have weighed the prospects for future economic development before ordering the creation of PSNC's expansion fund. The Court rejected that argument stating, "It is furthermore not necessary that the Commission evaluate the evidence based upon CUCA's faulty interpretation of N.C.G.S. § 62-158, with which CUCA implies that the Commission is required to redetermine the economic values inherent in facilitating the construction of natural gas facilities in an unserved area, a task already undertaken by the General Assembly. To the extent that the General Assembly has already done so, it has effectively declared that the establishment of an expansion fund is in the public interest." State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc., 336 N.C. 657, 670-1 (1994). By its present request for reports to track economic development, CUCA is once again trying to get this Commission to reexamine the policy decisions made by the General Assembly in enacting G.S. §62-158. The Commission will not do so. Further, the Commission notes that some information on economic development is already gathered as part of the Commission's and the Public Staff's biennial reports to the General Assembly pursuant to G.S. § 62-36A.

IT IS, THEREFORE, ORDERED as follows:

1. That PSNC's proposed project to extend natural gas service to McDowell County is hereby approved for funding from PSNC's expansion fund in the amount of $8,193,500, which is the negative net present value of the project;

2. That disbursement of up to $8,193,500 from PSNC's expansion fund for this project in accordance with applicable Commission rules and this Order is hereby authorized;

3. That PSNC shall request progress payments, in the form of reimbursements for actual amounts paid by PSNC, pursuant to the provisions of Commission Rule R6-85(b) and such requests shall be handled as provided by that Rule;

4. That PSNC shall file reports with respect to this project as required by Commission Rules;

5. That the five annual assistance payments from the Towns of Old Fort and Marion and McDowell County equal to one hundred percent (100%) of the property taxes collected on the natural gas facilities constructed as part of the proposed project are hereby approved as a reasonable source of funding for PSNC's expansion fund for the purpose of offsetting a like amount of expansion fund monies from other sources that would otherwise be necessary to make up the negative NPV of this project and such payments shall be deposited into PSNC's expansion fund as received; and

6. That PSNC shall file requests with the Commission for disbursement to it of the annual assistance payments in the years in which they are received and deposited, and the Public Staff shall present such requests to the Commission in the form of a Staff Conference agenda item, and PSNC's final accounting for this project pursuant to Commission Rule R6-85(c) shall so provide.

ISSUED BY ORDER OF THE COMMISSION
This the 21st day of August 1995.

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

Errata Order (8-23-95)

DOCKET NO. G-9, SUB 367

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter Application of Piedmont Natural Gas Company, Inc., for Annual Review of Gas Costs Pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6)	)))))	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD: Tuesday, October 3, 1995, at 10:00 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Ralph A. Hunt, Presiding, and Commissioners Allyson K. Duncan and Jo Anne Sanford

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Amos & Jefferies, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On August 1, 1995, Piedmont Natural Gas Company, Inc. (Piedmont or Company), filed the direct testimony and exhibits of Chuck Fleenor, Vice President of Gas Supply, and Ann H. Boggs, Director of Gas Accounting, relating to the annual review of Piedmont's gas costs pursuant to N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On August 2, 1995, the Commission issued an order scheduling a public hearing for October 3, 1995, setting dates for prefiled testimony and intervention, and requiring public notice.

On August 22, 1995, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. By Order dated August 25, 1995, the Commission granted CUCA's Petition.

The matter came on for hearing as scheduled. The Public Staff presented the testimony of Julie G. Perry, Staff Accountant with the Public Staff's Accounting Division, and Eugene H. Curtis, Director of the Public Staff's Natural Gas Division. Piedmont presented the testimony of Mr. Fleenor and Ms. Boggs.

On November 2, 1995, Piedmont and the Public Staff filed a stipulation regarding secondary market transactions other than buy/sell and capacity release transactions which occurred during the review period.

Based on the evidence adduced at the hearing, the late filed information and stipulation, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont is a public utility as defined in Chapter 62 of the North Carolina General Statutes.

2. Piedmont is engaged primarily in the purchase, distribution, and sale of natural gas and in the transportation of customer-owned gas to over 500,000 customers in the Piedmont region of North Carolina, South Carolina, and the metropolitan area of Nashville, Tennessee.

3. Piedmont has filed with the Commission and submitted to the Public Staff all of the information required by N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The review period in this proceeding is the twelve months ended May 31, 1995.

5. During the review period, Piedmont incurred gas costs of $152,135,548 and recovered $148,474,722 related to gas costs through its rates. This resulted in an undercollection of $3,660,826.

6. At May 31, 1995, Piedmont had a net credit balance (payable from Piedmont to its customers) of $2,221,334 in its deferred accounts, consisting of a credit balance of $3,720,667 in the Sales Only Deferred Account and a debit balance (payable from the customers to Piedmont) of $1,499,333 in the All Customers Deferred Account.

7. During the review period, Piedmont realized net compensation of $3,300,233 from buy/sell agreements and $212,641 from capacity release transactions. The ratepayer portions of the net compensation from these transactions are $2,970,210 and $191,377, respectively. These amounts were credited to Piedmont's All Customers Deferred Account pursuant to procedures established in Docket No. G-100, Sub 63.

8. Piedmont received net compensation of $535,926 from other secondary market transactions during the review period. Piedmont and the Public Staff have come to an agreement and filed a joint stipulation on November 2, 1995, regarding the accounting for these transactions.

9. Piedmont properly accounted for its gas costs during the review period.

10. Piedmont proposed to collect the balance of $1,499,333 in the All Customers Deferred Account based on the fixed gas cost apportionment percentages for each rate schedule approved by the Commission in the Company's last rate case, except for Company Use and Lost and Unaccounted For (CU & LUAF) and Interest on Accumulated Deferred Income Taxes (ADIT). The Company proposed to refund CU & LUAF and the Interest on ADIT uniformly to the various rate schedules based on throughput.

11. The Public Staff recommended that, except for the dollars related to Company Use and Lost and Unaccounted For Gas (CU & LUAF), rate changes be calculated by individual rate classes based on the fixed gas cost apportionment percentages and associated volumes of each rate class as determined by the Commission in Piedmont's last general rate case, Docket No. G-9, Sub 351, and in the Company's Purchased Gas Adjustment (PGA) Procedures. The total balance to be collected from all customers in the All Customers Deferred Account is $1,499,333.

12. The Public Staff agreed with the Company that the decrement for CU & LUAF be calculated based on throughput and not allocated by rate class using the fixed gas cost apportionment percentages. The amount attributable to CU & LUAF to be refunded to all customers is $235,223.

13. Since the Company's PGA procedures specifically identify and set out CU & LUAF for separate treatment in the calculation of demand and storage charges, it is appropriate to separate CU & LUAF and calculate this item based on throughput. The Public Staff's treatment of CU & LUAF is also consistent with the manner in which the Company has computed the benchmark changes in its PGAs since the last general rate case.

14. The Public Staff disagreed with the Company's allocation of Interest on ADIT based on throughput. The Public Staff recommended allocating the Interest on ADIT by rate class using the fixed gas apportionment percentages in the same manner as all other items in the All Customers Deferred Account, except CU & LUAF. The amount attributable to Interest on ADIT to be refunded to all customers is $577,505.

15. It is inappropriate to subcategorize the All Customers Deferred Account balance and determine a separate increment (or decrement) for each type of transaction.

16. Piedmont has transportation and supply contracts with the interstate pipelines which transport gas directly to Piedmont's system and long term supply contracts with other suppliers.

17. Piedmont has adopted a "best cost" gas purchasing policy consisting of the price of gas, the security of the gas supply, the flexibility of the gas supply, gas deliverability, and supplier relations.

18. Piedmont's gas costs during the review period were prudently incurred.

19. Piedmont should be permitted to recover 100% of its prudently incurred gas costs.

20. Piedmont proposed to refund the net credit balance in the deferred account beginning with the first billing cycle of the month that follows the date of the Commission's order in this docket.

21. As of the date of the hearing, Piedmont had a temporary increment of $0.0828/dt in its Sales Only Deferred Account and a temporary decrement of $(0.1107)/dt in its All Customers Deferred Account, both of which were approved by Commission order in Docket No. G-9, Sub 356, effective February 10, 1995.

22. Piedmont should collect the May 31, 1995, balance in its All Customers Deferred Account by implementing the following increments for each rate schedule, as recommended by the Public Staff:

Rate 101-YR	Rate 101-HO	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0315/dt	$0.0320/dt	$0.0304/dt	$0.0277/dt	$0.0174/dt	$0.0094/dt

23. Piedmont should refund the May 31, 1995, balance in its Sales Only Deferred Account by implementing an across-the-board decrement of $(0.0600)/dt.

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

The evidence supporting these findings is contained in the official files and records of the Commission and the testimony of Piedmont witness Fleenor. These findings are essentially informational, procedural or jurisdictional in nature and are based on evidence uncontested by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3-4

The evidence supporting these findings is contained in the testimony of Piedmont witnesses Fleenor and Boggs.

N.C.G.S. 62-133.4 requires that each natural gas utility submit to the Commission information and data for an historical twelve-month test period concerning its actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. In addition, Commission Rule R1-17(k)(6)(c) requires the filing of information and data showing weather-normalized sales volumes, workpapers, and direct testimony and exhibits supporting the information.

Mr. Fleenor testified that Commission Rule R1-17(k)(6) required Piedmont to submit to the Commission on or before August 1, 1995, certain information based on a twelve-month test period ending May 31, 1995. He stated that Piedmont complied with the filing requirements of Commission Rule R1-17(k)(6). Ms. Boggs also testified that Piedmont filed with the Commission and submitted to the Public Staff throughout the review period complete monthly accounting of the computations required by Commission Rule R1-17(k)(6)(c). Ms. Perry confirmed that the Public Staff had reviewed the filings and that they complied with the Rules.

The Commission therefore concludes that Piedmont has complied with all of the procedural requirements of N.C.G.S. 62-133.4(c) and Commission Rule R1-17(k) for the review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-9

The evidence supporting these findings is contained in the testimony of Piedmont witness Boggs and Public Staff witnesses Perry and Curtis.

Ms. Boggs testified that, as of May 31, 1995, Piedmont had a net credit balance (payable from Piedmont to its customers) of $2,221,334 in its deferred accounts. This credit balance consisted of a credit balance of $3,720,667 in the Sales Only Deferred Account and a debit balance (payable from the customers to Piedmont) of $1,499,333 in the All Customers Deferred Account.

Ms. Perry testified that Piedmont entered into buy/sell and capacity release arrangements during the review period and recorded net compensation to the ratepayers of $2,970,210 and $289,648, respectively. The $289,648 was corrected to $191,377 in a late-filed exhibit. Ms. Perry also testified that these adjusted amounts represent 90% of the net compensation recognized from the buy/sell and capacity release transactions during the review period pursuant to procedures established in Docket No. G-100, Sub 63.

CUCA questioned both the Company and the Public Staff witnesses on the proper allocation of buy/sell and capacity release credits to the rate classes and suggested that the credits should be refunded to the rate classes that generated the revenues. Ms. Boggs stated that the Commission order in Docket No. G-100, Sub 63, provides that the capacity release and buy/sell net compensation will be considered to be an adjustment to the demand and storage charges and the demand true-up entry and that she prepared her schedules based on that order. Ms. Boggs further stated that the effect of her adjustment was to assign 32.98% of the buy/sell and capacity release credits to Rate Schedule 101 year round customers. She agreed that those customers do not participate in buy/sell and capacity release transactions but stated that they do contribute to the demand true-up related to the underlying cost of the capacity. Finally, Ms. Boggs stated that, while industrial customers may be the end user beneficiaries of buy/sell programs, the revenues themselves may be generated by brokers, shippers, or marketers.

Mr. Curtis stated that the Company collects 100% of its fixed gas costs from the ratepayers based on the percentage of fixed gas costs by rate class and that any reduction to the fixed gas costs should be refunded using the same percentages. He explained that the net compensation from buy/sell and capacity release transactions should be allocated to the rate classes based on the fixed gas cost apportionment percentages for the same reason. He also explained that the Commission's July 22, 1994, order in Docket No. G-100, Sub 63, states that the LDCs shall record 90% of the net compensation on these transactions entered into on and after August 30, 1993, in their respective deferred accounts as a reduction of demand and storage charges for the purposes of computing the demand and storage charges true-up required by Commission Rule R1-17(k)(4)(a). Mr. Curtis stated

that a customer who participates in buy/sell and capacity release arrangements obtains the right to otherwise unutilized capacity, which results in more savings for the industrial customer because he can transport his own gas or is able to negotiate a package deal for both supply and capacity. He also stated that to refund the net compensation from those transactions on an equal basis would be unfair to the customers who had paid their proportionate share for the capacity.

The Commission finds CUCA's position to be disingenuous. The fact that the revenues that make up the buy/sell and capacity release credits come from customers on Rate Schedules 103 and 104 has nothing to do with how those credits should be allocated. Customers participating in these programs benefit through lower overall costs of delivered gas through the use of capacity that is paid for by all customers according to percentages established in a general rate case. Credits to the cost of that capacity clearly should be allocated on the same percentages. Otherwise, participating customers would benefit twice, first by paying less than the tariffed rate at the time of the transaction and then by being responsible for less than their allocated share of the cost at the time of the demand true-up. Taken to the extreme, CUCA's position would result in virtually zero cost interstate transportation to its members, a patently absurd result. The Commission therefore concludes, as it did in its Order on Annual Review of Gas Costs for Public Service Company of North Carolina, Inc. (PSNC), issued November 1, 1995, in Docket No. G-5, Sub 346, that it is appropriate to refund net compensation on the sale of capacity rights in the same proportions as the cost of the capacity is charged to rate schedules.

CUCA questioned Mr. Curtis on the effective date of the Commission's Order approving the modifications to the PGA procedures as it relates to the fixed gas cost percentages. Mr. Curtis explained that the fixed gas cost apportionment percentages were effective with the Company's last general rate order, dated November 1, 1994. He agreed that the Company recorded an accrual entry for buy/sell and capacity release credits for the period ending September 1994. Mr. Curtis also agreed that this entry was recorded prior to the date of the rate case order. He stated, however, that the Public Staff did not look all the transactions that occurred prior to and after the rate order but took the net balance. Otherwise, he explained, items such as the undercollection of demand and storage charges at November 1, 1994, would be allocated to the rate classes on an across-the-board basis instead of the fixed gas cost apportionment percentages. If the review period is split at November 1, 1994, CUCA's members would pay much more in fixed gas cost undercollections.

The Commission has considered the effect of splitting the review period for all of the transactions that were recorded in the deferred accounts before and after the rate order during that period. The Commission notes that the balance in the deferred account may vary depending on weather sensitive rates, demand and storage price fluctuations, and rate case issues. The weather also affects the level of demand and storage charges in the deferred account. Furthermore, the Commission recognizes that demand and storage charges are typically undercollected (owed to the Company) in the summer period and overcollected (owed to the ratepayers) in the winter period. This can be seen on Boggs Schedule 9, which shows the monthly activity in the All Customers Deferred Account for the review period. The demand cost undercollections at the end of the period were $5,958,905. If the balance of the undercollections prior to November 1, 1994, are recovered from all customers equally and the balance of the overcollections after November 1, 1994, are refunded to all customers based on fixed gas cost allocation percentages established in the rate case,

industrial customers will bear more of the demand and storage costs. The same is true for the costs included under the headings Subs 339/356, Sub 340, Sub 300, and ending balance. Based on the foregoing, the Commission concludes that netting the transactions that occurred before and after the rate case order date, rolling them into the All Customers Deferred Account balance at March 31, 1995, and then applying the fixed gas cost apportionment percentages to the balance, excluding CU & LUAF, is the most equitable and administratively feasible method for all parties.

Ms. Perry testified that the Public Staff had examined Piedmont's accounting for gas costs during the review period and determined that Piedmont had properly accounted for these costs with one exception related to the proper accounting treatment of other secondary market transactions during the review period. Ms. Perry explained that secondary market transactions involve the resale of interstate pipeline capacity rights such as buy/sell arrangements, capacity release, or some other arrangements involving the bundling of gas supply and capacity rights. She also explained that the issue of how the LDCs should account for the other types of secondary market transactions is addressed in the Public Staff's Petition for Investigation in Docket No. G-100, Sub 67. She recommended that a decision as to the proper accounting treatment for the transactions be deferred until further discussions could be held and the matter could be presented to the Commission for determination or approval.

Since the hearing, Piedmont and the Public Staff have come to an agreement and filed a joint stipulation regarding the accounting for other secondary market transactions that occurred during the review period. The stipulation provides that no change will be made in Piedmont's accounting for the $535,926 of net compensation the Company realized from secondary market transactions during this period. The stipulation further provides that the Company will credit its deferred account for 100% of the first $1,071,852 of net compensation received from such transactions subsequent to October 31, 1995, and thereafter will credit the amount authorized by the Commission in Docket No. G-100, Sub 67.

Based on the foregoing, the monthly filings by Piedmont pursuant to Commission Rule R1-17(k)(5)(c), and the findings of fact set forth above, the Commission concludes that Piedmont properly accounted for its gas costs during the review period and that the deferred account balances as reported are correct. The Commission further concludes that the stipulation between Piedmont and the Public Staff regarding secondary market transactions should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-15

The evidence for these findings is contained in the testimony of Company witness Boggs and Public Staff witnesses Curtis and Perry.

Ms. Boggs calculated an increment for the All Customers Deferred Account, excluding CU & LUAF and Interest on ADIT, by allocating the remaining balance in the account to the various rate classes using the fixed gas cost apportionment percentages approved in the previous rate case, Docket No. G-9, Sub 351. Mr. Curtis testified that he calculated the increment based on the Company's PGA procedures by allocating the All Customers Deferred Account balance, except for CU & LUAF, using the same fixed gas cost percentages. He stated that he computed a decrement

for the CU & LUAF portion of the account balance based on annual throughput from the rate case for each rate class. Mr. Curtis explained that CU & LUAF was allocated based on annual throughput in the cost of service study in the Company's last general rate case. He also explained that he treated CU & LUAF differently than the rest of the All Customers Deferred Account balance because costs associated with CU & LUAF are recovered on an across-the-board basis, and, therefore, the collection and/or refund of the balances in the true-up should be based on the same methodology.

Piedmont's PGA procedures state that the Company may file to adjust its rates to refund or collect balances in the All Customers Deferred Account through decrements or increments to current rates. These procedures further state that any such increments or decrements shall be made on the applicable apportionment percentage basis, defined as the percent of fixed gas costs allocated to each rate schedule, for all affected rate classes, unless otherwise ordered by the Commission.

The Commission notes that no party opposed allocating CU & LUAF on the basis of annual throughput in this proceeding or in Piedmont's two prior PGA filings. Historically, the effects of benchmark changes on CU & LUAF gas costs have affected all customers, including transportation customers. Because the CU & LUAF costs are incurred by the Company to serve all customers on its system, it is appropriate to allocate these costs to all customers based on annual throughput. The only unresolved issues are how to allocate the Interest on ADIT and whether the remaining balance of the All Customers Deferred Account should be allocated based on the fixed gas cost percentages determined in the Company's last rate case or some other allocation factors.

Ms. Boggs also allocated the Interest on ADIT based on the throughput percentages for each rate class approved in the last rate case. Ms. Perry, on the other hand, recommended that the Interest on ADIT be allocated to the rate classes in the same manner as all other items in the All Customers Deferred Account, except for CU & LUAF, using the fixed gas cost apportionment percentages. Ms. Boggs stated that this method was reasonable.

Ms. Perry explained that the Interest on ADIT resulted from a stipulation between the Company and the Public Staff in Piedmont's last rate case. The Company was required to record in its deferred account the interest on certain accumulated deferred income taxes. The agreement on this issue resolved the controversy between the Company and the Public Staff regarding the amount of ADIT that should be treated as cost-free capital and reflected as a rate base reduction in the rate case. Ms. Perry stated that the Public Staff typically reduces rate base for cost-free capital items such as pensions, postretirement benefits, sales tax accruals, and stock option accruals which have no relationship to plant. She further stated that in the last general rate case, the Public Staff allocated accumulated deferred income taxes to the rate schedules in its cost of service study based on plant in service and would recommend the same allocation basis in this case if it was recommending that each type of transaction recorded in the deferred account be allocated on a specific basis. She also stated that use of the plant allocator would assign more of the refund dollars to the core market than the fixed gas percentage allocator that the Public Staff recommended or the annual throughput percentages proposed by the Company.

The Commission agrees with the Public Staff's position that the Interest on ADIT should be allocated in the same manner as all other items in the All Customers Deferred Account balance. The

Commission recognizes that the Company's PGA procedures state that the balance in the All Customers Deferred Account should be collected or refunded from ratepayers using the fixed gas cost percentages, unless otherwise ordered by the Commission. The Commission also recognizes that no order or previous ruling exists for determining how the Interest on ADIT dollars should be refunded to ratepayers.

Since no evidence exists which shows a relationship between throughput and Interest on ADIT, and the fixed gas cost percentages recommended by the Public Staff more closely reflect the plant in service allocators from the rate case, the Commission concludes that Interest on ADIT should be included in the All Customers Deferred Account balance and allocated to the rate classes in the same manner as all other items in the account.

Mr. Curtis testified that he allocated the remainder of the All Customers Deferred Account balance based on the fixed gas cost apportionment percentages. Ms. Perry testified that many new types of transactions are recorded each review period and that, if these transactions were to be allocated individually, separate deferred accounts might need to be maintained for each item in order to keep up with the cumulative balances for each allocation basis utilized. She also stated that she did not want to determine a separate allocation basis for each transaction because issues would be raised in each annual review proceeding as to which allocation basis is appropriate. Ms. Perry asserted that the significant, additional administrative burden to allocate each type of deferred account transaction would be inappropriate and impractical.

The Commission has evaluated the appropriateness of allocating the remainder of the All Customers Deferred Account based on the fixed gas cost apportionment percentages determined in the Company's last rate case or some other allocation factors. We recognize that the Company's Purchased Gas Adjustment procedures specifically set out how to refund the balance in the deferred account. We also recognize that many issues would probably be raised as to which allocation basis is appropriate for each transaction. Furthermore, the Commission typically does not adopt any particular cost of service study in general rate cases, because it does not determine rates based solely on a cost of service study. Therefore, the Commission finds that due to the uncertainty that exists in determining a separate allocation basis for each deferred account transaction by rate schedule, the All Customers Deferred Account balance, except CU & LUAF, will be collected from the rate classes using the fixed gas cost apportionment percentages determined in the Company's most recent general rate case.

The Commission recognizes that the administrative burden of attempting to allocate each type of deferred account transaction could be overwhelming to the Company, the Public Staff, the Commission Staff, and the Commission. The separate allocation approach suggested by CUCA would require the Commission to make a number of difficult determinations, including whether transactions that are presently recognized as one journal entry should be dissected into their many components; whether separate deferred accounts should be maintained for each different type of transaction; whether separate increments and decrements should be maintained for each deferred account; whether these changes would enhance the ability of customers to understand their rates; and whether, if these changes would be beneficial, they would justify the cost of implementation.

The Commission also recognizes its recent order issued October 27, 1995, in North Carolina Natural Gas Corporation's general rate case, Docket No. G-21, Sub 334, which states that the balance in the All Customers Deferred Account, except for CU & LUAF, should be assigned to the rate classes for purposes of determining increments and decrements based on the fixed gas cost apportionment percentages determined in the rate case. The Commission found that, because most of the dollars that flow through the All Customers Deferred Account relate to fixed gas costs (including the net compensation on buy/sell and capacity release transactions), assigning the balance of the account based on the fixed gas cost apportionment percentages strikes an equitable balance between minimizing administrative burdens and CUCA's desire to determine a separate increment or decrement by rate class for each type of deferred account transaction.

Finally, the Commission recognizes its recent order in Docket No. G-5, Sub 346, PSNC's annual gas cost review, rejecting the idea of dissecting the All Customers Deferred Account and analyzing every type of transaction to determine what allocation factor best suits that particular item. The Commission therefore concludes that the method used by the Public Staff is accurate, practical, consistent, logical, nondiscriminatory, and administratively feasible.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17-20

The evidence supporting these findings is contained in the testimony of Piedmont witness Fleenor and Public Staff witness Curtis.

Mr. Fleenor testified that Piedmont's gas purchasing policy is best described as a "best cost" policy. This policy consists of five components: price of gas, security of gas supply, flexibility of gas supply, gas deliverability, and supplier relations. Mr. Fleenor stated that all of these components are interrelated and that Piedmont considers and weighs each of these five factors depending on the profile of the entire supply portfolio.

Mr. Fleenor further testified that Piedmont purchases gas from two entirely different sources -- the spot market and the long-term market. Spot gas is purchased under a contract with a term of 30 days or less while long-term gas is purchased under a contract with a term greater than 30 days and usually for multiple years. Spot gas is not regarded as a particularly reliable or secure source of gas but is generally cheaper than long-term gas. Long-term supplies are usually more expensive and offer less flexibility but are the most reliable and secure source of gas. Mr. Fleenor stated that as the market changed from FERC-ordered unbundling, Piedmont sought the assurance of long-term supplies because of its rapidly growing firm market. During this period, producers insisted that firm contracts provide for flat levels of deliveries year round. Since then, Piedmont has gradually renegotiated some of its firm contracts with lower costs and for winter service only.

Mr. Fleenor testified that Piedmont sells its gas to two distinct markets -- the firm market and the interruptible market. Firm sales are principally the residential, commercial, and the small firm industrial customers. Interruptible customers consist principally of large industrial customers. The firm market generally has no alternative source of fuel and depends entirely on gas. The interruptible market has alternative sources of energy and will refuse to buy gas when its alternative fuel is cheaper.

Mr. Fleenor also described how the interrelationship of the five factors affects Piedmont's construction of its supply portfolio under its "best cost" policy. The long term contracts, supplemented by long-term peaking services and storage, generally are aligned with the firm market; the short term spot gas generally serves the interruptible market. In order to weigh and consider the five factors, Piedmont must be kept informed about all aspects of the natural gas industry. Piedmont therefore stays abreast of current issues by intervening in all major proceedings affecting pipeline suppliers, attending conferences, and subscribing to industry literature.

Mr. Fleenor stated that Piedmont's greatest obstacle in applying its "best cost" policy is in dealing with future uncertainties. Future demand for gas is affected by various factors including economic conditions, weather patterns, and housing starts. Future availability and pricing of gas is affected by factors including investment in domestic exploration and development projects. He further stated that Piedmont did not make any changes in its basic gas purchasing policies during the review period but continued to investigate alternatives. The Company participated in an open season offering of seasonal storage and transportation by Columbia Gas Transmission for the winter of 1997-98 and another open season for Transco capacity referred to as SunBelt.

Finally, Mr. Fleenor testified that Piedmont had taken a number of steps to keep its gas costs as low as possible consistent with its "best cost" policy. The Company has participated in matters before the FERC, worked with industrial customers to transport customer-owned gas, continued an internal committee to oversee major gas supply decisions, continued to utilize the flexibility available within its contracts to purchase and dispatch gas in a cost effective manner, actively sought load growth from the "year around" markets, and utilized futures pricing to lock in prices for a period of time.

Mr. Curtis testified that he had reviewed the Company's gas supply contracts to determine how the commodity and variable costs were determined. He then reviewed the fixed gas costs that apply. In addition, Mr. Curtis stated that he reviewed information related to (1) design day information, (2) historical and forecast load duration curves, (3) historical and forecast gas supply requirements, (4) the Company's purchasing practices, and (5) projections of capacity addition and supply charges. Mr. Curtis stated that, in the Public Staff's opinion, Piedmont's purchasing practices were reasonable and prudent.

Based on the foregoing, the Commission concludes that Piedmont's gas costs during the review period were reasonably and prudently incurred and should be recovered.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-23

The evidence supporting these findings is contained in the testimony of Piedmont witness Boggs and Public Staff witness Curtis.

Ms. Boggs testified that, as of the date of the hearing, Piedmont had a temporary increment of $0.0828/dt related to its Sales Only Deferred Account and a temporary decrement of $(0.1107)/dt related to its All Customers Deferred Account. Both the Sales Only Deferred Account increment and the All Customers Deferred Account decrement were approved by Commission order in Docket No. G-9, Sub 356, effective February 10, 1995.

Mr. Curtis presented an exhibit showing his calculation of the rate changes relating to the balance in the All Customers Deferred Account at May 31, 1995. According to this exhibit, the following increments should be implemented:

Rate 101-YR	Rate 101-HO	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0315/dt	$0.0320/dt	$0.0304/dt	$0.0277/dt	$0.0174/dt	$0.0094/dt

The Commission finds that refunding the May 31, 1995 balance in the Company's Sales Only Deferred Account should be accomplished by implementing an across-the-board decrement of $(0.0600)/dt.

The Commission believes that the temporary increments and decrements proposed by the Public Staff are just and reasonable to collect and simultaneously refund the balances in the deferred accounts until further order of the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont's accounting for gas costs during the twelve months ended May 31, 1995, is approved.

2. That the stipulation between Piedmont and the Public Staff regarding secondary market transactions is approved.

3. That Piedmont is authorized to recover 100% of its gas costs incurred during the twelve months ended May 31, 1995.

4. That Piedmont shall implement the following temporary increments to collect the debit balance related to the All Customers Deferred Account beginning with the first billing cycle of the month following the date of this order:

Rate 101-YR	Rate 101-HO	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0315/dt	$0.0320/dt	$0.0304/dt	$0.0277/dt	$0.0174/dt	$0.0094/dt

5. That Piedmont shall implement a temporary decrement of $(0.0600)/dt to refund the credit balance related to the Sales Only Deferred Account beginning with the first billing cycle of the month following the date of this order.

6. That the existing increment to sales customers and the decrement to all customers approved in Docket No. G-9, Sub 356, shall be discontinued.

7. That Piedmont shall give notice to all of its customers of the changes in rates approved in this order by appropriate bill inserts in the first billing cycle following the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December, 1995.

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

DOCKET NO. G-21, SUB 330

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition by North Carolina Natural Gas	)	ORDER APPROVING EXPANSION
Corporation for Approval of the Use of	)	PROJECT FOR FUNDING
Expansion Fund for a Certain Project	)	FROM EXPANSION FUND

HEARD: Tuesday, June 13, 1995, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Laurence A. Cobb, Presiding, and Commissioners Allyson K. Duncan and Judy Hunt

APPEARANCES:

For North Carolina Natural Gas Corporation:

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

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, and Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, Post Office Drawer 1269, 301 E. Meeting Street, Morganton, North Carolina 28680-1269

BY THE COMMISSION: On December 22, 1994, North Carolina Natural Gas Corporation (NCNG) filed a petition pursuant to G.S. §§62-2(9) and 62-158 and Commission Rule R6-84 for approval of partial funding from NCNG's expansion fund for an expansion project that would extend natural gas service into Duplin and Onslow Counties, two unserved counties in NCNG's franchised service territory.

On January 14, 1995, Carolina Utility Customers Association, Inc. (CUCA) filed a petition to intervene and motion to stay the proceedings. CUCA requested that the Commission enter an order staying the establishment of a procedural schedule until NCNG reached an agreement with the United States government, a potential gas customer in Onslow County and until NCNG learned whether local governments in Duplin and Onslow Counties intended to contribute to the cost of construction. On January 17, 1995, the Commission allowed CUCA's intervention. After hearing oral argument from CUCA, the Public Staff and NCNG on issues related to whether and how to proceed, the Commission issued an Order dated January 23, 1995, scheduling a public hearing, setting dates for prefiling of testimony, allowing NCNG through March 17, 1995, to modify its petition to address commitments by the United States government and ordering NCNG to provide public notice in the form attached to the Commission's Order.

On March 17, 1995, NCNG filed a motion to modify its petition addressing the impact on the economic feasibility of the proposed project of a commitment by the Marine Corps to utilize gas at Camp Lejeune and the local governments' resolutions committing to make certain contributions to NCNG's expansion fund related to this proposed expansion project. On March 23, 1995, the Commission allowed NCNG's motion and ordered NCNG to mail to its customers and publish a revised notice beginning no later than April 13, 1995. At the hearing, NCNG represented to the Commission that notice had been given as required and affidavits evidencing the same were received into evidence without objection, the same having previously been filed with the Commission on May 12, 1995.

On May 31, 1995, CUCA moved to continue the June 13, 1995 hearing. The Commission denied the motion on June 8, 1995. Prior to the hearing, CUCA notified the Commission that it waived its right to participate in the public hearing but reserved the right to file a brief in the matter.

Immediately prior to the start of the public hearing, the Public Staff and NCNG filed a Stipulation resolving their differences in this docket. The Stipulation was received into evidence after the hearing commenced. At the public hearing on June 13, 1995, the following persons appeared and testified as public witnesses in support of the proposed expansion project to bring natural gas service to Duplin and Onslow Counties:

Dana Querim	-	Purchasing Agent, Delta Woodside Industries, Inc.
Sherwood Fountain	-	Duplin County Commissioner
Johnny Powell	-	Mayor of Warsaw, North Carolina
William P. Fennell	-	Town of Kenansville Commissioner
Richard Harrell	-	Chairman of Community Development for the Eastern North Carolina Chamber of Commerce
Larry Fitzpatrick	-	Chairman of the Onslow County Board of Commissioners
Sam Hewitt	-	Onslow County Commissioner
M. C. "Joe" Choate	-	Mayor of Jacksonville, North Carolina
Jim Sloan	-	City of Jacksonville Council Member
George Jones	-	Chairman of the Onslow County Economic Development Commission
Watts Carr	-	North Carolina Department of Commerce
Suzanne Sartelle	-	President, Jacksonville/Onslow Chamber of Commerce
Jeff Newsome	-	Executive Director of the Onslow County Economic Development Commission
Edward Bowen	-	General Assembly, Representative for Onslow County

NCNG presented the testimony and exhibits of the following witnesses: Calvin B. Wells, Chairman, President and Chief Executive Officer of NCNG; Terrence D. Davis, Vice President of Operations and Industrial Sales of NCNG; George M. Baldwin, Director - Industrial Sales for NCNG; and Robert P. Evans, Director - Statistical Services for NCNG.

The Public Staff presented the testimony of James G. Hoard, Supervisor of the Natural Gas Section in the Accounting Division of the Public Staff; Eugene H. Curtis, Jr., Director of the Public Staff's Natural Gas Division; and John Robert Hinton, Financial Analyst with the Public Staff.

Based on the petition as modified, the Stipulation between the Public Staff and NCNG, the testimony and exhibits and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG, a Delaware corporation with its principal office in Fayetteville, North Carolina, operates a natural gas local distribution system consisting of 1,019 miles of natural gas transmission pipeline, 2,516 miles of distribution mains and other facilities for furnishing gas to the public within its franchised service territory.

2. NCNG is a "public utility" as defined in N.C.G.S. §62-3(23) subject to the jurisdiction of this Commission.

3. NCNG's franchised service territory covers forty-three counties in south central and eastern North Carolina, although fourteen of these counties currently have no natural gas service.

4. NCNG is properly before the Commission having given the required notice of its petition for approval of partial funding for a proposed expansion project from its expansion fund.

5. The project will bring natural gas service to Duplin and Onslow Counties which currently have no natural gas service and constitute "unserved areas" as that term is defined in Commission Rule R6-81 and used in G.S. §§62-2(9) and 62-158.

6. Duplin and Onslow Counties currently have a combined population of 203,000 persons which is approximately the total population of all twelve remaining counties in NCNG's territory that do not have natural gas service.

7. Due to existing infrastructure, natural resources and a favorable business climate, the unserved area covered by NCNG's proposed project in this docket has good industrial and economic growth potential.

8. Leaders from Duplin and Onslow Counties believe that there is a strong need for natural gas service in Duplin and Onslow Counties and that the lack of natural gas service has hampered industrial and economic development.

9. The proposed expansion facilities include approximately sixteen miles of 10-inch natural gas transmission pipeline beginning at Mount Olive and continuing in a southwesterly direction into Duplin County on the east side of Faison and passing near Warsaw. The transmission line will then be reduced to an 8-inch pipeline traversing approximately 55 miles passing south of Kenansville, entering Onslow County, and passing south of Jacksonville before crossing the New River and ending at Camp Lejeune. The facilities also include a limited amount of distribution mains at the towns of Faison and Kenansville and the city of Jacksonville and at Camp Lejeune.

10. There is a reasonable prospect that the construction and operation of natural gas facilities in the unserved area covered by NCNG's proposed project in this docket will assist in industrial and economic growth in the area leading to increased throughput on NCNG's system.

11. The proposed project will facilitate future expansion into unserved areas and will enable NCNG to strengthen its present system and provide a safer and more stable supply of gas to its customers, thus benefiting all customers on NCNG's system.

12. The pipeline route proposed is the most direct, cost-effective route to serve the area covered by the expansion project which also maximizes potential attachments of gas customers and utilizes existing corridors to facilitate construction.

13. NCNG's design and location of the proposed transmission pipeline and distribution mains for this project, as modified to remove 3,000 feet of distribution main in Jacksonville pursuant to the Stipulation between NCNG and the Public Staff, are appropriate.

14. To encourage the approval of this expansion project, the towns of Faison and Kenansville and the city of Jacksonville and Duplin and Onslow Counties have submitted resolutions to the Commission committing to provide financial assistance to the project in the form of five annual payments to NCNG's expansion fund in amounts equal to 100% of the ad valorem tax revenues collected on natural gas facilities constructed as part of the proposed project.

15. The willingness of the local governments in the area to provide financial assistance in order to facilitate the expansion project is viewed as a positive factor by the Commission.

16. The local government assistance payments are reasonable and appropriate sources of funds to be deposited into NCNG's expansion fund as received. These local government assistance payments will be direct contributions to NCNG's expansion fund and will, to the extent received, be designated as reimbursement for a portion of the funds expended on the proposed project.

17. The feasibility of this project is improved by the agreement of the United States government to convert a number of oil-fired steam boilers to natural gas usage at various military installations in Onslow County.

18. Rate Schedule 12 and Rate Schedule T-12 for service to military installations located in Onslow County, filed with the Commission by NCNG in this docket, are just and reasonable and are accepted and approved by the Commission. Rate Schedules 12 and T-12 proposed by NCNG and agreed to by the United States government provide a reasonable and appropriate margin under the circumstances of this project.

19. The volumetric/margin commitment by the United States government for gas usage at Camp Lejeune is an essential element in meeting the goal of providing natural gas service to Duplin and Onslow Counties. Without this commitment, there would not be sufficient expansion fund monies available to enable natural gas service to be brought to the population center located in Onslow County at this time.

20. The projected annual volumes from potential customers now located in the area to be served, margins from which are included in the net present value (NPV) calculation, are expected to be as follows:

Year	Commercial	Large Commercial and Industrial	Military	Total
2	33,650 dt	42,558 dt	87,933 dt	164,141 dt
3	67,300	85,116	287,480	439,896
4	67,300	85,116	508,019	660,435
5-11	67,300	85,116	616,943	769,359
12	67,300	85,116	308,472	460,888
13-40	67,300	85,116	--	152,416

21. The nature and amount of natural gas usage by new industrial and large commercial facilities that may locate in the area covered by the expansion project, but which are not presently in existence, cannot be quantified to the degree of certainty appropriate for inclusion in the NPV calculation. To the extent industrial and large commercial growth occurs, NCNG's system will benefit.

22. The total cost of the proposed expansion fund project, modified by the Stipulation between NCNG and the Public Staff, is estimated to be $18,834,100 which consists of $17,083,500 of transmission plant and $1,750,600 of distribution plant.

23. The NPV for the proposed Duplin and Onslow Counties expansion project is a negative $12,422,000.

24. NCNG's shareholder investment in the project is estimated to be $6,412,100 and such amount is reasonably supported by margins estimated to be received on gas sales and transportation.

25. For purposes of the proceedings in this docket, the Stipulation between NCNG and the Public Staff is fair and reasonable, and the terms of the Stipulation are fair and reasonable for determining the NPV of the project in this proceeding.

26. NCNG should have sufficient monies in its expansion fund when needed for the acquisition of the rights-of-way and the construction of the proposed project.

27. The Duplin and Onslow Counties project proposed by NCNG is in accordance with G.S. § 62-2(9) and 62-158 and should be approved for funding from NCNG's expansion fund.

28. The reasonable negative NPV of this project is $12,422,000. The negative NPV will be satisfied by disbursements of up to $12,422,000 from NCNG's expansion fund, including to the extent received the assistance payments from the local governments.

29. The Commission will not condition the approval of this project for funding from NCNG's expansion fund upon a mechanism to review economic development in Duplin and Onslow Counties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence for these findings of fact is contained primarily in the verified petition as modified, the Commission's files and records in this proceeding and the testimony of NCNG witness Wells. These findings are essentially informational, procedural or jurisdictional in nature and are uncontradicted by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 - 13

The evidence for these findings is found primarily in the testimony and exhibits of NCNG's witnesses Wells and Davis, Public Staff witness Curtis, NCNG's petition as modified, and the testimony of public witnesses at the June 13, 1995 hearing.

NCNG witness Wells testified that Onslow and Duplin Counties are two of the fourteen unserved counties in NCNG's service territory. Witness Wells testified that in 1990 Onslow County had a population of 149,838 people, making it the second most populated county overall in NCNG's service territory. It is the only county in NCNG's service territory with a population over 55,000 that does not have natural gas service. Duplin County's population was 39,995 persons in 1990. By 1995, the combined population of these two counties equaled approximately the total population of the remaining 12 unserved counties in NCNG's service territory according to witness Wells.

The public witnesses, witness Wells and witness Davis testified concerning the infrastructure available in Duplin and Onslow Counties to support economic development, including recently improved and expanded sewer and water systems, extensive railroad systems, the new Interstate 40 (I-40) with multiple interchanges, other multi-lane highways in existence or proposed, navigable waterways at Jacksonville, close proximity to State ports, updated hospitals, new industrial parks, community colleges to train workers, and an available labor force.

The public witnesses and witness Wells discussed in detail the importance of natural gas to economic development. Witness Wells pointed out that between 20% and 32% of industrial prospects communicating with the North Carolina Department of Commerce between 1988 and 1994 required natural gas service. Public witnesses testified concerning lost opportunities in their area because of the lack of natural gas. Witness Wells noted that it takes months or years to plan and construct a natural gas extension project. Various public witnesses concluded that many industries are not willing to wait and that opportunities are being missed.

Witness Wells expressed his belief that this project had the best opportunity for positively impacting economic development as compared to other potential projects and he explained why. In deciding on a proposed project to provide natural gas to Duplin and Onslow Counties, NCNG witness Wells testified that NCNG placed strong weight on the potential for economic development in the area and the population base that could benefit from natural gas service, taking into consideration terrain and distance to maximize the project's feasibility. The Commission concludes that it was proper under the facts of this case to emphasize these factors which maximize the benefits of expanded natural gas service not only to the area served but also to NCNG's system through the potential for increased natural gas deliveries.

Witness Wells gave a general description of the proposed expansion project. NCNG witness Davis provided a detailed description of the physical facilities, operating parameters, route selection, proposed rights-of-way arrangements and the location of distribution systems necessary for the revenues included in the NPV study.

The project proposed by NCNG included 86,064 feet of 10.75-inch steel transmission pipe; approximately 289,450 feet of 8.625-inch steel transmission pipe; 3,875 feet of 4-inch steel transmission pipe; 11,600 feet of 4-inch steel distribution main; 42,000 feet of 8-inch plastic distribution main; 1,320 feet of 6-inch plastic distribution main; 21,121 feet of 4-inch plastic distribution main and 3,600 feet of 2-inch plastic distribution main. Witness Davis noted that the line capacity as now proposed is approximately 24,000 mcf/day.

Witness Curtis testified that, based upon its investigation, which included an on-site customer survey, the Public Staff concluded that 3,000 feet of 8-inch plastic distribution main in Jacksonville totaling $75,369 should be excluded from the proposed project. NCNG concurred in the deletion of the 3,000 feet of distribution main as part of the Stipulation.

Witness Davis set forth the geographic location of the proposed facilities in Davis Exhibits 1-5. Witness Davis testified that other potential routes for providing service to Duplin and Onslow Counties were considered before NCNG decided upon the route proposed to the Commission in this docket. The other routes were rejected on a cost vs. benefits basis, economic development potential, and comparatively greater areas of swamp and river crossings which would also contribute to higher cost and less development potential. Witness Davis testified that the route selected was the most cost-effective choice given the goal of providing service to Jacksonville in Onslow County.

From Faison to Warsaw the proposed natural gas line will be in the vicinity of the new I-40 corridor, an area anticipated to experience accelerated growth. Witness Davis testified that the pipeline route from Warsaw to the Jacksonville area utilizes the shortest, most direct course and maximizes the feasibility of future expansion projects. Witness Davis pointed out that the central Duplin County route will enable NCNG to strengthen its system after the project is complete by linking the expansion project pipeline with NCNG's existing facilities near Turkey. The route also improves NCNG's ability to provide natural gas service to the unserved areas in the vicinity of Beulaville, Wallace and Rose Hill, three areas considered by some to be centers for potential industrial growth.

The Commission concludes that the facilities as proposed are reasonably sized and designed and that the proposed route is appropriate to bring natural gas service to Duplin and Onslow Counties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14-16

The evidence for these findings of fact is contained in the testimony and exhibits of NCNG witness Wells, the testimony of public witnesses Fountain, Fitzpatrick and Choate and the resolutions of certain local governments supporting the project which were filed with the Commission.

Pursuant to Commission Rule R6-84(b), one factor that the Commission may consider in deciding whether to approve funding from an expansion fund for a particular project is the extent of contributions from local governments. Faison, Kenansville, Jacksonville, Duplin County and Onslow County all passed resolutions expressing their support for the proposed project and authorizing the provision of financial assistance to facilitate the project and its approval by the Commission. These

local governments recognized that there is a great demand for the extension of natural gas facilities throughout eastern North Carolina but that funds available to pay for such extensions are limited.

The Public Staff has estimated that the local government assistance payments, which have been committed to provide reimbursement for costs incurred on the project, will total approximately $661,100. Such support is viewed as a positive factor by the Commission.

In their Stipulation, NCNG and the Public Staff urged the Commission to approve the local government assistance payments as a source of funds which may be deposited into NCNG's expansion fund. The Commission believes that local government assistance payments in the form set forth in the resolutions are appropriate sources of funds for an expansion fund and should be approved. These local government assistance payments offset other expansion fund monies that would be needed to make up the negative NPV of this project.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17-19

The evidence for these findings of fact is contained in the testimony and exhibits of NCNG witnesses Wells and Davis, NCNG's petition as modified and the Stipulation between the Public Staff and NCNG.

NCNG witness Wells' Exhibit A is a letter from the United States Marine Corps which was received in March, 1995. The letter was executed by Major General L. H. Livingston, Commanding General for the Marine Corps Base, Camp Lejeune and by Rear Admiral Thomas A. Dames, Commander, Atlantic Division, Naval Facilities Engineering Command. The Atlantic Division, Naval Facilities Engineering Command has responsibility for the procurement of utility services for the Camp Lejeune facilities. The letter sets forth a commitment by the United States government to convert oil-fired steam boilers to natural gas at seven steam plants located on and around Camp Lejeune in Onslow County. Witness Wells testified that it is anticipated that these conversions will cost the government approximately $1.2 million. There are certain conditions precedent set forth in the letter which were addressed by witness Davis in his direct and supplemental direct testimony. These include approval by the Commission of the expansion project, NCNG's commitment to construct the project, the Commission's approval or acceptance of the initial proposed rate schedules, the availability of appropriations to the government for the purposes of converting the boilers from oil to natural gas and to pay for the natural gas to be used, the completion of certain requisite approvals (a business clearance memorandum and execution of a justification and authorization form) and execution of a standard Federal Acquisition Regulation Utility Service Contract.

Witness Davis testified that, by the hearing date, Camp Lejeune had received $122,254 from the United States government to perform the design work necessary to convert the steam boilers to natural gas. This project also had been designated by the Marine Corps in its energy budget as its number one priority energy project and NCNG had been advised that funding should be available for the remainder of the conversion project as soon as the design work was completed provided the Commission approved the expansion project. The Marine Corps confirmed to NCNG that they were willing to convert the steam boilers to utilize natural gas but only if natural gas is going to be available.

The requisite approvals, including the business clearance memorandum and justification and authorization forms, are standard forms prepared immediately before the execution of the natural gas service contract. Such forms confirm that NCNG holds the franchised service territory and that the proposed expenditures are based on fair and reasonable estimates. The Commission concludes that NCNG has reasonably relied on the letter of commitment it received from the United States Marine Corps in proceeding with this project.

The letter NCNG received from the Marine Corps sets forth a volumetric commitment of 616,943 dekatherms per year by year three of the contract (year 5 of the project) compared to the 1.6 million dekatherms sought by NCNG and referenced in its original petition; however, NCNG witness Wells testified that the Marine Corps had accelerated their conversion timetable and NCNG witness Evans noted that the value of money received early in a NPV study makes a greater impact than margins received in later years. Further, witness Wells testified that the minimum annual margin agreed to by the Marine Corps was sufficient to make up for much of the lower volumetric commitment.

Both NCNG witnesses Wells and Davis testified that the Marine Corps could make no commitment to use natural gas beyond ten years and that the volume reduction was a result of the Marine Corps' study which indicated that they could not convert their coal-fired boilers at this time. Witness Davis pointed out that the government wanted no commitment of any kind after ten years including no termination liability if it did not use natural gas beyond the ten years. However, due to the volumetric and margin commitments, NCNG's investment in that portion of the project represented by Camp Lejeune's volumes would substantially be paid for within the ten years, thus protecting NCNG's ratepayers. NCNG also obtained a commitment that if during the first ten years the government closed the base or otherwise wished to terminate its natural gas usage, it would pay a termination fee that would represent the remaining unpaid investment, further protecting NCNG's ratepayers. Witness Wells testified that any net margins earned from sales or transportation of natural gas to Camp Lejeune after the ten-year period would be credited for the benefit of NCNG's system in a general rate case proceeding.

Having completed its investigation, the Public Staff concluded that the proposed sales and transportation tariffs and rate schedules filed by NCNG in this docket for service to military installations located in Onslow County are appropriate, just and reasonable. This conclusion is set forth in the Stipulation between NCNG and the Public Staff. The Commission concludes that the agreement worked out between NCNG and the United States government reasonably protects NCNG's ratepayers by supporting the investment by NCNG that will become part of NCNG's rate base in its next general rate case. The minimum annual margin committed by the Marine Corps is a reasonable amount to be paid for gas service under the terms set forth in the letter to NCNG. NCNG has received a ten-year commitment with minimum annual margins. The Commission finds and concludes that the rates proposed for service to military installations in Onslow County which will be served through this expansion project represent the military's fair share of the cost of this project taking into consideration factors such as cost, value of service, quantity of gas, length of commitment and NCNG's other rates presently in existence, of which the Commission takes judicial notice.

CUCA argues that the Commission should not approve this project for funding until the United States government has committed sufficient funds to convert to natural gas at Camp Lejeune. NCNG, citing witness Davis' testimony and the commitment letter from the government, responds that the government is committed to converting facilities at Camp Lejeune and that some funding has already been approved, but that the Commission's approval of this project is a condition precedent to further funding. CUCA relied upon a similar argument in its motion to continue the hearing, which the Commission denied. The Commission again rejects CUCA's argument. CUCA also argues that the Commission should not approve this project at all because it requires existing ratepayers to subsidize the United States government. The Commission rejects this argument. The Commission has just concluded that the rates for military installations should be approved because they represent a fair share of the cost of the project. Neither CUCA nor any other party presented evidence challenging the level of the rates to be paid for natural gas service to the military installations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20 AND 21

The evidence for these findings of fact is contained in the testimony and exhibits of NCNG witnesses Wells, Davis and Baldwin and the testimony of Public Staff witnesses Hinton and Hoard.

Public Staff witness Hinton testified that the Public Staff's investigation supported NCNG's customer projections including that for Camp Lejeune.

NCNG witness Baldwin testified concerning NCNG's marketing efforts in Duplin and Onslow counties. Initially, NCNG obtained information from the directors for the economic development commissions in the two counties and, as it proceeded in its efforts, it relied closely on relationships with other persons involved in economic development, including civic leaders. NCNG conducted mail surveys, on-site surveys and aerial reviews to locate potential customers along potential natural gas pipeline routes. Such information was used as part of the route selection. Witness Baldwin set forth in his exhibits the industries which were located in Duplin County and interested in natural gas and the characteristics of their fuel usage. Most of the industrial facilities utilized low cost, residual oil and/or coal and were concentrated in the Rose Hill and Wallace areas which greatly diminishes the economic feasibility of extending natural gas lines to such facilities as part of this project. In addition to the Camp Lejeune load, NCNG included in its proposed expansion project one industrial facility located at Faison, approximately fifty commercial customers located along the project route and a hospital located in Kenansville. Witness Baldwin provided information concerning the types of commercial customers included and their consumption characteristics. He testified that in his opinion, NCNG had included all the potential customers currently located along the project route which would positively impact the NPV calculation for this project. Davis Exhibit 9 set forth the projected annual volumes from potential customers now located in the area to be served by this project.

NCNG did not include as a part of its NPV calculation, any projected margins from new industrial and large commercial facilities that may subsequently locate in the area to be covered by the expansion project. NCNG witness Wells and Public Staff witness Hoard explained the reasons why only quantifiable levels of natural gas usage were included in the NPV study. Witness Wells testified that although he believes the availability of natural gas will help attract new industrial customers to an area, there is no way to predict the characteristics of the growth or when it will

occur. He pointed out that the existence of natural gas along with other infrastructure and area opportunities may result in a large facility employing many people located in the vicinity of the gas line but that the facility may use only a small amount of natural gas, while conversely, an industry with few employees may require a significant amount of natural gas. Natural gas usage by industrial and large commercial customers varies widely, and witness Wells testified that it is impossible for NCNG to know what the natural gas load will be or what additional natural gas facilities may be necessary in order to connect that load. Witness Wells pointed out that if substantial additional loads are added, the margin for such loads would be included in the company's general rate case proceedings and NCNG's customers would receive the benefit of such loads at that time.

Public Staff witness Hoard concurred that loads for industrial facilities that do not presently exist should not be included in the NPV calculation due to the lack of reliable information indicating that the facilities will materialize, thus preventing a reasonable determination to be made as to the gas load. Witness Hoard testified that

> because each industrial facility presents a unique situation, and could have a very significant effect on the NPV calculation, the cost associated with the down side risk of reflecting such a facility in the NPV calculation is very great. If such a facility does, in fact, materialize, NCNG can either buy back the project from the Expansion Fund, or roll the customer into rates in a general rate case. In either case, the benefits that this facility provides a system will be recognized.

Commission Rule R6-86 provides that if an expansion project is successful and economic development does occur, adding additional gas loads to the project, the utility may buy back, with Commission approval, the portion of the project that has become economically feasible. This rule recognizes that future growth in the previously unserved area, which is the goal of expansion projects, cannot be quantified at the time the project is approved and should not be included in the NPV study. The rule enables expansion fund monies to be rolled over for use on other projects, should expansion projects become feasible through economic growth and the addition of gas load. The Commission concludes that NCNG and the Public Staff have appropriately dealt with the impact of growth along the pipeline route. The Commission further concludes that, based upon the evidence presented to it, the projected annual volumes from potential customers are reasonable.

NCNG witness Davis testified that once annual volumes for potential customers were projected, margins were determined based upon customer survey and/or NCNG's experience with the types of customers included in the project and their alternate fuel capabilities. The Commission believes that this is a reasonable method for determining margins for the purposes of the NPV calculation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence for this finding of fact is contained primarily in the testimony of NCNG witness Davis and Public Staff witness Curtis and the Stipulation between NCNG and the Public Staff.

NCNG witness Davis testified that the total estimated cost of the project as proposed by NCNG in its modified petition was $18,909,508 after adjustment for expected inflation in cost over the first two years of the project when construction would occur. Witness Davis noted that of such total, approximately $9,612,000 would be incurred in the first year of the project and $9,297,000 in the second year. Davis Exhibit 6 set forth a detailed breakdown of the plant cost for both transmission and distribution plant additions. Public Staff witness Curtis testified that 3,000 feet of distribution main should be removed and NCNG concurred as part of the Stipulation. The Public Staff and NCNG have stipulated that the total cost of the project is estimated to be $18,834,100, consisting of transmission plant of $17,083,500 and distribution plant of $1,750,600.

NCNG witness Davis testified that NCNG had reviewed the terrain of the proposed route from both the air and ground to determine the extent of swamp and river crossings and other impediments which could affect cost. NCNG then used unit costs from other gas construction projects in its service territory in recent years and was assisted in the estimation process by a contractor familiar with pipeline projects of this nature. Witness Curtis testified that the construction cost estimates were in line with other NCNG projects he has reviewed.

The Commission concludes that the total cost estimate for the project is reasonable and should be used in the NPV calculation based upon the evidence presented to the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 - 25

The evidence for these findings of fact is contained in the testimony and exhibits of NCNG witnesses Wells and Evans, the testimony of Public Staff witnesses Hoard, Hinton and Curtis and the Stipulation between the Public Staff and NCNG.

NCNG witness Evans determined that the NPV for the proposed project was a negative $12,467,400. Public Staff witness Hoard determined that NCNG requires $12,422,000 from its expansion fund as the negative NPV for this project. The Public Staff's NPV calculation differs from that of NCNG in the following areas:

1. margin amounts have been reduced to exclude company use and unaccounted for gas cost;

2. the margin per dekatherm for the IST customer has been increased from $0.05 to $0.20;

3. margin amounts for all customers except Camp Lejeune and the IST customer have been increased to reflect the effects of inflation;

4. the margins associated with the IST customer have been reflected in cash inflows beginning in year 5;

5. property and other general taxes have been computed based on gross plant instead of net plant;

6. estimated local government assistance payments have been increased;

7. construction costs have been reduced to exclude a portion of the distribution mains in Jacksonville;

8. operating and maintenance expenses have been increased to reflect the effects of inflation; and

9. state income taxes have been changed to reflect a state tax rate of 7.75%.

The negative NPV for this project as determined by the Public Staff was only $45,400 more positive than that determined by NCNG, and NCNG accepted this negative NPV as part of the Stipulation.

Except as noted, NCNG and the Public Staff agreed in their testimony on the methods and adjustments utilized in the NPV calculation. The Commission is of the opinion that the methods and adjustments agreed to by the Public Staff and NCNG in their testimony are just, reasonable and proper. For the reasons set forth in this Order and based upon the evidence as a whole, the Commission concludes that all of the provisions of the Stipulation are fair and reasonable under the circumstances of this proceeding. The Commission further concludes, based upon the complete record in this proceeding, that the the negative NPV as set forth in the Stipulation is fair and reasonable. Disagreements in the testimony of the Public Staff and NCNG over the treatment of IST margins were not material given the level of volumes from the one IST customer included in the project. Such differences may be more pronounced in expansion projects involving significantly greater IST volumes. Neither party shall be held to waive the right to assert any position it may have on the IST issue, or other differences resolved by the Stipulation, in any other docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence for this finding of fact is contained in the testimony of NCNG witness Wells and the petition of NCNG as modified. Witness Wells testified that as of May 31, 1995, the balance held by the State Treasurer for NCNG's expansion fund was approximately $11,231,000. He noted that NCNG was holding additional funds totaling approximately $4,581,000 for possible inclusion in its expansion fund although much of that money was subject to an appeal in federal court. Witness Wells finally noted that the annual interest income on the expansion fund account is almost $800,000. It appears to the Commission that expansion fund monies will be available as they are needed for the project the Commission is approving in this docket given the negative NPV of $12,422,000.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 27-28

The evidence for these findings of fact is contained in the testimony of all the witnesses taken together and their exhibits and work papers filed with the Commission and received into evidence.

For the reasons set forth in the foregoing paragraphs and based upon the undisputed evidence presented at the hearing, the Commission concludes that the proposed project is in accordance with the General Statutes and Commission Rules and is just, reasonable and fair and that funding from NCNG's expansion fund in an amount up to the negative NPV for the project of $12,422,000 should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

Finally, CUCA argues that approval of this project should be conditioned upon a mechanism to compare the level of economic development in the area before and after the availability of natural gas. The Commission will order no such mechanism. In its appeal challenging the constitutionality of the expansion fund legislation, CUCA argued that the Commission should have weighed the prospects for future economic development before ordering the creation of an expansion fund. The Court rejected that argument stating, "It is furthermore not necessary that the Commission evaluate the evidence based upon CUCA's faulty interpretation of N.C.G.S. § 62-158, with which CUCA implies that the Commission is required to redetermine the economic values inherent in facilitating the construction of natural gas facilities in an unserved area, a task already undertaken by the General Assembly. To the extent that the General Assembly has already done so, it has effectively declared that the establishment of an expansion fund is in the public interest." State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc., 336 N.C. 657, 670-1 (1994). By its present request for reports to track economic development, CUCA is once again trying to get this Commission to reexamine the policy decisions made by the General Assembly in enacting G.S. §62-158. The Commission will not do so. Further, the Commission notes that some information on economic development is already gathered as part of the Commission's and the Public Staff's biennial reports to the General Assembly pursuant to G.S. § 62-36A.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's proposed project to extend natural gas service to Duplin and Onslow Counties, as modified to reflect the elimination of 3,000 feet of distribution main in Jacksonville in accordance with Exhibit A attached to the Stipulation between NCNG and the Public Staff, is hereby approved for funding from NCNG's expansion fund in the amount of $12,422, 000 which is the negative net present value of the project;

2. That disbursement of up to $12,422,000 for this project from NCNG's expansion fund in accordance with applicable Commission rules and this Order is hereby authorized;

3. That NCNG shall file reports as required by Commission Rules and shall request progress payments, for reimbursement for actual amounts paid by NCNG, pursuant to the provisions of Commission Rule R6-85(b) and such requests shall be handled as provided by that Rule;

4. That the local government assistance payments authorized in resolutions adopted by Onslow County, Duplin County, the towns of Faison and Kenansville and the city of Jacksonville are hereby approved as a reasonable source of funding for NCNG's expansion fund for the purpose of offsetting a like amount of expansion fund monies from other sources that would otherwise be

necessary to make up the negative NPV of this project and such payments shall be deposited into NCNG's expansion fund as received;

5. That NCNG shall file requests with the Commission for disbursement to it of the annual assistance payments in the years in which they are received and deposited, and the Public Staff shall present such requests to the Commission in the form of a Staff Conference agenda item, and NCNG's final accounting for this project pursuant to Commission Rule R6-85(c) shall so provide; and

6. That the proposed sales and transportation tariffs and rate schedules filed by NCNG in this docket for Onslow County Marine Corps facilities are hereby approved and accepted as just and reasonable under the circumstances of this project and NCNG is authorized to advise appropriate officials of the United States Marine Corps that the condition precedents in their letter to NCNG of March 19, 1995, requiring Commission approval of the project and approval or acceptance of the initial proposed rate schedules for military facilities in Onslow County have been met.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of August, 1995.

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

MOTOR TRUCKS - DENYING APPLICATION

DOCKET NO. T-4042

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Father & Son Moving and Storage of Jacksonville, Inc., 6805 Stuart Lane South, Jacksonville, Florida 33205 - Application for Sale and Transfer of Certificate No. C-2064 from Richard S. Bunting, d/b/a Coastal Carrier, 1106 Adelaide Drive, Wilmington, North Carolina 28412	)	FINAL ORDER RULING ON EXCEPTIONS AND DENYING APPLICATION

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, February 16, 1995, at 9:30 a.m.

BEFORE: Chairman Hugh A. Wells, Presiding; and Commissioners William W. Redman, Jr., Charles H. Hughes, Laurence A. Cobb, Allyson K. Duncan, Ralph A. Hunt, and Judy Hunt

APPEARANCES:

For the Applicant:

Ralph McDonald and Cathleen M. Plaut, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602
For: Father & Son Moving and Storage of Jacksonville, Inc.

For the Protestants:

David H. Permar, Hatch, Little & Bunn, LLP., 327 Hillsborough Street, Raleigh, North Carolina 27603
For: ABC Moving and Storage, et. al.

BY THE COMMISSION: On August 4, 1994, a joint application was filed with the Commission on behalf of Father & Son Moving and Storage of Jacksonville, Inc., as Transferee, and Richard S. Bunting, d/b/a Coastal Carrier, as Transferor, seeking authority to sell and transfer Common Carrier Certificate No. C-2064 from Transferor to Transferee. The authority sought to be transferred is statewide household goods.

The application was listed in the Commission's Calendar of Hearings dated August 24, 1994, with a notice containing a provision that if no protests were filed by September 13, 1994, the Commission would decide the case on the record; and if protests were filed within the time specified, the Commission would set the application for hearing. On September 13, 1994, a Protest and Motion for Intervention was filed by David H. Permar, Hatch, Little & Bunn, Attorneys at Law, Raleigh,

North Carolina, on behalf of 25 household goods movers holding authority issued by the Commission and operating in North Carolina. By Order issued on September 15, 1994, the Commission granted the intervention and assigned the application for hearing on Thursday, October 13, 1994. By Order issued September 24, 1994, the Commission rescheduled the hearing to October 22, 1994, at 9:30 a.m., Dobbs Building, Hearing Room 2115, 430 North Salisbury Street, Raleigh, North Carolina.

Upon call of the matter for hearing, the Transferee and Protestants were present and represented by counsel. The Transferee offered in support of the application the testimony of its Vice President, Steven Michael Horowitz. The Protestants offered in opposition to the application the testimony of James Applebee, Jr., President and CEO of the Better Business Bureau Southern Piedmont, Inc.; Michael Newell, Executive Vice President and General Manager of Charlotte Van and Storage Company, Inc.; and Phil Cook, Director, Transportation Rates Division, North Carolina Utilities Commission.

On January 12, 1995, Hearing Examiner Larry S. Height entered a Recommended Order in this docket granting the application.

On January 26, 1995, the Protestants filed exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order dated January 27, 1995, the Commission scheduled an oral argument on exceptions for Thursday, February 16, 1995.

Upon call of the matter for oral argument on exceptions, the Transferee, Transferor, and Protestants were represented by counsel who presented their positions before the full Commission.

Based upon a careful consideration of the entire record in this proceeding and the oral argument of the parties before the Commission on February 16, 1995, the Commission now makes the following:

FINDINGS OF FACT

1. By this application, approval is sought for the sale and transfer of Common Carrier Certificate No. C-2064 from Richard S. Bunting, d/b/a Coastal Carrier to Father & Son Moving and Storage of Jacksonville, Inc., for consideration of ten thousand dollars ($10,000). The authority sought to be transferred is statewide household goods.

2. Richard S. Bunting, the Transferor in this proceeding, filed an application with the Commission on April 20, 1993, in Docket No. T-3816 to purchase the certificate which is the subject of this proceeding.

3. By Order dated May 17, 1993, the Commission approved the sale and transfer of household goods authority to the Transferor from Everett Express, Inc., in Docket No. T-3816.

4. The Transferor's annual reports for the years 1993 and 1994 indicate that the Transferor had no motor carrier operations during this time.

5. On July 8, 1994, Richard S. Bunting requested an authorized suspension of operations under Common Carrier Certificate No. C-2064, the same certificate that is sought to be transferred in this docket and which he acquired in the May 17, 1993, Order.

6. By Order dated July 12, 1994, in Docket No. T-3816, Sub 1, the Commission granted an authorized suspension of operations under Common Carrier Certificate No. C-2064 until July 1, 1995.

7. The Transferee is a Florida corporation with its principal offices and place of business in Jacksonville, Florida. The principal shareholders of the corporation are Fred Massaro and Evonne Horowitz. The officers are Fred Massaro - President, Steven Horowitz - Vice President, and Evonne Horowitz - Secretary and Treasurer.

8. The Transferee is an experienced household goods mover and has operated in Jacksonville, Florida, since September 19, 1992. During that period, the Transferee performed somewhere between 4,000 and 5,000 moves within Florida. Eighteen complaints concerning claims handling, rates, or service have been filed with the Jacksonville Better Business Bureau against the Transferee.

9. The Transferee pays $2,000 per month to Father & Son Consulting, Inc., under a consulting agreement which enables Transferee to use the name "Father & Son Moving and Storage" and advertise under such name.

10. Approximately four or five months prior to the hearing, Transferee placed a full page ad in the Charlotte yellow pages in anticipation of obtaining household goods authority. The Charlotte telephone number in the ad rang at Transferee's Florida office. Transferee did not perform any moves within North Carolina during this time. Two months after the ads were placed, the telephone was disconnected pending the outcome of this hearing.

11. There are a number of Father & Son Moving and Storage companies located throughout the United States. The advertising is basically the same copy used by all companies operating under the Father & Son name. The Charlotte yellow pages ad indicates or states that Father & Son is "family owned and operated since 1908, 4th generation, my grandfather moved your grandfather, family men on every van, and licensed piano movers."

12. The Transferee has an agency agreement with Family Moving & Storage, Inc., which provides that Family Moving will haul any of the Transferee's interstate bookings and pay the Transferee a commission of 20%.

13. Evonne Horowitz and Fred Massaro, officers of the Transferee, have recently formed a new company, All in the Family Moving and Storage of Jacksonville, Inc., which acquired authority from the Intrastate Commerce Commission in June 1994.

14. The Transferee's equipment includes two trucks suitable for the transportation of household goods which it plans to utilize in North Carolina if this application is granted.

15. The Transferee, at the time of the hearing, did not have general liability and cargo insurance for its proposed North Carolina operations but indicated the insurance would be obtained prior to initiating operations.

16. There are approximately 200 carriers that have household goods authority issued by the Commission.

17. The twenty-five (25) Protestants are common carriers of household goods within North Carolina and have authority from the Commission.

18. The Transferee is not fit to provide service under the authority sought to be transferred because it held itself out to the public to provide service without the proper authority by advertising in the Charlotte yellow pages prior to the filing of this application. The Commission also finds that the misleading content of the advertising renders the Transferee unfit.

WHEREUPON, the Commission reaches the following:

CONCLUSIONS

This application for approval of sale and transfer of a motor carrier franchise is governed by G.S. 62-111. Section (a) of G.S. 62-111 provides in pertinent part that no franchise shall be sold, assigned, pledged or transferred, except after application to and written permission by the Commission, which approval shall be given if justified by the public convenience and necessity. Subsection (e) of G.S. 62-111 sets out the criteria to be used by the Commission in determining the public convenience and necessity:

> "The Commission shall approve applications for transfer of motor carrier franchises made upon this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, would not adversely affect the service to the public under said franchise, would not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing, and able to perform such service to the public under said franchise, and that service under said franchise has been continued to be offered to the public up to the time of filing said application in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)."

The Protestants contend that the application should be denied for the following reasons:

a. The Transferor did not comply with the requirements of the May 17, 1993, Order Granting the Authority sought to be transferred in this docket because he failed to begin operations within 30 days after the effective date of that Order as required;

b. The Transferor conducted no operations under the authority; therefore, it is dormant pursuant to G.S. 62-112(a)(5) and cannot be transferred; and

c. The Transferee is unfit to perform service to the public under the franchise.

It is the contention of the Protestants that the authority may not be transferred as a result of the Transferor's failure to begin operations within 30 days after the effective date of the Order transferring the authority from Everett Express, Inc. The Protestants' view is based on decretal paragraph 3 of the May 17, 1993, Order in Docket No. T-3816, which provided that authority would cease unless the Transferor complied with the requirements of the Order and initiated operations within 30 days.

As previously indicated, on July 12, 1994, in Docket No. T-3816, Sub 1, the Commission granted the Transferor an authorized suspension. This suspension was granted through July 1, 1995. The Protestants argue that the Order Granting Authorized Suspension covers only the period subsequent to July 12, 1994. In essence, the Order Granting Authorized Suspension does not cover the year prior to July 12, 1994, when no suspension of operations was authorized.

The Commission agrees, however, with the Transferee that the dormancy and failure to conduct the operations for a period of more than thirty (30) days is cured by the Commission's Order Granting Authorized Suspension. The statute indicates that a franchise may be revoked at the discretion of the Commission after notice and hearing. Nowhere in the facts and/or evidence presented at the hearing was there an indication that the Commission had exercised this discretion.

The Transferee cites a previous decision by the Commission which makes for a very strong argument in favor of its position. In the matter of Charles Mitchell Powell d/b/a Powell Trucking; NCUC Docket No. T-3584; Order Sustaining Exception and Remanding to Examiner (June 29, 1992), the Commission discussed the effect of an authorized suspension as follows:

> The Commission disagrees with the Hearing Examiner as to the effect of the three Commission Orders granting Colonial authorized suspensions of operation. 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 are 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.

Id. at 2.

In view of this decision, Transferor's certificate is not dormant and is transferrable.

Nevertheless, the Protestants further assert that the Transferee is unfit to perform service to the public under the franchise. Based on the evidence offered at the hearing which bears upon the Transferee's fitness to operate as a common carrier in North Carolina, the Commission cannot find, as G.S. 62-111(c) requires, that the Transferee is fit to perform as a common carrier of household goods in this State. The Charlotte yellow pages ad was placed prior to the filing of the sale and transfer application in this docket. In effect, the Transferee was holding itself out to the public to provide service when it was not authorized to do so. Also, certain items in the content of the ad are misleading. The Transferee has been in business only since 1992 and not 1908 as indicated in the ad. Other misleading items include "4th generation" and "licensed piano movers". North Carolina does not issue a piano movers license. The movement of pianos is part of household goods transportation.

Accordingly, the Commission is compelled to conclude that, based upon the entire record in this docket, the Transferee is unfit to provide the service requested and that the application should be denied. The Commission is especially concerned about the premature advertising of the Transferee prior to even filing the sale and transfer application and the misleading content of the yellow pages advertising. The Commission cannot and will not condone these practices.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions to the Recommended Order filed in this docket by the Protestants on January 26, 1995, be, and the same are hereby, allowed in part and denied in part.

2. That the application for the sale and transfer of Common Carrier Certificate No. C-2064 from Richard S. Bunting, d/b/a Coastal Carrier to Father & Son Moving and Storage of Jacksonville, Inc., be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of March 1995.

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

Commissioner Ralph A. Hunt dissents and would affirm the Recommended Order.

DOCKET NO. T-4071

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Professional Movers Inc., Post Office) Box 600, Whittier, North Carolina 28789 -) Application for Common Carrier Authority)	ORDER DENYING EXCEPTIONS AND APPLICATION, REMANDING CASE FOR FURTHER PROCEEDINGS

ORAL ARGUMENT

HEARD IN: Commission Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday May 22, 1995, at 2:00 p.m.

BEFORE: Chairman Hugh A. Wells, Presiding; and Commissioners William W. Redman, Judy Hunt, Ralph A. Hunt, and Allyson K. Duncan

APPEARANCES:

For the Applicant:

M. Jackson Nichols, Allen & Pinnix, 20 Market Plaza, Suite 200, Post Office Box 1270, Raleigh, North Carolina 27602
For: Professional Movers Incorporated

For the Protestants:

Theodore C. Brown, Jr., Attorney at Law, Post Office Box 12907, Raleigh, North Carolina 27605
For: Smith Dray Line & Storage Company of North Carolina, Inc.

BY THE COMMISSION: On February 16, 1995, Professional Movers Inc. (Applicant), filed an application with the Commission for common carrier authority to transport Group 18, household goods, statewide.

The Commission Calendar of Hearings dated February 22, 1995, set the application for hearing in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, March 30, 1995, at 9:30 a.m. The hearing took place as scheduled at that time and place.

A Protest and Petition to Intervene was filed on March 10, 1995, on behalf of Smith Dray Line & Storage Company of North Carolina, Inc. (Smith Dray Line), Asheville, North Carolina. By Order dated March 15, 1995, Protestant was allowed to intervene in this proceeding.

Upon call of the matter for hearing, Applicant and Protestant were present and represented by counsel. Applicant presented in support of its application the testimony of its President, Mr. Troy C. Wilkie, and the testimony of Mr. J. C. King. Protestant offered in opposition to the application the testimony of Mr. Joel R. Gilespie.

On April 17, 1995, Hearing Examiner Barbara Sharpe entered a Recommended Order denying the application of Professional Movers Inc., for common carrier authority to transport Group 18, household goods, statewide. On May 2, 1995, Protestant filed exceptions to the Recommended Order and requested the Commission to schedule oral arguments to consider the exceptions. An Order dated May 4, 1995, was issued scheduling oral arguments on the exceptions for Monday, May 22, 1995, at 2:00 p.m. in Commission Hearing Room 2115, Dobbs Building, Raleigh, North Carolina.

Upon call of the matter for oral argument on exceptions, Applicant and Protestant were present and represented by counsel before the Commission.

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received in evidence and the entire record in this proceeding the Commission now makes the following

FINDINGS OF FACT

1. By this application, Applicant seeks statewide common carrier authority to transport Group 18, household goods.

2. Applicant is a North Carolina corporation incorporated in March 1994. President of the Applicant's corporation is Mr. Troy C. Wilkie.

3. Applicant owns a U-Haul truck rental franchise in Whittier, North Carolina. Also, Mr. Wilkie is president of Temporary Help of Western North Carolina (Temporary Help).

4. Mr. Wilkie rents U-Haul vehicles to people desiring to move. Mr. Wilkie refers people to Temporary Help when these same people are interested in hiring laborers to help them move. Mr. Wilkie receives a fee from Temporary Help for these referrals.

5. Prior to the filing of this application, Applicant performed some movements of household goods; however, when it became aware of the need for operating authority, it stopped advertising and did not perform any more moves.

6. Applicant owns a 22-foot van-type truck suitable for the movement of household goods and has resources with which to procure additional trucks and equipment if needed.

7. Mr. King is a semi-retired resident of Bryson City, North Carolina. He works occasionally as a laborer for Temporary Help. He has helped move furniture and household goods in the areas of Jackson County and Swain County.

8. Smith Dray Line holds Common Carrier Certificate No. C-651 which authorizes the statewide transportation of household goods. It has been in business since 1911. Mr. Gilespie is general manager of the Asheville, North Carolina, location and has held that position for 10 years. Within Mr. Gilespie's territory, Smith Dray Line operates in most of the western counties of North Carolina from Morganton west to the Tennessee state line, including Swain and Jackson Counties. In 1994, Mr. Gilespie testified that Smith Dray Line made approximately 15 - 25 moves in Jackson County and approximately five to ten moves in Swain County.

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 public convenience and necessity require the proposed service in addition to existing authorized transportation service; and

2. That Applicant is fit, willing, and able to properly perform the proposed service; and

3. That Applicant is solvent and financially able to furnish adequate service on a continuing basis.

Commission Rule R2-15(a) further provides as follows:

(a) If the application is for a certificate to operate as a common carrier of property, the applicant shall establish by proof (i) that a public demand and need exists for the proposed service in addition to existing authorized service, (ii) that the applicant is fit, willing, and able to properly perform the proposed service, and (iii) that the applicant is solvent and financially able to furnish adequate service on a continuing basis. Uncorroborated testimony of the applicant is generally insufficient to establish public demand and need.

Applicant's evidence tended to show, prima facie, a public demand and need for additional service for the movement of household goods between points in Jackson and Swain Counties, but not statewide. The Commission, therefore, concludes that the Applicant's request for common carrier authority to transport Group 18, household goods, statewide, should be denied. The Commission, however, further concludes that this case should be remanded for further consideration of the public demand and need existing for the proposed service in addition to the existing authorized service for common carrier authority to transport Group 18, household goods, between points in Jackson and Swain Counties.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions to the Recommended Order filed in this docket by the Applicant on May 2, 1995, be, and the same are hereby, allowed in part and denied in part.

2. That the Hearing Examiner's decision issued in the Order of April 17, 1995, denying the application of Professional Movers, Inc., for common carrier authority to transport Group 18, household goods statewide, be, and the same is hereby, affirmed.

3. That this matter be remanded to the Hearing Examiner for further consideration as to the public demand and need existing for the proposed service in addition to the existing authorized service for common carrier authority to transport Group 18, household goods, between points in Jackson and Swain Counties.

4. That a hearing be, and the same hereby is, scheduled for the following time and place:

Wednesday, June 28, 1995, at 9:00 a.m.
Commissioners' Chambers, Room 204
Buncombe County Courthouse
Courthouse Plaza
Asheville, North Carolina

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of June 1995.

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

DOCKET NO. P-55, SUB 1001

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Lexington Telephone Company, Complainant	)	
v.	)	ORDER DISMISSING COMPLAINT
BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company, Respondent	)	

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, on May 2, 1995

BEFORE: Chairman Hugh A. Wells, presiding; Commissioners William W. Redman, Jr. and Allyson K. Duncan

APPEARANCES:

For the Complainant:

Daniel C. Higgins, Post Office Box 10867, Raleigh, North Carolina

For the Respondent:

Leon H. Lee, Jr., Southern Bell Telephone and Telegraph Company, Post Office Box 30188, Charlotte, North Carolina 28230

BY THE COMMISSION: On October 25, 1994, Lexington Telephone Company (Lexington) filed a complaint seeking an Order enjoining BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) from serving APC Building Products, a business located in northern Davidson County, North Carolina. By Order of November 8, 1994, the Commission served the complaint on Southern Bell. Southern Bell filed its Answer and Motion to Dismiss on December 20, 1994. The Commission originally set this matter for hearing on March 21, 1995, and continued the hearing until May 2, 1995.

At the hearing, Lexington presented testimony from Barry Reep, Harry D. Barnes, and B. Earl Hester, Jr. Southern Bell presented testimony from Gayle Williams, who is an employee of APC, and three Southern Bell employees: Phillip R. Poindexter, Rachel Yancey, and B.A. Rudisill.

Based on the entire record in this docket, including all testimony and exhibits introduced into evidence, the Commission makes the following

FINDINGS OF FACT

1. Lexington and Southern Bell are certificated local exchange companies that have adjoining service territories in northern Davidson County, North Carolina.

2. The premises occupied by APC Building Products straddle the boundary line between the service territories of Lexington and Southern Bell.

3. APC Building Products has attached its customer premise equipment to network facilities of both Lexington and Southern Bell and is using the service obtained from Southern Bell to place both local calls and interstate long distance calls.

EVIDENCE IN SUPPORT OF FINDINGS OF FACT NUMBERS 1 AND 2

The facts that gave rise to this proceeding are not in dispute. Both Lexington and Southern Bell share a service boundary in northern Davidson County. While the APC Building Products location was under construction in the late spring and early summer of 1994, neither Lexington nor Southern Bell could ascertain from a visual inspection where the boundary between their two service areas was located in relation to the APC Building Products site. The two companies agreed to share the cost of a surveyor to make a drawing that would show the relationship of the boundary to the APC Building Products site. Officials from Lexington met with the surveyor and indicated the two known points of the boundary on either side of the APC Building Products site. The surveyor ran the line between the two points and made a drawing reflecting that the boundary runs through the APC Building Products site. A copy of that survey was admitted into evidence as Williams Exhibit A.

EVIDENCE IN SUPPORT OF FINDING OF FACT NUMBER 3

The parties do not dispute the fact that each of them is serving APC Building Products; indeed, the relief sought by Lexington is an Order prohibiting Southern Bell from serving APC Building Products. Gayle Williams, the Marketing Manager for APC Building Products, testified that APC has connected its PBX to Southern Bell's network and is using the network services provided by Southern Bell to place local calls and interstate long distance calls.

Based on the foregoing findings of fact, the Commission reaches the following

CONCLUSIONS

The Commission concludes that the deciding principle in this case is that a public utility is entitled to provide service to a customer who is located within its franchise area. The application of this principle in this case means that a customer whose property straddles a service boundary can obtain service from either or both of the phone companies.

The Commission concludes that this principle accords with North Carolina law and with the reasoning in such leading cases as Fort Mill Telephone v. FCC, 719 F2d 80. (4th Cir. 1983) and

Texas Public Utility Commission v. FCC, 886 F2d 1325, 105 PUR4th 437 (D.C. Cir. 1985) where it was ruled in cases analogous to this one that the private benefit to the customer was not outweighed by a public detriment. The Commission further notes that the case of Town of Pineville v. Southern Bell Docket No. 89, Sub 71, 41 Pur 4th 619 (1981), where a customer extended his facilities into a neighboring utility's territory and sought service therefrom, is distinguishable in that there is no suggestion here that the customer extended his facility into a neighboring utility's territory for the purpose of receiving service there. (Indeed, the majority of APC's building is in Southern Bell's territory). Moreover, the continued viability of Town of Pineville is extremely dubious in light of the Fort Mill Telephone and Texas Public Utility Commission cases.

Moreover, the Commission concurs with Southern Bell's argument that Lexington's reliance on G.S. 62-110(a) is misplaced, since that provision is clearly intended to apply to territories where there is no incumbent public utility. The Commission also concurs with Southern Bell's argument that Lexington's position would tend to render franchise boundaries uncertain and may encourage uneconomic construction of facilities.

Lastly, the Commission notes that in its June 26, 1978, Order Settling Service Across Telephone Boundary Lines, Docket No. P-100, Sub 44, et al., the Commission in Ordering Paragraph No. 3 stated that all telephone companies "shall hereafter observe their telephone boundaries as filed . . . and shall not provide service across boundary lines except under tariff provision for such service or except upon specific application to and approval by the Commission . . . ."

IT IS, THEREFORE, ORDERED that the complaint filed by Lexington in this docket be dismissed and that this docket be closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of May 1995.

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

DOCKET NO. W-1051

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Britley Utilities, Inc., 8224 East Harris Boulevard, Charlotte, North Carolina 28227, for a Certificate of Public Convenience and Necessity to to Provide Water and Sewer Utility Services in Britley Subdivision in Cabarrus County, North Carolina, and for Approval of Rates	)	ORDER GRANTING WATER AND SEWER UTILITY FRANCHISE AND APPROVING RATES

Heard In: Community Room, First Union National Bank, 5075 Highway 49 South, Harrisburg, North Carolina, November 22, 1994; Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 29, 1994

Before: Commissioner Ralph A. Hunt, presiding and Commissioners William W. Redman, Jr., and Charles H. Hughes

Appearances:

For Britley Utilities, Inc.:

James L. Hunt, 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 April 8, 1994, Britley Utilities, Inc. (Britley, Company or Applicant) filed an application with the Commission for a certificate of public convenience and necessity to provide water and sewer utility service in Britley Subdivision in Cabarrus County, North Carolina and for approval of rates.

On May 11, 1994, the Commission issued an Order granting the Applicant temporary operating authority, approving interim rates, scheduling hearing, and requiring public notice.

On May 13, 1994, Britley filed a motion requesting a revision and partial rescinding of the Commission's Order of May 11, 1994. On May 26, 1994, John Crosland Company (Crosland) filed a motion in this docket opposing the Applicant's May 11, 1994 motion.

On June 3, 1994, the Commission issued an Order rescinding the temporary operating authority of the Applicant and interim rates and continuing Crosland as the emergency operator of the utility services in Britley Subdivision.

On June 28, 1994, the Applicant filed a motion for extension of time to present bond and give notice to the public. On August 3, 1994, the Applicant filed a motion to reschedule the public hearing and to stay requirement of public notice.

On August 8, 1994, the Commission issued an Order granting the Applicant's motion to reschedule hearing, staying the requirement of public notice, and indicating that it would later rule on the Applicant's pending June 28, 1994 motion regarding the bonding requirement.

On October 25, 1994, the Commission issued an Order requiring a response to the question of whether Britley intended to amend its application of April 8, 1994. On October 25, 1994, the Applicant responded that it did not plan to file any amendments to its application.

On October 27, 1994, the Commission issued an Order scheduling a public hearing to be held in Harrisburg on November 22, 1994, and an evidentiary hearing to be held in Raleigh on November 29, 1994.

On November 4, 1994, the Public Staff filed the affidavit of Thomas W. Farmer, Jr., relating to operating ratios for Britley Utilities, Inc. On November 9, 1994, the Public Staff pre-filed the testimony of Gina Y. Casselberry and Katherine A. Fernald.

On November 10, 1994, the Applicant filed a motion requesting the Commission to modify the bond requirement for Britley Utilities, Inc. On November 22, 1994, the Commission issued Orders denying the motion for alteration in the bond requirement, and appointing the Applicant as temporary water and sewer operator in Britley Subdivision effective December 1, 1994.

The public hearing was held as scheduled in Harrisburg on November 22, 1994, for the specific purpose of receiving testimony from public witnesses. The following public witnesses appeared and presented testimony: David G. Feeney, Ronald W. Cobb, Michael Carlson, Donna R. Bialosky, Sunny P. Garner, Tim Feeney and Frank Redies.

On November 29, 1994, the Company and the Public Staff signed a joint stipulation addressing issues related to the proposed rates for water and sewer utility service. The parties indicated agreement that the stipulated rates might be put into effect without allowing time to file exceptions to the full Commission.

An evidentiary hearing was held as scheduled in Raleigh on November 29, 1994. The Public Staff presented the testimony of Gina Y. Casselberry, a Utilities Engineer with the Public Staff Water Division. The affidavits of Thomas W. Farmer, Jr., Financial Analyst, Economic Research Division of the Public Staff, and Katherine A. Fernald, Supervisor of the Water Section of the Accounting Division of the Public Staff, were admitted into evidence. The Applicant presented the testimony of William Whitley, III.

Based upon the foregoing, the evidence introduced at the hearings, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. Britley Utilities, Inc., is seeking a certificate of public convenience and necessity to furnish water and sewer utility service in Britley Subdivision in Cabarrus County, North Carolina.

2. There is a need and demand for water and sewer utility service in Britley Subdivision.

3. The test period appropriate for use in this proceeding is the 12-month period ended December 31, 1993.

4. The operating ratio methodology should be used in establishing rates in this case. A margin of 10.30% on operating revenue deductions requiring a return for water service is appropriate for use in this proceeding.

5. The Applicant, based upon a test year ended December 31, 1993, has requested rates designed to produce additional annual water service revenues of $9,157 above those currently authorized for the temporary operator.

6. The Applicant, based on a test year ended December 31, 1993, has requested rates designed to produce additional annual sewer service revenues of $1,440 above those currently authorized for the temporary operator.

7. The Applicant has proposed to employ Environmental Wastewater Services, Inc. ("EWS") to perform the day-to-day operation and maintenance of the water and sewer systems at Britley Subdivision under the terms of a utility operating agreement. EWS is presently providing this service to the Applicant under its temporary operating authority and is technically fit and qualified to provide the services required. The Applicant has submitted, as a late-filed exhibit, its contract with EWS.

8. The Company and the Public Staff signed a joint stipulation on November 29, 1994, resolving all matters in dispute related to the Applicant's proposed rates.

9. The Company and the Public Staff agreed in the joint stipulation that it is reasonable and appropriate for the applicant to impose an EPA water testing surcharge of $11.35 per customer per month during the calendar year 1995.

10. The Company and the Public Staff agreed in the joint stipulation that Britley is entitled to an increase (above levels currently authorized to the temporary operator) in gross water operating revenues of $5,380, for a total gross annual water revenue level of $12,506.

11. The Company and the Public Staff agreed in the joint stipulation that Britley is entitled to an increase (above the level currently authorized to the temporary operator) in gross operating sewer revenues of $1,440, for a total gross annual sewer revenue level of $7,200.

12. The Company and the Public Staff agreed in the joint stipulation that Britley is entitled to a total gross annual combined water and sewer revenue level of $19,706.

13. The Company and the Public Staff stated that the joint stipulation filed in this proceeding resulted from extensive negotiations and compromise and therefore does not necessarily reflect the parties' beliefs as to the proper treatment or level of specific components.

14. The parties agree that such components are reasonable only in the context of the overall settlement between the parties.

15. The parties have agreed that none of the positions, treatments, figures, or other matters reflected in the joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue. Based upon this understanding, the Commission accepts the joint stipulation of the Company and the Public Staff.

16. In accordance with the recommended increases in revenues set forth in Findings of Fact Nos. 10-12, the Company should be allowed to increase its total gross annual revenues for water and sewer utility services above the revenues currently authorized for the temporary operator by $6,820. The rates, as agreed upon by the Company and the Public Staff and reflected in Appendix B, attached hereto, will allow this increase, and are fair to the Company and its customers. Accordingly, the rates set forth in the Appendix B are approved as the proper rates in this proceeding.

17. During the past year there have been intermittent periods of low water pressure.

18. The precise causes for such low water pressure are not known.

19. Britley Subdivision depends entirely upon wells located in the adjacent Silverton Subdivision for its supply of water. Resolution of the water pressure problems occurring in Britley Subdivision will require continuing cooperation among the owners and operators of the water utility systems in both Silverton Subdivision, which is owned by Pace Utilities Group, Inc. (Pace) and operated by Mid South Water Systems, Inc. (Mid South), and Britley Subdivision, which is owned by Britley and operated by EWS.

20. The Applicant has not obtained final approval for the installation of the water and sewer systems in Britley Subdivision from the North Carolina Department of Environmental Health (DEH).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-7

The evidence supporting these findings is contained in the verified application, the Commission files and records regarding this proceeding, the Commission's Order scheduling hearings, and the

testimony of the Company and the Public Staff witnesses. These findings are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are for the most part noncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-16

The evidence supporting these findings is contained in the joint stipulation entered into between the Company and the Public Staff, wherein all their differences relating to rates were resolved, and in the testimony provided by the Company witness and the Public Staff witness at the hearing in this matter.

Based upon the foregoing, the Commission accepts the joint stipulation of the Company and the Public Staff for purposes of this proceeding only. As stated by the Company and the Public Staff in the joint stipulation filed in this proceeding, the stipulation does not necessarily reflect the two parties' beliefs as to the proper treatment or level of specific components. The parties agree that such components are reasonable only in the context of the overall settlement between the parties. The parties have agreed, and the Commission concurs, that none of the positions, treatments, figures, or other matters reflected in the joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue.

Further, the Commission also recognizes that in the joint stipulation the Company and the Public Staff agreed that it is reasonable and appropriate for the applicant to impose an EPA water testing surcharge of $11.35 per customer per month during the calendar year 1995. In this regard, the Commission reminds the parties that by Commission Order issued on November 22, 1994, in this docket, the Commission found that the effective date for beginning the EPA water testing surcharge should be for the billing period for service rendered on and after December 1, 1994. Additionally, the Commission also notes that the schedule of rates that was attached to the parties' joint proposed order states that the subject EPA surcharge would be added to the flat rate for water utility service for a period of 12 months starting with the first billing period following the effective date of this Order. Considering the foregoing, the Commission is unsure as to whether or not the Company may have already begun its EPA surcharge billing as authorized for service rendered on and after December 1, 1994. In any event, the Commission reminds the Applicant that it is only authorized to collect the $11.35 per month, per customer, EPA surcharge for a single period of 12 consecutive months.

Based upon the foregoing, the Commission concludes that Britley should be allowed an annual increase in its water service revenues of $5,380 in order to have the opportunity to earn a margin of 10.30% on its operating revenue deductions requiring a return, which is fair and reasonable. The Commission also concludes that Britley should be allowed an annual increase in its sewer service revenues of $1,440, as stipulated by the parties. Accordingly, the Schedule of Rates set forth in Appendix B, attached hereto, are approved as the proper rates for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17-19

The evidence for these findings comes from the testimony of Public Staff witness Casselberry, the testimony of Company witness Whitley, and the public witnesses testifying at the public hearing.

There were seven witnesses who testified at the public hearing in this matter; most of these witnesses testified regarding their concern over low water pressure problems. There were also complaints about poor service under the emergency operator, Crosland, and the spotting of fixtures.

David Feeney stated that he was concerned about the division of water and sewer service among the subdivisions adjacent to Britley and water pressure. Regarding water pressure, he testified that the water pressure fluctuates, that the problems began in April, May, and June of 1994; that he did not have water pressure problems for the year prior to that time, when the system was being operated by Mid South; that the temporary operator, Crosland, was hostile and had done nothing to resolve the pressure problems. Mr. Feeney also stated that the Britley Subdivision had been placed on voluntary restrictions in the summer, but that the Silverton Subdivision had not experienced restrictions.

Ronald Cobb testified that he experienced low water pressure as early as April and May and that low pressure was sporadic.

Michael Carlson testified that he has had fluctuating water pressure since May. He also expressed concern over the proposed rates and complained that the present operator had not reported to him the results of water pressure testing.

Donna Bialosky testified that she had been told by Daniel Barnobi from Crosland that the water pressure problems really were not Crosland's concern. Further, Ms. Bialosky stated that she had experienced water pressure problems during the summer, when there was no rain, and on weekends; and that the water seems to have some chemical in it that creates spotting.

Sunny Garner testified that she was told by Daniel Barnobi from Crosland that there was no water pressure problem and that his main concern was with Bradfield Farms Subdivision and not Britley Subdivision. She also testified that she had experienced spotting and that there is an odor from water in one of the bathrooms.

Tim Feeney stated that he has had some low water pressure problems; that he has had some buildup of white material in shower heads; and that there is spotting.

Frank Redies stated that he had experienced calcium lime deposits in varying degrees, more so when he was on a private well, less so when Mid South provided service, and more so when Crosland was the temporary operator. He also stated that with Crosland as temporary operator the water had developed a sulfur smell. He indicated that water pressure declined in the early spring and has fluctuated. Further, he expressed concern about the Company's proposed rates.

At the evidentiary hearing in Raleigh, Public Staff witness Casselberry testified that she looked at well No.2 in Silverton Subdivision serving Britley Subdivision and took a pressure test at the highest point in Britley Subdivision. The pressure test revealed a reading within the normal range.

In her pre-filed testimony, witness Casselberry agreed with the conclusion of James Gordon, an environmental engineer with DEH, that the water pressure problems in Britley Subdivision are the result of high usage. Witness Casselberry indicated, in her pre-filed testimony and at the hearing, that the basis for the high usage determination was one customer using more than 90,000 and 100,000 gallons per month. She testified that about three or four customers used between 20,000 and 25,000 gallons per month, while the rest (about 20) were using a normal amount of 9,000 to 10,000 gallons per month. Further, witness Casselberry also testified that she had been told by Rayco Utilities, Inc. (Rayco) that it had replaced the meter for the one highest user, and that the previous meter had been tested and found to be accurate. Further, witness Casselberry testified that the wells and storage tank were adequate for Britley Subdivision and that the pressure coming out of the storage tank was adequate.

Nonetheless, at the hearing, witness Casselberry stated that based on the customers' testimony at the public hearing, that maybe the periodic low water pressure has not been caused by high usage. As part of the inquiry into the reasons for the problem, she stated that the Public Staff would file a late exhibit on the water pressure at the point at which the water flows into lines owned by Britley.

Witness Casselberry testified that, given the uncertainty of the source of the pressure problem, Britley should be required to hire an engineer to determine the cause of the low pressure. Further, she stated that the Public Staff supported a moratorium on housing construction in Britley Subdivision pending resolution of the problem. She also indicated that if the pressure problem is determined to be within Pace's lines, then Pace should be required to pay for the necessary corrections to the problem.

Company witness Whitley testified that the previous operator, Mid South, had informed him that the water system in Silverton Subdivision had two wells providing large amounts of water, and thus Britley could be served by those two wells. He testified that the two wells in Silverton Subdivision are physically connected, but that he does not know whether the valve connecting the two wells has been opened. He stated that he believed that Britley Subdivision was only receiving water from well No.2 in Silverton Subdivision. Witness Whitley testified that he personally oversaw the replacement of the water meter at the home at which usage in excess of 100,000 gallons per month was recorded. Contrary to witness Casselberry, witness Whitley testified that at the time Rayco gave him the meter, and that he has been in possession of the old meter ever since; as a result, it has not been tested. Witness Whitley did not believe that the water pressure problem was caused by high usage.

Witness Whitley testified that based on conversations with numerous residents that the water pressure problem is not a continuous ongoing problem; it is an intermittent problem that does not occur on a daily or even a weekly basis. He also testified that most of the people he had talked to in the neighborhood were not even aware of the pressure problem; and that only four residents, on the

highest street in the Subdivision, have the worst pressure. Witness Whitley suggested that the problem may be in the storage or in the pumps located in Silverton Subdivision.

Witness Whitley testified that his primary occupation is as a residential builder. According to witness Whitley, Britley Subdivision is a planned community of 65 total homes, of which about 35 were completed at the time of the hearing. Witness Whitley opposed any moratorium on building in Britley Subdivision as a result of the water pressure problems. Witness Whitley stated that the moratorium proposed by the Public Staff for Britley Subdivision would render him unemployed. He testified that, in addition to himself, there are two other builders in the Subdivision, owning a total of 8 to 10 lots, who would also be shut down by the proposed moratorium. Further, witness Whitley testified that currently there are eight or nine homes under construction in Britley Subdivision, each of which is already under contract for sale, and most of which are under construction loans.

The issue before the Commission is how to evaluate the evidence of low pressure and to determine what remedy is appropriate in the context of this application for a certificate of public convenience and necessity. It is clear from all of the testimony that at least some residents are experiencing low pressure. However, the evidence suggests that such shortages are limited to certain portions of the Subdivision. In addition, the evidence suggests that such shortages occur intermittently, not constantly. Apparently, weeks go by without pressure problems. Further, the evidence on the degree of pressure loss does not indicate a critical problem. One of the public witnesses mentioned that his yard sprinkler would not oscillate; others suggested that shortages tended to occur on weekends, and in warm weather.

Thus, the question of what is to be done about pressure concerns must be answered in the context of an absence of evidence of a critical shortage of water. The primary difficulty in fully answering this question, however, is that the cause of problem is unknown. The Public Staff witness indicated that customer testimony at the Public Hearing tended to contradict the Public Staff's earlier belief that high usage was the source of the problem. And although witness Whitley disagreed with the usage theory, his testimony does not establish either a clear cause or a clear remedy.

Based upon the foregoing, the Commission believes that a reasonable approach toward the resolution of the water pressure problems would be an analysis of the water supply by a qualified engineer. An engineer should be able to discern the problem and suggest the most economical means of rectifying any shortage. Mr. Whitley did not object to taking responsibility for this course of action at the hearing. Further, the Commission also finds that any legitimate and reliable study of such problems will require the full cooperation of all certificated utilities and contract operators providing water service in both Britley Subdivision and Silverton Subdivision; i.e., Britley Utilities, Inc., Environmental Wastewater Services, Inc., Pace Utilities, Inc., and Mid South Water Systems, Inc. Thus, any engineers hired by Mr. Whitley to investigate the nature of the subject water pressure problems must have full access to all water utility property for inspection and testing. Further, the Commission agrees with the Public Staff that if the problem causing the low water pressure exists on property owned by Pace Utilities, Inc. and given this Commission's Order issued in Docket No. W-1046 requiring bulk water service be provided by Pace to Britley, then the Commission finds that it should be Pace's obligation to correct the problem.

The second issue of concern raised in this regard is what is to be done while an engineer is analyzing the problem and preparing recommendations. At the hearing, the Public Staff suggested that a complete moratorium on additional connections should be required. The Company is opposed to any moratorium. Considering that this is an application for a new franchise, that the water pressure problems seems limited both in terms of customers affected and, more importantly, the amount and degree of affect, the Commission finds that an immediate and complete moratorium would be unduly harsh. Further, an immediate moratorium would punish Mr. Whitley for a problem that may not even be his problem to remedy. Additionally, an immediate and complete moratorium would apparently throw several construction companies out of work and jeopardize hundreds of thousands of dollars in loans. Considering that an immediate moratorium cannot actually solve the water pressure problem and assuming that the well sites are adequate to serve the needs of both Silverton and Britley Subdivisions, the Commission believes that the results produced by an immediate moratorium would not be in the best interests of either the Applicant or its customers and therefore a moratorium should not be required at this time.

In summary, the Commission finds that Britley should immediately hire an engineer to analyze the problem and to present a written recommendation on the means of remedying the subject problem. The propriety of a moratorium will then be revisited by the Commission when the problem is diagnosed and a remedy proposed. Further, the Commission finds that it is appropriate to require that all the certificated utilities and contract operators providing water service in both Britley Subdivision and Silverton Subdivision, i.e., Britley Utilities, Inc., Environmental Wastewater Services, Inc., Pace Utilities, Inc., and Mid South Water Systems, Inc., cooperate both in discerning the problem and in effecting a remedy.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence for this finding comes from the testimony of Public Staff witness Casselberry and the testimony of Company witness Whitley.

In pre-filed testimony, witness Casselberry stated that the plans and specifications for the Britley water and sewer utility systems had been approved by DEH, and that the applicant has submitted the required letter from the engineer certifying that the system was installed according to the plans and specifications. However, Britley is still awaiting a response or final approval from DEH for the installation of the system. Witness Casselberry recommended that the Applicant submit to the Commission and the Public Staff a copy of the approval letter no later than 15 days from its receipt by DEH.

Witness Whitley testified that, on October 14, 1994, he sent the engineer's verification letter by FAX to J.C. Lin, James Gordon, and Daryll Herndon at DEH. He also stated that he had not yet received a response from DEH regarding the engineer's verification.

The Commission concludes that final approval for the installation of the water and sewer systems has not yet been obtained by the Applicant from DEH. The Commission finds that it is appropriate to require the Applicant to obtain a letter of approval from DEH and to file a letter with the Commission confirming such approval within 15 days after receiving such approval.

IT IS, THEREFORE, ORDERED, as follows:

1. That the Applicant, Britley Utilities, Inc., is hereby granted a certificate of public convenience and necessity to furnish water and sewer utility service in Britley Subdivision, Cabarrus County, North Carolina. Such certificate is attached as Appendix A.

2. That the stipulation of the Applicant and the Public Staff filed on November 29, 1994 is adopted by the Commission, with the understanding that none of the positions, treatments, figures, or other matters reflected in the joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue.

3. That the Schedule of Rates, attached hereto as Appendix B, are approved for water and sewer utility service rendered by Britley Utilities, Inc. and said rates and charges shall become effective for service rendered on or after the effective date of this Order.

4. That Britley Utilities, Inc. shall file a letter with the Commission within 15 days of the effective date of this Order notifying the Commission of the specific 12-month period during which it will collect its authorized $11.35 per month, per customer, EPA water testing surcharge.

5. That the Notice to Customers, attached hereto as Appendix C, shall be served on the customers by inserting a copy of Appendix C in the Company's next regularly scheduled billing statement following the effective date of this Order. A copy of Appendix B shall also be attached to said Notice.

6. That Britley Utilities, Inc. shall employ a qualified engineer to inspect the water system serving Britley Subdivision and that such engineer shall make written recommendations regarding the most economical means of remedying the water pressure problem in Britley Subdivision within 30 days after the entry of this Order. The certificated utilities and contract operators providing water service in both Britley Subdivision and Silverton Subdivision, i.e., Britley Utilities, Inc., Environmental Wastewater Services, Inc., Pace Utilities, Inc., and Mid South Water Systems, Inc., are hereby ordered to cooperate fully with any inspections and testing required by the engineer. Within 30 days subsequent to the receipt of the engineer's recommendations, Britley shall file a statement with the Commission indicating Britley's response to such recommendations. The Commission will reserve any ruling on the enforcement of a moratorium on further connections in Britley Subdivision until after the filing of Britley's response to its hired-engineer's report.

7. That the Chief Clerk shall mail a copy of this Order to all the certificated utilities and contract operators providing water service in both Britley Subdivision and Silverton Subdivision, i.e., Britley Utilities, Inc., Environmental Wastewater Services, Inc., Pace Utilities, Inc., and Mid South Water Systems, Inc., as such companies are hereby ordered to cooperate fully with any inspections and testing required by Britley's hired-engineer investigating the low water pressure problem(s).

8. That Britley Utilities, Inc. shall file a copy of the final approval letter for the installation of the water and sewer system serving Britley Subdivision with the Commission not later than 15 days from the date it is received by Britley.

9. That Britley's proposed bond in the form of an irrevocable standby letter of credit from First Union National Bank of North Carolina in the amount of $20,000, as filed in this docket on January 25, 1995, be and hereby is, approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of January 1995.

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

APPENDIX A

DOCKET NO. W-1051

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

BRITLEY UTILITIES, INC.

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water and sewer utility service in

BRITLEY SUBDIVISION

Cabarrus 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 27th day of January 1995.

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

APPENDIX B

SCHEDULE OF RATES
for
BRITLEY UTILITIES, INC.

for providing water and sewer utility service in

BRITLEY SUBDIVISION
Cabarrus County, North Carolina

WATER SERVICE: (Metered)	
Base charge (monthly)	$22.30
Usage charge/1,000 gallons (monthly)	$ 2.82
EPA SURCHARGE:	
Monthly charge	$11.35

This EPA-testing surcharge is to be added to the flat rate for water utility service for a single period of 12 consecutive months.

SEWER SERVICE: (Flat rate)	
Monthly charge	$30.00

CONNECTION CHARGE: None

RECONNECTION FEES:	
If water or sewer is cut off by utility for good cause	$15.00
If water or sewer is cut off at customer's request	$15.00

BILLS DUE: On billing date

BILLS PAST DUE: 20 days after billing date

BILLING FREQUENCY: Shall be monthly in arrears

RETURNED CHECK CHARGE: $20.00

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.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1051, on this the 27th day of January 1995.

APPENDIX C

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1051

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Britley Utilities, Inc., 8224 East Harris Boulevard, Charlotte, North Carolina 28227, for a Certificate of Public Convenience and Necessity to to Provide Water and Sewer Utility Services in Britley Subdivision in Cabarrus County, North Carolina, and for Approval of Rates	)	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted Britley Utilities, Inc., a Certificate of Public Convenience and Necessity to provide water and sewer utility service in Britley Subdivision. The rates approved by the Commission are shown on the attached Schedule of Rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of January 1995.

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

DOCKET NOS. W-1026 AND W-1046

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Bradfield Farms Utility Company, Post Office Box 127, Sherills Ford, North Carolina, 28673, for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Bradfield Farms and Silverton Subdivisions, Mecklenburg and Cabarrus Counties, North Carolina, and for Approval of Rates	)	
and	)	ORDER DISMISSING COMPLAINT
Application of Pace Utilities Group, Inc., 6719-C Fairview, Charlotte, North Carolina, 28210, for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Silverton Subdivision, Cabarrus County, North Carolina, and for Approval of Rates	)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 29, 1994

BEFORE: Commissioner Ralph A. Hunt, Presiding, and Commissioners William W. Redman, Jr. and Charles H. Hughes

APPEARANCES:

For SPDI Partnership:

James L. Hunt, Hunton & Williams, One Hannover Square, Suite 1400, Post Office Box 109, Raleigh, North Carolina, 27602

For Mid South Water Systems, Inc., for the limited purpose of contesting jurisdiction:

Cynthia M. Currin, Crisp, Davis, Page & Currin, L.L.P., 4011 Westchase Boulevard, Suite 400, Raleigh, North Carolina 27607

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 June 28, 1994, William Whitley, III (Whitley), a partner in SPDI Partnership (SPDI), filed a motion in these dockets whereby the Commission was requested to either (1) issue an Order requiring that Mid South Utilities, Inc. (Mid South), pay $10,000 to SPDI (Whitley & Company Real Estate had paid $10,000 to Mid South), or (2) issue an Order requiring that Pace Utilities Group, Inc. (Pace), convey to Whitley all of its property interest in a well, well site, water mains and other facilities that connect the water distribution center in Silverton Subdivision to Britley Subdivision.

On July 20, 1994, Pace filed a response in opposition to Whitley's motion and requested that, as to Pace, Whitley's motion be denied and that this matter be dismissed.

On July 20, 1994, Mid South Water Systems, Inc. (Mid South Water), filed a response in opposition to Whitley's motion whereby the Commission was requested to deny and dismiss said motion.

On July 29, 1994, Whitley filed a reply in opposition to the responses filed by Mid South Water and Pace. As to Mid South, Whitley amended its motion of June 28, 1994, to include Mid South Water, as well as Mid South.

The Commission, by Order dated August 17, 1994, ordered that the motion for relief filed in these dockets on June 28, 1994, by Whitley on behalf of SPDI against Mid South Water and Pace be treated as a formal complaint and ordered that a hearing on SPDI's complaint would be held on September 15, 1994. By Commission Order issued October 14, 1994, the hearing was rescheduled to be heard on November 29, 1994.

The Public Staff filed a statement of position, in this proceeding, on November 3, 1994. The Public Staff was of the opinion that there was no basis in the record for an Order of the Commission requiring the transfer of utility property from Pace to Whitley. Further, in its statement, the Public Staff concluded that the $10,000 which is at issue relates to nonutility property and that the controversy does not touch on the rates or services provided to the public by a regulated utility. Therefore, the Public Staff did not offer an opinion on the matter on behalf of the using and consuming public, nor did it present any evidence at the hearing.

On November 14, 1994, Whitley filed a motion to amend his pleading and to dismiss Pace as a party to this proceeding. This motion was granted by Order of the Commission dated November 28, 1994.

The above-captioned proceeding came on for hearing in Raleigh, North Carolina, as scheduled. Mid South Water appeared at the hearing on the motion for the limited purpose of contesting jurisdiction. Whitley on behalf of SPDI appeared and participated in the hearing. At the time that

the matter was called for hearing, and after Mid South Water and SPDI were granted an opportunity to argue the merits of Mid South Water's motion to dismiss, the Commission reserved its decision on Mid South Water's motion to dismiss and the question of jurisdiction, and proceeded with the taking of evidence and testimony on the matter.

At the hearing, SPDI presented the testimony and exhibits of William Whitley, III. Mid South Water presented the testimony and exhibits of Carroll Weber, the President of both Mid South Water Systems, Inc., and Mid South Utilities, Inc. At the conclusion of the hearing, the Commission allowed all parties 45 days from the mailing of the official transcript to file briefs and proposed orders.

Briefs and proposed orders were submitted by the parties at the appropriate time.

Based upon the evidence presented at the hearing, the arguments of counsel, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. SPDI is a general partnership organized and existing under the laws of the State of North Carolina. SPDI is the developer of a Cabarrus County residential development called Britley Subdivision. Whitley is a principal in and is authorized to act on behalf of the SPDI partnership.

2. Mid South Water is a corporation formed under Chapter 55 of the North Carolina General Statutes. Mid South Water is a regulated utility that owns and operates various water and sewer systems in certain areas in the counties of Cabarrus and Mecklenburg.

3. Mid South is a corporation formed under Chapter 55 of the North Carolina General Statutes. Mid South is in the business of constructing water and sewer facilities used by Mid South Water in providing its water and sewer services. Mid South does not provide any water and/or sewer services, or other similar services, to the using and consuming public.

4. The Commission does not regulate either SPDI or Mid South, since they do not provide utility services to the using and consuming public.

5. On April 26, 1990, Mid South Water and SPDI entered into a water and sewer operating agreement (Agreement). The purpose of the Agreement was to provide the terms and conditions for the service to Britley Subdivision of water and sewer services by Mid South Water. The Agreement provided that SPDI would pay all of the costs incurred by Mid South Water (or Mid South) in constructing facilities needed to serve Britley Subdivision. The Agreement also provided that SPDI would pay $20,000 towards any utility franchise bond ordered if Mid South Water was granted the certificate of public convenience and necessity to serve Britley Subdivision. No such bond was ever ordered by the Commission.

6. On September 7, 1990, Mid South Water applied for a certificate of public convenience and necessity for approval to provide water and sewer services to Britley Subdivision. The

application was assigned to Docket No. W-720, Sub 108. The April 26, 1990 Agreement referenced, hereinabove, was attached to the franchise application.

7. In December 1990, a check for $10,000 from Whitley & Company Real Estate was given to Mid South by Whitley. At the time that the check was written, Whitley understood that the check was to be used by Mid South to outfit a well in Silverton Subdivision, a subdivision adjacent to Britley Subdivision. This well was being outfitted so that Mid South Water could supply water services to Britley Subdivision from a well located in Silverton Subdivision.

8. Whitley & Company Real Estate is a North Carolina general partnership. Whitley is a principal in Whitley & Company Real Estate and is authorized to act on behalf of this partnership. SPDI does not have any interest in Whitley & Company Real Estate.

9. On July 28, 1992, in Docket No. W-720, Sub 108, the Commission issued an Order stating that Mid South Water's application for a certificate of public convenience and necessity to serve the Britley Subdivision was denied. On January 27, 1995 in Docket No. W-1051, Britley Utilities, Inc. was granted a certificate of public convenience and necessity to provide water and sewer utility services in Britley Subdivision.

10. The entire well site, that was outfitted to provide services to Britley Subdivision through, in part, the use of the subject $10,000 in funds, and all other utility property in Silverton Subdivision was transferred to Pace by Mid South Water pursuant to an October 13, 1993 Commission Order, issued in Docket No. W-1026.

11. Britley Subdivision's source of water is supplied by wells located in the adjacent Silverton Subdivision, which receives its water and sewer services from Pace. This being the case, SPDI was not required to establish well sites on two acres of land located in Britley Subdivision; consequently, more land was available in Britley Subdivision for development than otherwise would have been.

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

The evidence for these findings is found in (1) the request for relief that was filed by Whitley in this proceeding, (2) Mid South Water's reply thereto, and (3) the testimony presented at the November 29, 1994 hearing on this matter. The Commission's own files and records also support the finding that Mid South Water and Mid South are corporations formed under the laws of the State of North Carolina. Additionally, the regulation of Mid South Water by the Commission is duly evidenced in the Commission's records. Whitley's testimony at the hearing in this proceeding established that SPDI is a partnership and not a sole proprietorship. Mid South did not contest that SPDI is a general partnership and that Whitley is a partner in the same. SPDI did not contest that Mid South Water is a regulated utility that provides water and sewer services to the consuming public, nor does it contest that Mid South is a construction company that does not provide utility-type services to the general public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

A public utility, in accordance with G.S. 62-2(23), generally is defined as a person or entity that: (1) produces, sells or transmits gas, electricity or the like to the general public for compensation; (2) diverts, develops, pumps, distributes, or furnishes water to the public for compensation or operates a public sewer system for compensation; (3) transports the public or property by bus, rail or motor vehicle for compensation; (4) transports or conveys gas, crude oil or other fluid substances by pipeline for compensation; or (5) conveys or transmits messages or communications by telephone or telegraph, or other means of transmission to the public for compensation.

Mid South and SPDI are not public utilities. Mid South's business is the construction of water and sewer systems and other infrastructure. SPDI is the developer of Britley Subdivision, a residential community. Further, the evidence did not indicate that either Mid South or SPDI provide any water and/or sewer services to the using and consuming public. Thus, the Commission concludes that it does not have the jurisdiction to hear this matter, since Mid South and SPDI are two nonregulated entities and the matter does not involve the provision of service by or the rates of a regulated utility. The Commission agrees with the Public Staff and Mid South Water that the $10,000 which is at issue relates to nonutility property. This is a matter of controversy between two nonregulated parties.

Furthermore, even if either entity were subject to regulation by the Commission, jurisdiction over the subject matter of this proceeding would be lacking. The Commission's power to hear matters of controversy between two parties is restricted under Chapter 62 of the North Carolina General Statutes. Under G.S. 62-40, the Commission can only hear matters in controversy between a public utility and another person or entity, if the involved parties have agreed to have the matter heard by the Commission in writing. No such written agreement has been filed in this proceeding. Therefore, the Commission, additionally, lacks the jurisdiction to hear this matter and to determine the outcome of the controversy.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5, 6 AND 9

On April 26, 1990, Mid South Water and SPDI entered into a water and sewer operating Agreement. A copy of such Agreement was filed with SPDI's complaint/request for relief in this matter. The stated terms and conditions are provided within the Agreement. Testimony presented at the hearing in this proceeding establishes that the primary purpose of the Agreement was to ultimately enable the provision of water and sewer utility services to Britley Subdivision by Mid South Water. The Agreement also provided that SPDI would pay $20,000 towards any utility franchise bond ordered if Mid South Water was granted the certificate of public convenience and necessity to serve Britley Subdivision.

Information regarding the September 7, 1990, filing for a certificate of public convenience and necessity by Mid South Water to provide water and sewer services to Britley Subdivision is found in the Commission's files and records in Docket No. W-720, Sub 108. On July 28, 1992, the Commission issued an Order stating that Mid South Water's application for a certificate of public convenience and necessity to serve the Britley Subdivision was denied. Therefore, no utility bond

was ever ordered by the Commission. Subsequently, a certificate of public convenience and necessity for the provision of water and sewer services to Britley Subdivision was granted to Britley Utilities, Inc., (Britley) by the Commission in Docket No. W-1051, by Order issued January 27, 1995.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The check for $10,000 from Whitley & Company Real Estate that was given to Mid South by Whitley included the words "Sewer Bond-(Britley)" written in the description section on the face of the check. The check was deposited into the bank account of Mid South, not Mid South Water. In this proceeding, witness Whitley argued that such check was written to be applied toward the $20,000 bond obligation referenced in the Agreement. However, no bond was required at the time, nor was such a bond required at any time. Additionally, at the time that the check was written, Whitley understood that the check was to be used by Mid South to outfit a well in Silverton Subdivision, a subdivision adjacent to Britley Subdivision. This well was being outfitted so that Mid South Water could supply water services to Britley Subdivision from a well located in Silverton Subdivision.

Specifically, in this regard, Whitley's June 28, 1994, motion for relief states that "In late 1990, while the water and sewer system in Britley was under construction, William Whitley was told by Carroll Weber of Mid South that Mid South was in need of cash to outfit a well in Silverton, a nearby subdivision under development. This well was to be used by Mid South [Water] for water service to Britley. In recognition of that section of the April 26, 1990 agreement quoted in paragraph 4 above, Mr. Weber and Mr. Whitley agreed that in exchange for a payment of $10,000, SPDI's obligation to pay $20,000 for the utility franchise bond would be reduced by $10,000." Further, in a letter written by Whitley on November 29, 1993, it is stated, therein, that "Mid South also owned a well and wellsite in Silverton that we paid a $10,000.00 franchise fee in advance of getting the water, so Mid South could outfit the well with tank, building, and controls."

On cross-examination, witness Weber testified that the $10,000 was deposited into Mid South Water's bank account because it was going to be used for construction purposes. He testified that most of the $10,000 went toward the purchase of the tank for well No. 2. Further, witness Weber stated that Mr. Whitley knew that the $10,000 was going to be used for construction of the well in Silverton Subdivision. During cross-examination, witness Weber stated that he did not instruct Whitley to write sewer bond on the check. According to witness Weber's testimony, if the Commission had granted Mid South Water the franchise for Britley Subdivision and if the Commission had required a $20,000 bond, then he would have asked Whitley for $10,000 and he (Mr. Weber) would have had to pay the other $10,000 that was required under bond.

Based upon the foregoing, the Commission finds that the evidence presented at the hearing establishes that all parties to this proceeding (SPDI, Whitley and Mid South Water) knew at the time that the $10,000 payment was made (December, 1990) that the funds would be used to pay for the construction of the facilities needed by Mid South Water to serve Britley Subdivision. Mid South,

in fact, used the payment to outfit the well with tank, building and controls. Thus, there is no dispute over Mid South's actual use of the funds in the amount of $10,000. Further, the Commission considers that the parties were in agreement that in exchange for the $10,000 payment by Whitley, SPDI's obligation in the Agreement to pay $20,000 for the utility bond was reduced and changed to $10,000 instead of $20,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence presented through witness Whitley's testimony at the hearing of the proceeding establishes that the $10,000 check was written from the account of Whitley & Company Real Estate not SPDI's account. Whitley testified that SPDI and Whitley & Company Real Estate are two separate legal partnerships and that they have separate bank accounts. Additionally, he testified that the partners in SPDI are Whitley and Arthur O. Bridges and the partners in Whitley & Company Real Estate are Whitley and John R. Whitley. Whitley & Company Real Estate did not develop Britley Subdivision.

The $10,000 check was signed by Whitley as a partner for Whitley & Company Real Estate. The name on the check was Whitley & Company Real Estate. SPDI does not have legal standing to assert a claim on behalf of Whitley & Company Real Estate. The relief requested by SPDI cannot be granted because of SPDI's lack of standing. Furthermore, the Commission concludes that if it were to require Mid South to pay $10,000 to SPDI, then SPDI would be unjustly enriched. SPDI did not make the $10,000 payment to Mid South; Whitley & Company Real Estate made such payment. Additionally, Whitley & Company Real Estate is not a public utility; it is a nonregulated entity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

By Order issued October 13, 1993, in Docket No. W-1026, the Commission required that all of Mid South Water's public utility property interests in the Bradfield Farms, Silverton, and Britley Subdivisions should be reconveyed to the appropriate developers. In Docket No. W-1026, Mid South Water's interests were represented by Mec-Cab Utilities, Inc., a Mid South Water subsidiary which was a joint venturer with the affiliate of the John Crosland Company in seeking a public utility water and sewer franchise for Bradfield Farms and Silverton Subdivisions.

The testimony at the hearing in this proceeding, and the Commission's records and documents in other dockets as well as this one, establish that the Commission Order of October 13, 1993, was complied with by Mid South Water and that all related utility assets in Bradfield Farms Subdivision, Silverton Subdivision and Britley Subdivision were returned to the appropriate developers. As a result of that Order, the well site and related utility property associated with the matter at issue in this proceeding was transferred to Pace as said property is located within Silverton Subdivision. The October 13, 1993 Order was not appealed and the time for filing any appeal has lapsed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

In this proceeding, witness Weber testified that ". . . Mr. Pace did pay us $60,000 for what amount of money that we had contributed to the development of the two water wells in Silverton and that did not include the $10,000 that we see here. If I had known this, I would probably asked him $70,000." Such testimony is further corroborated in Docket No. W-1046, in the Commission Order issued October 6, 1994, granting a water and sewer utility franchise to Pace. Therein, the Commission found that the amount of $60,000 paid by Pace for the assets purchased from Mid South, related to outfitting the wells as constructed by Mid South, was not an unreasonable amount and Pace was allowed to include the amount of $60,000 in its plant in service for its water operations.

On cross-examination, in this proceeding witness Whitley testified that if Britley Subdivision had not received water from Pace's Silverton Subdivision facilities then two other wells would have been required for providing water service to the 65 residential lots planned for development in Britley Subdivision. Further, witness Whitley testified that the price of an acre lot in Britley Subdivision would be in the range of $25,000 to $33,000.

The Commission recognizes that if the two wells, needed to provide the required water supply, had been located in Britley Subdivision, then SPDI would have been required to set aside two acres of land for such dedicated purpose and forego the sale and development of this land as residential property. Based on the testimony of Whitley, the value of the two acres of land that would have been required to be dedicated to water utility service would have been priced in the range of $50,000 to $66,000. Further, additional capital investments would have been required by SPDI to drill the wells and to properly outfit them with storage tanks, well houses and treatment equipment.

Based upon the foregoing, the Commission finds that SPDI has been generously enhanced by the payment of $10,000 to Mid South by Whitley & Company Real Estate. Whitley has enjoyed the benefits of a water supply from a location outside the Britley Subdivision premises for a number of years, since April 1991. The Commission concludes that SPDI has not been harmed, it is now receiving its water supply for the provision of water utility service in Britley Subdivision from Britley; SPDI, thereby, was not required to set aside two acres of land in Britley Subdivision, nor to incur the additional costs necessary to drill and outfit two wells.

Based upon the entire record in this proceeding, the other evidence related hereto, contained in the Commission files in Docket Nos. W-720, Sub 108, W-1026, W-1046, and W-1051, and the foregoing conclusions discussed herein, the Commission finds that SPDI's complaint against Mid South Water should be dismissed for various reasons including the Commission's lack of jurisdiction in this matter, the absence of any showing of harm, and the circumstance that the entity, Whitley & Company Real Estate, who actually paid the $10,000, is not a party to this proceeding.

IT IS, THEREFORE, ORDERED that this complaint proceeding against Mid South Water be, and hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of March 1995.

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

DOCKET NO. W-177, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Brookwood Water Corporation	)
Post Office Drawer 4889, Cary, North	) RECOMMENDED ORDER
Carolina 27519, for Authority to Increase	) GRANTING PARTIAL
Rates for Water Utility Service in All of	) RATE INCREASE
Its Service Areas in North Carolina	)

HEARD IN: Old Cumberland County Courthouse Building, Fayetteville, North Carolina, on August 2, 1995, at 10:00 a.m.

BEFORE: Bliss B. Kite, Hearing Examiner

APPEARANCES:

For Brookwood Water Corporation:

Robert F. Page, Attorney at Law, Crisp, Davis Page & Currin, 4011 Westchase Boulevard, Suite 400, Raleigh, North Carolina 27607-3954

For the Using and Consuming Public:

Vickie L. Moir and Paul L. Lassiter, Staff Attorneys, Public Staff -North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

KITE, HEARING EXAMINER: On March 3, 1995, Brookwood Water Corporation (Brookwood, Applicant or Company) filed an application with the Commission seeking authority to increase its rates for providing water utility service in all of its North Carolina service areas. On March 7, 1995, the Commission issued a Protective Order to control the furnishing and use of confidential employment and compensation data required by the Public Staff.

By Order issued on April 7, 1995, the Commission declared the matter to be a general rate case, suspended the proposed rates, scheduled the matter for public hearing and required customer notice. Public notice was given by Brookwood as evidenced by the Certificate of Service filed on May 3, 1995.

On June 14, 1995, Brookwood and the Public Staff filed a joint stipulation, subject to Commission approval, regarding their agreement on the capital structure, cost rates for debt and common equity, and the overall cost of capital to be used in determining Brookwood's revenue requirement in this proceeding. The stipulation was contingent upon a finding that the level of utility service being provided by Brookwood to its customers is adequate.

On June 15, 1995, the Company filed the prefiled direct testimony of William E. Grantmyre, President and Freda Hilburn, Director of Rates, in support of its Application and applied for rates.

On June 30, 1995, the Public Staff filed the prefiled testimony of David C. Furr, Utilities Engineer - Public Staff Water Division, and Frankie H. Carrigan, Staff Accountant - Public Staff Accounting Division, reporting the results of the Public Staff's rate investigation and audit, and making its recommendations.

On July 14, 1995, the Company prefiled the rebuttal testimony of William E. Grantmyre, Freda Hilburn, and Jerry H. Tweed, Director of Environmental and Regulatory Affairs.

The matter came on for hearing as scheduled. There were no public witnesses. The Applicant presented the direct and rebuttal testimony of William Grantmyre and Freda Hilburn. The Company also presented the rebuttal testimony of Jerry Tweed. The Public Staff presented the testimony and exhibits of David Furr and Frankie Carrigan.

On August 4, 1995, Brookwood filed a motion requesting approval of the rates recommended by the Public Staff in its prefiled testimony as interim rates subject to refund. The Public Staff filed its response to Brookwood's motion on August 8, 1995. In such response, the Public Staff submitted a revised revenue requirement and revised rates reflecting the removal of filters that testimony offered during the hearing indicated were not in service. The Public Staff's position was that if the Commission were to allow interim rates it would not be appropriate to permit interim rates in excess of its revised rates. On August 18, 1995, the Company filed a Late-Filed Exhibit stating that the Granular Activated Carbon (GAC) filters had been installed and were in service on Well Nos. 69 and 70 on the Brookwood Master System. Additionally, Brookwood filed a copy of the engineering certification letter sent to the Department of Environment, Health and Natural Resources (DEHNR) stating that the GAC Treatment System had been installed, inspected, tested (coliform), and constructed in accordance with the plans and specifications approved by DEHNR.

On August 23, 1995, the Hearing Examiner issued an Interlocutory Order granting as interim rates the rates originally proposed by the Public Staff subject to refund. An Errata Order was issued on August 24, 1995 to correct the Schedule of Rates to reflect Brookwood's meter installation fee which had been erroneously omitted from the Schedule of Rates reflected in the August 23, 1995 Interlocutory Order.

The Public Staff filed Carrigan Late-Filed Exhibit 1 on August 7, 1995.

On September 13, 1995, Brookwood filed Late-Filed Exhibits regarding (1) the total rate case cost including actual payroll and legal fees through the date of filing of the proposed order and (2) the calculation of the $6,454 adjustment to group medical insurance stated in William Grantmyre's rebuttal testimony. Additionally, on September 13, 1995, the Company also filed a notice stating that it was withdrawing its position in this case regarding the higher level volatile organic chemicals (VOC) testing costs and was accepting the Public Staff's recommended level of $7,488 for VOC testing, with an overall level of testing fees of $62,350 as recommended by the Public Staff.

Based on the foregoing, the verified application, the late-filed exhibits, the evidence adduced at the hearing, and the entire record in this matter, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Brookwood is a corporation organized under the laws of North Carolina and is a wholly owned subsidiary of Heater Utilities, Inc. Brookwood provides water utility service in North Carolina.

2. Brookwood is a public utility as defined by G.S. 62-3(23) and is properly before the Commission seeking an increase in its rates and charges pursuant to G.S. 62-133.

3. The appropriate test year for use in this proceeding is the 12 months ended September 30, 1994.

4. Brookwood's present rates and the rates requested in its application are as follows:

Description	Existing	Proposed
Base monthly charge, zero usage:		
Meter Size		
<1"	$ 5.90	$ 6.70
1"	$14.75	$ 16.75
1 ½"	$29.50	$ 33.50
2"	$47.20	$ 53.60
3"	$88.50	$100.50
4"	$147.50	$167.50
6"	$295.00	$335.00
Usage charge per 1,000 gallons	$1.35	$1.42
Flat monthly rates	$12.98	$14.15
New customer account fee	$12.00	$15.00

5. At the end of the test year, the Applicant provided water utility service to 7,006 customers (6,734 metered and 272 flat rate) in Cumberland County.

6. The overall quality of service provided by Brookwood is good.

7. It is appropriate to include $113,088 that was collected on contributed property in the calculation of the appropriate level of accumulated depreciation.

8. The reasonable original cost rate base is $2,528,920 comprised of the following components:

Item	Amount
Plant in service	$3,772,824
Customer deposits	(143,530)
Accumulated deferred income taxes	(198,985)
Accumulated depreciation	(1,066,256)
Working capital allowance:	
Cash working capital	102,910
Prepayments	80,609
Tax accruals	(18,763)
Investment tax credits	(21,930)
Materials and supplies inventory	22,041
Original cost rate base	$2,528,920

9. The end of period level of service revenue for water operations under present rates is $1,368,975.

10. The end of period level of miscellaneous revenue under present rates is $41,729 and under proposed rates is $48,534.

11. The end of period level of uncollectibles under present rates is $3,698.

12. The total level of end of period operating revenue under present rates is $1,407,006.

13. The appropriate metered customer growth annualization factor is 1.0181, and the appropriate overall customer growth annualization factor is 1.0163.

14. The reasonable level of salaries and wages expense for field employees is $137,932.

15. The reasonable level of purchased water is $5,688.

16. The reasonable level of purchased power expense is $115,930.

17. The reasonable level of chemicals expense is $76,986.

18. The reasonable level of maintenance and repair expense is $5,142.

19. The reasonable level of testing expense is $62,350.

20. The reasonable level of transportation expense is $14,844.

21. The reasonable level of permit fees is $1,675.

22. The reasonable level of signal wires expense is $1,506.

23. The reasonable level of tank painting expense is $8,315.

24. The reasonable level of freight and miscellaneous expense is $2,206.

25. The reasonable level of salaries and wages expense for office employees is $179,439.

26. The reasonable level of pensions and other employee benefits is $56,979.

27. The reasonable level of purchased power - office expense is $3,307.

28. The reasonable level of office materials and supplies is $12,616.

29. The reasonable level of contract services is $27,047.

30. The reasonable level of rent is $7,152.

31. The reasonable level of transportation - general and administrative expense is $1,118.

32. The reasonable level of insurance expense is $16,436.

33. The reasonable level of miscellaneous general and administrative expense is $62,245.

34. The reasonable level of rate case expense is $17,968.

35. The reasonable level of interest expense on customer deposits is $8,169.

36. The reasonable level of annualization adjustment for certain expenses is $3,919.

37. The reasonable level of operation and maintenance expense is $828,969.

38. The reasonable depreciation period for the new GAC filters for Well Nos. 69 and 70 is 25 years.

39. The reasonable level of depreciation and amortization expense is $232,336.

40. The reasonable level of taxes other than income taxes is $44,116.

41. The reasonable level of regulatory fee is $1,407.

42. The reasonable level of gross receipts taxes is $56,280.

43. The reasonable level of state income taxes is $8,300 and federal income taxes is $25,909.

44. The reasonable level of total operating revenue deductions under present rates is $1,197,317.

45. The reasonable capital structure for use in this proceeding consists of 59.64% debt and 40.36% equity. The embedded cost of debt associated with this capital structure is 9.07%.

46. The reasonable cost of equity in this case is 11.95%.

47. The reasonable overall weighted cost of capital in this case is 10.23%.

48. An increase in total annual revenue of $85,562 will allow Brookwood the opportunity to earn a return of 10.23% on its reasonable original cost rate base.

49. The attached Schedule of Rates will allow Brookwood the opportunity to earn a return of 10.23% on its reasonable original cost rate base.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence for these findings of fact is contained in the application. These findings are jurisdictional and informational and are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the application and in the testimony of witness Furr. This evidence is not contested.

At the end of the test year, the Applicant provided water utility service to 7,006 customers (6,734 metered and 272 flat rate) in Cumberland County. Most of the customers are residential although the Applicant provides water utility service to several commercial customers. All of Brookwood's customers are metered except for those customers in one mobile home park and one apartment complex who all pay flat rates for their water utility service. The majority of the Applicant's customers (over 6,300) are on one consolidated system, the Brookwood Master System. The remaining customers are on one of six other systems. Witness Furr's Exhibit 1 provided the breakdown of these systems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is contained in the testimony of witness Furr, witness Grantmyre, and a Brookwood late-filed exhibit, dated August 18, 1995.

The Public Staff received only one letter in this proceeding from a single customer which letter does not mention any service related problems, instead the customer was expressing his concern over the magnitude of the proposed rate increase. No customers appeared or testified at the hearing.

Witness Furr testified that the Applicant is providing adequate utility water service in its service areas. Where problems have occurred, Brookwood has corrected the problems or is actively working to eliminate the difficulty. In general, the Applicant's well houses, tanks, and other equipment are

well maintained and are functioning properly. Improvements that are in process and proposed in the near future are expected to add to the reliability and consistency of water quality and service.

Witness Furr testified that water quality testing at Mill Creek Farm has found lead concentration that exceeded the North Carolina Division of Environmental Health (DEH) action level. To provide for optimal corrosion control, the Applicant abandoned a low yield, low pH well, and replaced it with a new high yield well on the same well site. The new well has satisfactory pH levels, and no pH adjustment equipment was required. With the addition of the high yield well, two ground water storage tanks on the same site were no longer needed and have also been abandoned.

Witness Furr testified that the two hydropneumatic storage tanks at Stoney Point are in need of minor painting maintenance.

Witness Furr testified that the wells at Stoney Point and Turnbridge cycle on and off frequently and that the level of the water in the hydropneumatic storage tanks was high. He recommended that an investigation be undertaken to determine if the overall controls for the systems could be modified to reduce the cycling and provide for more efficient operation. Witness Grantmyre testified that the cycling is because of the high yield of the wells. He testified that an investigation at Turnbridge has confirmed the air charge in the tank was less than it should have been, and the Applicant has now installed a new air compressor and increased the air charge to give a longer run. An investigation was also conducted at Stoney Point, but modifications could not be made to increase the run time.

Witness Furr testified that water quality testing at Kelly Hill has shown a higher level of Gross Alpha (Radiation) than is allowed by state and federal drinking water regulations. One of the wells at Kelly Hill has since been found to be in compliance, and the second well has been taken out of service. This has resulted in a low yield for the system. Witness Furr also testified that actual water usage is low, and there have been few complaints about low/no water pressure since the problem has been on-going for several years and customers are aware of the situation. Brookwood has been, and continues, pursuing other sources of water supply for this Subdivision.

Witness Furr testified that water quality testing on the Brookwood Master System, Well Nos. 69 and 70 found a pesticide, dibromochloropropane, that exceeded the maximum contaminant level. Since these are high yield wells, Brookwood has now installed a treatment plant on these two wells that consists of granular activated carbon pressure filters and associated equipment to correct the problem.

Witness Furr testified that with the exception of Kelly Hills, as already discussed, Brookwood has adequate well capacity to provide water to its customers. Based on the foregoing, the Hearing Examiner finds the service provided by Brookwood is good.

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

The evidence for these findings is contained in the testimony of Company witnesses Grantmyre and Hilburn and Public Staff witness Carrigan. The following schedule on rate base summarizes the positions of the parties as reflected in their proposed orders.

Item	Public Staff	Company	Difference
Plant in service	$3,768,635	$3,779,936	$ 11,301
Customer deposits	(143,530)	(143,530)	-
Accumulated deferred income taxes	(189,577)	(198,999)	(9,422)
Accumulated depreciation	(1,065,076)	(955,435)	109,641
Working capital allowance:			
Cash working capital	102,527	102,941	414
Prepayments	57,111	80,643	23,532
Tax accruals	(18,720)	(18,757)	(37)
Investment tax credits	(21,930)	(21,930)	-
Materials and supplies	22,041	22,041	-
Original cost rate base	$2,511,481	$2,646,910	$135,429

As shown in the above schedule, the parties agree on the amounts for customer deposits, investment tax credits and materials and supplies. The Hearing Examiner, therefore, finds and concludes that the appropriate amount for customer deposits for use in this proceeding is $143,530, the appropriate amount for investment tax credits is $21,930 and the appropriate amount for materials and supplies is $22,041.

Plant in Service

The difference, in the amount of $11,301, between the Public Staff's recommended level of plant in service and that proposed by the Company involves adjustments made by witness Carrigan to remove an allocated portion of Company vehicles related to personal and nonutility use for two Company employees, Mr. Strickland and Mr. Matthews in the amounts of $1,140 and $1,784, respectively, and to remove the entire allocated portion of vehicles for Mr. Grantmyre and Mr. Tweed, in the amounts of $4,236 and $4,141, respectively.

Witness Carrigan testified that the cost associated with Company vehicles provided to Mr. Grantmyre and Mr. Tweed are not reasonable and necessary costs of providing utility service and that a transportation allowance for business related miles at a rate of 30 cents per mile was appropriate. Therefore, she removed the Company's allocated cost of these vehicles from rate base. Witness Carrigan also testified that she excluded from rate base the personal and nonutility use percentage of the allocated amount of vehicles related to Mr. Strickland and Mr. Matthews.

Witness Grantmyre testified that the four vehicles have been included in previous Brookwood rate cases before the Commission. Further, he stated that the removal of the vehicles essentially requires the affected employees to suffer a reduction in compensation.

In witness Grantmyre's rebuttal testimony, he stated that company vehicles are a material part of his and Mr. Tweed's employment compensation packages, which were negotiated when they were hired. He further stated that a vehicle was included in his employment package when he was hired by Heater in 1977 and contended that without a vehicle he would have required a substantial increase in salary to induce him to leave his law practice in Greenville. With regard to Mr. Tweed, whose

employment contract he negotiated, Mr. Grantmyre indicated that the provision of a vehicle made Heater's compensation and benefit package competitive with what Mr. Tweed had been receiving at Mid South Water Systems, Inc. (Mid South) and further indicated that without a vehicle Mr. Tweed would not have left Mid South to come to Heater. Witness Grantmyre contended that the provision of vehicles for both personal and business use is still a material part of their employment benefit packages, adding that his salary is below the midpoint of his salary grade as established by Minnesota Power and Light Company (Minnesota Power). For clarification purposes, Brookwood's parent Company is Topeka Group, Incorporated which is an investment subsidiary of Minnesota Power.

Witness Grantmyre further testified that he and Mr. Tweed are key employees of Brookwood and use their vehicles to provide service to customers: for system inspections, well site, production, and storage facility construction and operating inspections, easement field inspections, regulatory and other utility business meetings and traveling to and from Fayetteville for meetings with Brookwood employees.

Witness Grantmyre contended that the vehicles used by Mr. Strickland and Mr. Matthews are also substantial components of their employment packages. He indicated that both men are involved in field operations and that it is necessary for them to be able to get in and out of rough terrain in all types of weather conditions. He stated that it would be impossible for them to reach some destinations without the specialized vehicles they drive, a 1992 or 1993 Jeep Cherokee and a 1995 Chevrolet Blazer. Like Mr. Grantmyre and Mr. Tweed, they each keep a daily mileage log and add the compensation represented by personal mileage onto their W-2 forms for federal and state income tax purposes.

Mr. Grantmyre also stated that his vehicle is a 1994 Eagle Vision and Mr. Tweed's is a 1995 Dodge Intrepid. He also conceded that Minnesota Power had set a maximum vehicle allowance plus tax, tags, and title which amounted to approximately $20,500, and he had to pay the amount over that, which came to $2,100. Mr. Grantmyre testified that the allowances for the other three gentlemen's vehicles are approximately $1,000 lower than his allowance.

Witness Hilburn indicated that the vehicles of Messrs. Grantmyre, Tweed, Strickland and Matthews are capitalized on Heater's books and allocated among the Heater group based on the individuals' daily time sheets. Witness Hilburn testified that the amount recorded on Heater's books for Mr. Grantmyre's vehicle is the price of the vehicle less the amount paid by Mr. Grantmyre himself plus the "account 300 spread" for capitalized labor and related amounts such as insurance, pensions, and other employee benefits. She testified that the amount recorded on the books for Mr. Grantmyre's vehicle is $25,564, which is the beginning amount that is allocated out to the various affiliates or subsidiaries. She indicated that similarly the vehicles of the other three employees would also have capitalized labor expense and related amounts from the operations allocated to them.

Witness Hilburn further stated that if the amount of capitalized overheads in the "account 300 spread" had not been applied to vehicles, then those amounts would have been included in every other asset account included in rate base. However, she did not provide any documentation supporting that assertion, nor did she state how the capitalized overheads would have been allocated to Brookwood, Heater or any of its South Carolina affiliates' plant accounts.

Public Staff Grantmyre Cross-Examination Exhibit 2 provides the personal and business miles for each of these four individuals for the years 1993 and 1994 and the resulting percentages based on these numbers. For Mr. Tweed over 83% of his vehicle usage was personal in 1993 and over 80% was personal in 1994. For Mr. Grantmyre over 80% of his usage was personal in 1993 and over 57% was personal in 1994. Mr. Grantmyre did not disagree with the figures presented on this cross-examination exhibit. He also stated that he has continued to engage in the private practice of law to a limited extent, that he uses his company vehicle in conjunction with these activities, and that he is also compensated for the use of this vehicle by his clients.

The Hearing Examiner agrees with Mr. Grantmyre that the vehicles provided to these four employees should be considered as part of the employees' total compensation packages, particularly in the case of Messrs. Grantmyre and Tweed, whose personal use of such vehicles far exceeds their business use. While the personal use of company vehicles may well have been a part of the total compensation package for certain employees, the issue is the reasonableness of the expense as a component of rates. Whether any of the cost of these vehicles, plus capitalized overhead, should be included in rate base must be considered in the context of the overall salary and benefit levels of these employees and the nature of their work in providing service to Brookwood's customers. The Hearing Examiner considers that the vehicles driven by Mr. Grantmyre and Mr. Tweed are simply an additional form of compensation. On the other hand, the Hearing Examiner does not dispute the value to Brookwood and its customers of a portion of the vehicles driven by Mr. Strickland and Mr. Matthews whose day-to-day work activities require the use of these kinds of vehicles.

Information concerning individual employee salaries and benefits has not been made public but is available to the Commission pursuant to a protective order in this docket and is a part of the record. Brookwood contends that the various levels of compensation are necessary to attract and retain qualified employees. Given the level and variety of the benefits, which will be subsequently discussed in more detail, the Hearing Examiner has no doubt that the Company has been able to accomplish this purpose. The issue, however, is whether all of these costs are appropriate for inclusion in rates.

The Commission is aware that executives like Messrs. Grantmyre and Tweed serve Heater's stockholder, Minnesota Power, as well as its ratepayers. In this respect, the Public Staff's adjustment is similar to one recently upheld by the North Carolina Supreme Court in State ex rel. Utilities Commission v. North Carolina Power, 338 N.C. 412, 450 S.E.2d 896 (1994). In that case, the Commission excluded $28,000 or 50% of the allocated amount of compensation of three officers' salaries on the grounds that the functions of those persons were most closely linked with meeting the demands of the company's common stockholders. The record in this case shows that even Heater's parent deemed the total cost of Mr. Grantmyre's vehicle excessive as a form of compensation. Based upon the totality of the circumstances, i.e. considering the overall compensation packages for Mr. Grantmyre and Mr. Tweed and the fact that the business use of these particular vehicles has been in the range of 17% to 43% over the past two years, the Hearing Examiner is of the opinion that the expense of such vehicles assigned to Messrs. Grantmyre and Tweed should not be covered entirely by the ratepayer. Instead, the Hearing Examiner believes a more equitable treatment would be to allow only 50% of such vehicle costs to be borne by ratepayers, with the other 50% to be provided out of shareholder funds for purposes of this proceeding.

Therefore, the Hearing Examiner finds that it is inappropriate to include in plant in service 50% of the allocated portion of company vehicles used by Messrs. Grantmyre and Tweed. The Hearing Examiner further agrees with the Public Staff that an allocated portion of the cost of vehicles should be excluded from rate base for the personal or nonutility use of vehicles assigned to Messrs. Strickland and Matthews. The appropriate level of general plant allocated from Heater's operations center is, therefore, $321,977 and the appropriate level of total plant in service is $3,772,824.

Accumulated Deferred Income Taxes

The difference in accumulated deferred income taxes (ADIT) between the Public Staff and the Company relates to the Company's inclusion of the unamortized portion of rate case expenses in rate base giving rise to ADIT of $9,422. Elsewhere in this Order, the Hearing Examiner concludes that it is appropriate to include the unamortized balance of rate case expenses in rate base. The Hearing Examiner, therefore, concludes that it would also be appropriate to reflect ADIT related to unamortized rate case expenses in rate base. The appropriate level of ADIT in this proceeding is therefore $198,985.

Accumulated Depreciation

The difference between the Company's proposed level of accumulated depreciation and the Public Staff's proposed level is $109,641. A review of Carrigan Exhibit 1, Schedule 2-3, and Hilburn Revised Rebuttal Exhibit 1, Page 4, shows that the difference relates to accumulated depreciation removed by witness Carrigan in the amounts of $1,324 and $1,035, related to the removal of the entire allocated portion of vehicles assigned to Messrs. Grantmyre and Tweed, respectively; removal of the amounts of $641 and $447, for the allocated portion of the vehicles assigned to Messrs. Strickland and Matthews related to personal or nonutility use, respectively; and the inclusion of $113,088 that has been collected on contributed property through rates that included depreciation expense on such property.

Since the Hearing Examiner has previously concluded that it is appropriate to include in rate base 50% of the allocated portion of Company vehicles used by Messrs. Grantmyre and Tweed and the specific business use portions of Company vehicles driven by Messrs. Strickland and Matthews, then the Hearing Examiner also concludes that it is appropriate to include the corresponding portions of accumulated depreciation related to the portions of such vehicles that are included in rate base herein.

The remaining area of dispute relates to the Public Staff's inclusion of $113,088 for accumulated depreciation on contributed property. Witness Carrigan testified that she increased accumulated depreciation by $113,088 ($14,136 times 8 years) which represents depreciation expense on contributed property paid by Brookwood's customers from 1974 to 1981. Witness Carrigan summarized the history of this issue in support of her adjustment. She stated that the Hearing Examiner in Docket No. W-177, Sub 17, found that the Company had been allowed in its preceding general rate case, in Docket No. W-177, Sub 11, to recover, through depreciation rates, capital that had been contributed to the Company and concluded that the amount of $113,088 that was so collected should be deducted from rate base as cost free capital. Witness Carrigan testified that in

Docket No. W-177, Sub 31, the Hearing Examiner again found it appropriate to treat the $113,088 as cost free capital as a reduction to rate base in order to reflect that portion of capital supplied by ratepayers at no cost to the Company. She stated that in Docket No. W-177, Sub 31, upon a request for reconsideration filed by the Company, oral argument was scheduled and held on the issue in question. The full Commission found that the $113,088 should be treated as accumulated depreciation. She stated that the Public Staff has made this adjustment in the Company's last three general rate case proceedings, but that the Public Staff and Company have stipulated to a revenue requirement in each of these cases and the matter has not been relitigated. Witness Carrigan testified that the full Commission had approved the decision to deduct $113,088 in determining Brookwood's rate base in Docket No. W-177, Sub 31 and that it is correct to continue to deduct that amount in this proceeding. She stated that since the Commission has determined that this amount should be reclassified as accumulated depreciation, $113,088 should be added to the Company's accumulated depreciation balance to properly reflect this source of capital supplied by ratepayers.

Witness Grantmyre also summarized the history of this adjustment. He testified that by Order issued in Docket No. W-177, Sub 11, the Commission approved rates which reflected the inclusion of $14,136 of annual depreciation expense on contributed property. He indicated that approximately one year after the decision in Docket No. W-177, Sub 11, the North Carolina Supreme Court issued its decision in Utilities Commission v. Heater Utilities Inc. 288 N.C. 457 (1975), wherein the Court held that the Commission could not allow annual depreciation expense on contributed property in rates. He stated that when Brookwood filed its next general rate case, in Docket No. W-177, Sub 17, Brookwood removed the depreciation expense on contributed plant from the cost of service, as well as all contributed plant and the associated accumulated depreciation on such plant. Witness Grantmyre indicated that the Public Staff agreed with the decisions to remove contributed plant from rate base and annual depreciation expense from cost of service, but did not remove the accumulated depreciation. He noted that the Public Staff's position was that the monies collected as depreciation on contributed plant should be reflected and continue to be reflected in accumulated depreciation. Witness Grantmyre noted that the Hearing Examiner disagreed with both parties treatment of the item and concluded that the $113,088 should be deducted from rate base as cost free capital. He indicated that in Docket No. W-177, Sub 31, the Public Staff proposed that the $113,088 should continue to be treated as cost free capital, with the Company disagreeing and arguing that such treatment constituted retroactive ratemaking. The Hearing Examiner agreed with the Public Staff and the Company sought reconsideration by the full Commission. Witness Grantmyre cites the language in the July 15, 1991, Final Order in Docket No. W-177, Sub 31, wherein the Commission stated that reducing rate base by $113,088 as cost free capital would violate the principle against retroactive ratemaking and the reduction should be denied. He testified that had the Commission's Order stopped at that point, it would have been correct, but that instead the Commission had in essence adopted the Public Staff's argument in Docket No. W-177, Sub 17, that while the contributed property should be removed from rate base, $113,088 of accumulated depreciation related to the contributed plant should stay on the books as accumulated depreciation. He contended this argument was rejected by the Hearing Examiner in Docket No. W-177, Sub 17 and abandoned by the Public Staff in Docket No. W-177, Sub 31 for "good reasons", which he proposed to demonstrate.

Witness Grantmyre offered an example in the current proceeding in an attempt to show that the Public Staff's treatment violated the "matching principle." Witness Grantmyre contended that the

Commission had "double-dipped" Brookwood's net investment in plant by placing $113,088 back in the accumulated depreciation account when the contributed property to which the accumulated depreciation relates has been removed from rate base. He stated that to add back accumulated depreciation without also restoring an offsetting amount of plant to the plant accounts violates the principle of "matching" depreciation expense and the accumulated depreciation resulting from depreciation expense with the plant items that produce the depreciation expense.

According to the Public Staff's proposed order, it has reviewed the example provided in witness Grantmyre's rebuttal testimony at page 22, which he offered to illustrate the problem of including the $113,088 in accumulated depreciation in rate base when the underlying contributed plant has been removed. Witness Grantmyre stated that assuming in his example that it were determined "'contributed'" plant in the amount of $475,072 should be removed from rate base " for whatever reason", then two adjustments to the example would be necessary. He contended that the contributed plant amount of $475,072 should be removed from the plant in service accounts and that $475,072 of contributions in aid of construction (CIAC) should be removed from the accumulated depreciation accounts. The Public Staff's proposed order noted several problems with his example and his related discussion of the accounting as follows. Witness Grantmyre's example only reflects accumulated depreciation on the plant in service in which the utility had an investment, it does not reflect any accumulated depreciation associated with contributed plant, the issue that is here in dispute. Under the assumptions stated by witness Grantmyre, the $86,832 in accumulated depreciation in his example relates to plant in which the utility had an investment. He also states that his example reflects the situation at the time of the Docket No. W-177, Sub 11 rates. The example, therefore, would not reflect accumulated depreciation related to depreciation expense allowed in that docket. Witness Grantmyre's discussion of the effect of adding back the accumulated depreciation to the remaining rate base seems to imply that he has somehow removed the accumulated depreciation associated with contributed plant; a result his example does not show. The Public Staff concluded that this example does not pertain to the facts of this case. In this regard, the Hearing Examiner agrees with the Public Staff since witness Grantmyre's example appears only to remove an equal amount of plant and CIAC from rate base.

As an alternative, witness Grantmyre stated, "[a]ssuming, but only for the sake of argument, that it would be proper for the Commission, in hindsight, to increase the accumulated depreciation accounts by $113,088 due to the depreciation expense taken on contributed plant during the years 1974-1982, Brookwood should also have been allowed to amortize an equal amount of the CIAC, producing a '0' effect adjustment to rate base." In his rebuttal testimony, witness Grantmyre presented a chart at page 23, to show how he contends the accounting would work if CIAC had been amortized. In his example he places back into rate base the plant and the CIAC and then adds the accumulated depreciation of $113,088, which he then offsets with the amortization of CIAC. As shown in this chart in his rebuttal testimony, the plant and the accumulated depreciation are both reflected. Therefore, the "matching principle," as witness Grantmyre terms it, has not been violated. This chart on page 23 also shows that his illustration on page 22 of his rebuttal testimony is flawed since when plant, CIAC, and the $113,088 of accumulated depreciation are all considered, his proposed offset becomes the amortization of CIAC instead of the plant offset.

Since the Hearing Examiner allowed depreciation on contributed property in the cost of service in Docket No. W-177, Sub 11, it clearly would be incorrect to reflect, in a future rate case, the cumulative amortization of CIAC related to that depreciation as an offset to the accumulated depreciation. If CIAC had been amortized, then the annual level of depreciation expense on contributed plant approved in Docket No. W-177, Sub 11 would have been zero rather than $14,136.

The Hearing Examiner finds that witness Grantmyre's contentions (1) that adding back accumulated depreciation without also restoring an offsetting amount of plant to the plant accounts violates the "matching principle" and (2) that if the $113,088 of accumulated depreciation is included, Brookwood should be allowed to amortize an equal amount of CIAC, are both without merit. Neither of these contentions takes into consideration that when depreciation on contributed plant is allowed as an operating expense, there is no amortization of CIAC. In other words, the CIAC is treated as permanent capital. In the first scenario, witness Grantmyre ignores the fact that CIAC was not amortized and that the CIAC would offset the plant amount, and therefore, there is no additional amount of plant to be restored to offset the accumulated depreciation of $113,088. In the second scenario, he ignores the fact that since depreciation was allowed on contributed plant in Docket No. W-177, Sub 11, it would be incorrect to include accumulated amortization of CIAC to offset the $113,088 of accumulated depreciation.

Witness Grantmyre has also argued that the Commission's treatment of the $113,088 as accumulated depreciation in its Final Order issued in Docket No. W-177, Sub 31 on July 15, 1991, violates the principle against retroactive ratemaking.

The Hearing Examiner finds witness Grantmyre's argument that the treatment of the $113,088 as accumulated depreciation constitutes retroactive ratemaking to be without merit. Retroactive ratemaking has been defined as where "... an additional charge is made for past use of utility service, or the utility is required to refund revenues collected, pursuant to then lawfully established rates, for past use." Utilities Commission v. Nantahala Power and Light Company 326 N.C.190, 388 S.E.2d 118, 127 (1990), quoting Utilities Commission v. N.C Natural Corp., 323 N.C. 630, 641, 375 S.E.2d 147, 153 (1989) See also Utilities Commission v. Edmisten, 291 N.C.451, 232 S.E.2d 184 (1977). "Prospective rate making to recover unexpected past expense or to recover expected past expense which did not materialize, is as improper as is retroactive rate making." Edmisten, supra, 291 N.C. at 469 (other citations omitted). The Commission's treatment of the $113,088 as accumulated depreciation does not fit the definition of retroactive ratemaking.

The Commission in its July 15, 1991, Final Order on Exceptions Modifying Recommended Order issued in Docket No. W-177, Sub 31 correctly stated:

> "...in accordance with our conclusion that the rates and charges approved in Docket No. W-177, Sub 11, were lawfully established, the Commission finds that the level of depreciation expense included in the cost of service in that docket, and collected through rates by the Company during the eight years, from 1974 through 1981, results in an increase of $113,088 in the Company's reserve for accumulated depreciation. Thus, the Commission finds it appropriate to treat the $113,088 amount in question as accumulated depreciation rather than as cost-free capital in recognition of the fact that

this amount was collected through rates as depreciation expense. This $113,088 level of accumulated depreciation is related to certain utility plant which had been contributed to the Company rather than purchased by the Company but, nevertheless, it is accumulated depreciation."

It is apparent to the Hearing Examiner that the treatment accorded the $113,088 by the Commission in Docket No. W-177, Sub 31, and recommended by the Public Staff in this case is simply the recognition of depreciation collected under legally established rates. The recognition of depreciation expense collected pursuant to legally established rates is standard ratemaking practice and such practice does not constitute retroactive ratemaking.

For the reasons discussed above, the Hearing Examiner concludes that the $113,088 should be included as accumulated depreciation as recommended by the Public Staff and as so treated by the Commission in Docket No. W-177, Sub 31. Such treatment violates no accounting principle nor does it constitute retroactive ratemaking.

Based upon the foregoing, the Hearing Examiner concludes that the appropriate amount of accumulated depreciation is $1,066,256.

Working Capital Allowance - Cash Working Capital

The difference between the Public Staff's recommended level of cash working capital and the level proposed by the Company results from the parties' use of different levels of operating and maintenance expenses. The standard formula used by this Commission for water and sewer utilities, allows one-eighth of operating and maintenance expenses as the amount required for cash working capital.

Based on the evidence of record and findings and conclusions set forth elsewhere in this Order, the Hearing Examiner concludes that the appropriate level of cash working capital is $102,910.

Working Capital Allowance - Prepayments

The difference between the Public Staff and the Company in prepayments is associated with the unamortized balance of rate case expense.

Witness Carrigan recommended that no unamortized balance of rate case expenses be included in prepayments. She stated that, since she had included a representative level of regulatory commission expense related to this proceeding, it would be inappropriate to include any unamortized rate case expenses in rate base given the ordinary, recurring nature of rate case expenses, the level of Brookwood's rate case expenses, and the frequency with which Brookwood files rate cases. Witness Grantmyre stated that Brookwood believes the Commission should follow its long standing policy of amortizing rate case expenses over a three-year period with the unamortized balance included in rate base.

In Carolina Water Service, Inc. of North Carolina in Docket No. W-354, Sub 128, by Order dated June 10, 1994, the Commission stated on page 46:

> "This Commission has, in the past, consistently included unamortized rate case expense in deferred charges. This is the second case in which this issue has been contested. Excluding operating ratio companies and cases that were settled prior to being resolved by the Commission, there has not been one case in which a public utility company had sought to amortize rate case expenses and the Commission had denied such treatment and instead treated rate case expenses as a normalized test year expense. We believe that this treatment is fair and should be continued. The Public Staff has offered insufficient justification for altering this long-standing policy based on its testimony in this case."

The Hearing Examiner concludes that it is appropriate to use the actual payroll, legal fees and other expenses incurred through the date of filing of the proposed orders in this docket as reflected in the Company's late-filed exhibits filed on September 13, 1995, and to amortize the total rate case expenses of $35,247 reflected therein over three years, with the unamortized balance of $23,498 to be included as prepayments in deferred charges.

The Commission has in the past consistently included unamortized rate case expense in deferred charges. The Public Staff has not offered any justification in this case for the Commission to alter its long standing policy. This decision is consistent with all prior public utility company rate cases where the Company sought to amortize rate case expenses and include deferred charges in rate base.

Therefore, the Hearing Examiner concludes that the appropriate level of prepayments is $80,609.

Working Capital Allowance - Tax Accruals

The difference between the Public Staff's calculation of tax accruals and the Company's calculation involves the parties' use of different levels of expense for property taxes on vehicles and different levels of revenue under present rates for calculating revenue related gross receipts taxes. The appropriate levels of revenue under present rates and property taxes are determined elsewhere in this Order. Based on these approved levels, the Hearing Examiner concludes that the appropriate level of tax accruals is $18,763.

Summary Conclusion

Based upon the foregoing, the Hearing Examiner concludes that the reasonable original cost rate base is $2,528,920, consisting of the following items:

Item	Amount
Plant in service	$3,772,824
Customer deposits	(143,530)
Accumulated deferred income taxes	(198,985)
Accumulated depreciation	(1,066,256)
Working capital allowance:	
Cash working capital	102,910
Prepayments	80,609
Tax accruals	(18,763)
Investment tax credits	(21,930)
Materials and supplies inventory	22,041
Original cost rate base	$2,528,920

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is found in the testimony of witness Furr. Witness Furr calculated the level of service revenues for the water operations under present rates to be $1,368,975. The Company agreed with this level of service revenues under present rates as reflected in its proposed order.

In calculating the level of service revenues, a customer growth annualization factor was applied to test year consumption to derive an annualized consumption. The factor of 1.0181 used by the Public Staff was a metered customer growth annualization factor. This is the appropriate factor since the test year consumption was for metered customers only, thus, flat rate customers should be excluded. Such factor was not contested by the Company. Based upon the parties' agreement, the Hearing Examiner finds that the appropriate level of service revenues is $1,368,975 under present rates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 - 12

The evidence supporting these findings of fact is contained in the application and in the testimony of witnesses Furr and Carrigan.

Witness Furr testified that the Applicant received revenues from sources other than basic service revenues during the test year of $40,809 as follows:

Item	Amount
Reconnect fees	$ 9,465
Late payment fees	996
Returned check charge	6,180
New account fee	24,168
Total	$40,809

Witness Furr further testified that the Applicant received $35 for other water sales during the test year. He also testified that the Applicant received $880 from interest income and $5 as a

discount on accounts payable. These amounts were uncontested. A summation of all these miscellaneous revenues yields an end of period level of miscellaneous revenues under present rates of $41,729, which is the same level reflected in the Company's proposed order.

Witness Furr further testified that the Applicant has requested an increase in the new account fee from $12 to $15, and that the Public Staff does not oppose this increase. Witness Furr applied an overall customer growth annualization factor of 1.0163 to each of these miscellaneous service revenue items to account for overall customer growth. The level of such miscellaneous revenues adjusted to account for customer growth and the proposed new account fee are as follows:

Item	Amount
Reconnect fees	$ 9, 619
Late payment fees	1,012
Returned check charge	6,281
New account fee	30 702
Total	$47,614

With the addition of the $35 for other water sales during the test year, the $880 amount received by the Applicant from interest income, and the $5 discount on accounts payable to the amount of $47,614 results in a level of miscellaneous revenues under proposed rates of $48,534, which was agreed to by both parties and the Hearing Examiner finds this level to be appropriate.

The record also indicates that the level of uncollectible revenues under present rates was uncontested, and the Hearing Examiner, therefore, concludes that the appropriate level is $3,698.

The Hearing Examiner in the Evidence and Conclusions for Finding of Fact No. 9 found that the end of period level of service revenues for water operations under present rates is $1,368,975. Adding to this level of service revenues, the amount of $41,729 found reasonable herein for the end of period miscellaneous revenues, and subtracting $3,698 for uncollectible expense results in the appropriate level of end of period operating revenues under present rates being $1, 407, 006

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is found in the application and the testimony of witness Furr.

The metered customer growth annualization factor filed by Brookwood was 1.018, and was calculated using 6,991 end-of-period metered residential equivalent units (REUs), and 82,416 REU test year billings. Witness Furr's calculation used corrected totals of 6,992 REUs and 82,414 REU test year billings, respectively, and produced a factor of 1.0181. This adjustment was uncontested.

The overall customer growth annualization factor which includes both flat rate and metered customers, filed by Brookwood was 1.016, and was calculated using 6,991 end-of-period REUs, and 82,416 REU test year billings. Witness Furr's calculation used corrected totals of 6,992 REUs and 82,414 REU test year billings, respectively, and produced a factor of 1.0163. This adjustment was uncontested.

Based upon the foregoing, the Hearing Examiner finds that the appropriate metered customer growth annualization factor is 1.0181, and the appropriate overall customer growth annualization factor is 1.0163, for purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 - 44

The evidence for these findings of fact is contained in the application and in the testimony of witnesses Grantmyre, Tweed, Hilburn, Furr, and Carrigan, the Public Staff's late-filed exhibit, the Company's late-filed exhibits, and information of which the Hearing Examiner has taken judicial notice. The level of total operating revenue deductions recommended by the Public Staff and the level proposed by the Company, as presented in their proposed orders, are shown as follows:

Item	Public Staff	Company	Difference
Salaries & wages - field employees	$ 137,932	$137,932	-
Purchased water	5,688	5,688	-
Purchased power	115,930	115,930	-
Chemicals	76,986	76,986	-
Maintenance and repair	5,142	5,142	-
Testing fees	62,350	62,350	-
Transportation and equipment operation	14,844	14,844	-
Permit fees	1,675	1,675	-
Signal wires	1,506	1,506	-
Tank Painting	8,315	8,315	-
Freight and other miscellaneous	2,206	2,206	-
Salaries & wages - office employees	179,439	179,439	-
Pensions and other employee benefits	51,096	56,979	5,883
Purchased power - office	3,307	3,307	-
Materials and supplies - office	12,616	12,616	-
Contract services	27,047	27,047	-
Rent	7,152	7,152	-
Transportation - general & administrative	1,092	1,118	26
Insurance	16,281	16,436	155
Regulatory commission expense	20,966	17,985	(2,981)
Miscellaneous - general & administrative	62,245	62,245	-
Interest expense - miscellaneous	8,169	8,169	-
Annualization adjustment	3,919	4,145	226
Total O & M expense	825,903	829,212	3,309
Depreciation and amortization expense	231,288	234,114	2,826
Taxes - other than income taxes	44,031	44,116	85
Regulatory fee	1,407	1,407	-
Gross receipts taxes	56,280	56,245	(35)
State income taxes	8,699	7,652	(1,047)
Federal income taxes	27,569	23,207	(4,362)
Total operating revenue deductions	$1,195,177	$1,195,953	$ 776

As shown above, the Public Staff and the Company are in agreement on a number of components of operating revenue deductions. The parties agree on salaries and wages for field employees, purchased water, purchased power, chemicals, maintenance and repair, testing fees, transportation and equipment operation expense, permit fees, signal wires, tank painting, freight and other miscellaneous, salaries and wages for office employees, office purchased power expense, office materials and supplies, contract services, rent, miscellaneous general and administrative expenses, miscellaneous interest expense, and regulatory fee. Therefore, the Hearing Examiner concludes that the appropriate level of salaries and wages for field employees is $137,932, purchased water is $5,688, purchased power is $115,930, chemicals is $76,986, maintenance and repair is $5,142, testing fees is $62,350, transportation and equipment operation expense is $14,844, permit fees is $1,675, signal wires is $1,506, tank painting is $8,315, freight and other miscellaneous is $2,206, salaries and

wages for office employees is $179,439, office purchased power expense is $3,307, office materials and supplies is $12,616, contract services is $27,047, rent expense is $7,152, miscellaneous general and administrative expenses is $62,245, miscellaneous interest expense is $8,169 and regulatory fee expense is $1,407.

Pensions and Other Employee Benefits

The difference between the parties in the amount of $5,883, relating to pensions and other employee benefits, is due to the Public Staff's proposal set forth in its proposed order to remove from operating expenses the Company's costs of 401(k) matching contributions. The Public Staff did not present any evidence at the hearing of any intention to make this proposed adjustment. In fact, the prefiled testimony of witness Carrigan specifically states the following position in this regard:

> "In the application, Brookwood Water Corporation, Inc. included employees' uniforms, pension plan, health, life and disability insurance premiums, 401K contributions and other miscellaneous benefits. The Company provided updated amounts for pensions, 401K contributions and miscellaneous expenses. There was an increase of $128 to pensions, an increase of $65 to 401K contributions and a decrease of $27 to miscellaneous expense. These updates were found to be reasonable."

In Exhibit F of the Company's application, the Company shows the following regarding its 401(k) contributions: the test year, per books amount was $140, to this amount the Company made an adjustment of $5,678, to arrive at its proposed adjusted annualized level of $5,818. The Company later provided an updated adjusted amount of $5,883, which was an increase of $65 to 401(k) contributions over what was originally proposed.

In its proposed order, the Public Staff is taking the position that the reasonableness of the overall level of employee wages and benefits to be included in setting rates needs to be carefully evaluated. The Public Staff is of the opinion that the record indicates that employment with Heater and its affiliates is obviously desirable compared to employment with the State. In this regard, the Public Staff noted several benefits as follows. Brookwood pays 70% of the premiums for health insurance which includes coverage for employee only, employee and child(ren) or family coverage. All Brookwood employees participate in what is called "result sharing" which means that if the Company meets certain criteria each employee receives an award equal to a percentage of his or her annual compensation. In addition to its 7% contribution to the employee pension plan, the Company makes up to a maximum 2% matching contribution to its employees' 401(k) plans, a cost of $5,883 for the test year, something the State does not offer. Brookwood also pays a portion of employee dues at local health clubs to encourage physical fitness. In summary, the Public Staff believes the testimony of Brookwood's own witnesses supports the finding that the overall compensation and benefits package offered by Brookwood is generous to the point that it deserves close scrutiny, especially in a period of increasing upward pressure on water rates. The Public Staff has stated in its proposed order that the 2% contribution to employee 401(k) plans is the benefit which appears most unnecessary compared to state employee benefits and thus, recommended that the amount of $5,883 for matching contributions be excluded from operating expenses in this proceeding.

This adjustment proposed by the Public Staff appears to be a compromise position to arrive at what the Public Staff considers a reasonable overall level of employee compensation including pensions and other benefits. Prior to the filing of its proposed order, as stated in witness Carrigan's prefiled testimony, the Public Staff disagreed with the Company on the Company's inclusion of $5,247 in operating expenses relating to health insurance premiums.

Witness Carrigan explained that Brookwood pays 50% of the premiums for life and disability insurance and 70% of the premiums for health insurance. She stated that the health insurance premium includes coverage for employee only, employee and child(ren) or family coverage. She stated that it was the Public Staff's opinion that 100% of the premiums for health insurance for Brookwood's employees should be allowed but that the health insurance premiums for employee spouses and children should not be paid for by ratepayers.

Brookwood vigorously contested the Public Staff's adjustment to health insurance premiums. Witness Grantmyre testified that Brookwood only has 12 full time employees and that the Brookwood employees are included in Heater's group medical insurance policy because 1) it would be very difficult to obtain a comprehensive and cost effective policy for such a small group, 2) Heater provides the same benefit package to all of its employees whether they are employed by the parent company or one of its subsidiaries, and 3) to offer different benefit packages to groups of employees who work together with many employees performing services for the parent and all the subsidiaries would be bad for morale, difficult and more expensive to administer and unfair.

In his prefiled rebuttal testimony, witness Grantmyre testified that the group health insurance expense should be further increased by $1,207 to reflect updates related to post test year changes by employees in their dependent insurance coverage. Witness Carrigan's testimony did not specifically address this $1,207 updated amount. The resulting difference between the Company and the Public Staff at the close of the hearing was in the amount of $6,454, ($5,247 + $1,207) relating to health insurance premiums.

Witness Grantmyre testified that, if the Company pays 100% of the employee only coverage, then nine Brookwood and Heater Utilities' Operations Center employees who are covered under their spouses' policies and currently have no medical insurance coverage at all with Brookwood, must be covered as required by Brookwood's group medical insurer, costing Brookwood an additional $4,021 per year. Therefore, witness Grantmyre stated that the cost reduction realized by dropping dependent coverage would be materially offset by the increased cost of picking up 100% of employee only premiums. He further testified that those Brookwood employees that do not elect coverage, do not receive any other type of compensation or benefit to replace the group medical coverage that they declined.

Witness Grantmyre presented a copy of a June 30, 1995, letter from Brookwood's insurer Pacific Mutual stating that, if the employer pays 100% of the premium, then all employees must be covered. Witness Grantmyre further testified there would be no reason under the policy coinsurance clauses, for an employee to decline coverage, if it were free to the employee. He further testified that Heater's prior medical insurance carrier also had the same requirement -- that all employees must be covered -- if the employer paid 100% of the employee premium.

Witness Grantmyre testified that in all of Brookwood's rate cases since being acquired by Heater, the Commission had approved the Company paying the percentage of dependents' medical insurance coverage.

Witness Grantmyre testified that the Public Staff's proposed adjustment effectively results in a pay decrease for Brookwood employees. He testified that all Brookwood employees were hired with the benefits package of the employer paying a percentage of the dependents group medical coverage. In addition, Mr. Grantmyre testified that reducing this benefit would make Brookwood less competitive with other employers in central and eastern North Carolina. He testified that, according to the 1995/1996 Personnel Practices Survey, 86% of the 261 employers surveyed paid more than Brookwood for employee only coverage and 45% pay better for dependent coverage.

As noted previously, the Public Staff's proposed order reflects that they ultimately did agree with the Company's position on health insurance premiums, i.e., the Public Staff concluded that it was appropriate to include the amount of $26,415 for such expenses as proposed by the Company. However, upon reaching this conclusion, the Public Staff then decided that the overall level of the Company's employee compensation package including pensions and other benefits was unreasonable and thus recommended removal of the Company's 401(k) matching contributions.

The Hearing Examiner is surprised by the Public Staff's change in position taken in its proposed order suggesting that 401(k) contributions should now be removed from the Company's operating expenses because they generally believe that the overall level of compensation proposed by the Company is unreasonable. The evidence in this case provides Public Staff testimony stating that the amount of the 401 (k) contributions was reasonable. The issue of the unreasonableness of the 401(k) company matching payments was not raised by the Public Staff prior to its proposed order being filed. Based upon the evidence, the Hearing Examiner finds that it would be inappropriate to accept the Public Staff's adjustment to remove 401(k) matching payments, as no evidence was provided to support such adjustment.

Based upon the foregoing, the Hearing Examiner concludes that it is appropriate to include the amount of $26,415 for health insurance premiums and $5,883 for 401(k) matching contributions in operating expenses. The appropriate amount to include in operating expenses for total pensions and other employee benefits is, therefore, $56,979, consisting of $1,767 for uniforms, $22,150 for pensions, $26,415 for health insurance premiums, $5,883 for 401(k) matching contributions, and $764 for other miscellaneous benefits.

Transportation - General and Administrative

The difference between the Company and the Public Staff in the amount recommended for general and administrative transportation expenses relates to the adjustment made by the Public Staff to include a transportation allowance for the business use of company vehicles assigned to Messrs. Grantmyre and Tweed based on a rate of 30 cents per mile in lieu of the Company's position reflecting inclusion of the total allocated cost of operating these vehicles related to general operations. The net adjustment recommended by Ms. Carrigan to general and administrative transportation expense results in a decrease of $26.

In prior findings and conclusions set forth in this Order, the Hearing Examiner has concluded that it is appropriate to include 50% of the allocated cost of Messrs. Grantmyre's and Tweed's vehicles. Therefore, the Hearing Examiner concludes that it is appropriate to include the total allocated costs claimed by Brookwood in its application for the operation of the vehicles of Messrs. Grantmyre and Tweed for transportation expense relating to customer service. Such treatment would be consistent with both parties' treatment of these same kinds of expenses related to the vehicles of Messrs. Strickland and Matthews. Based upon the foregoing, the Hearing Examiner finds that the reasonable level of general and administrative transportation expense in this proceeding is $1,118.

Insurance

The difference between the Company and the Public Staff in insurance expense involves the adjustment made by the Public Staff to exclude the allocated portion of vehicle insurance related to the vehicles assigned to Messrs. Grantmyre and Tweed. The net adjustment recommended by witness Carrigan to insurance expense results in a decrease of $155.

Elsewhere in this Order, the Hearing Examiner has concluded that it is appropriate to include 50% of the allocated costs associated with Messrs. Grantmyre's and Tweed's vehicles. Therefore, the Hearing Examiner concludes that it is appropriate to include the portion of vehicle insurance that relates to these vehicles, just as the parties have included insurance expense for the vehicles of Messrs. Strickland and Matthews. Thus, the appropriate level of insurance expense for use in this proceeding is $16,436.

Rate Case Expense

The Company and the Public Staff differ on the appropriate amount of rate case expense in essentially two respects. The first involves an adjustment made by the Public Staff to exclude rate case expenses either not actually incurred or not expected to be incurred. Witness Grantmyre testified that Brookwood has spent, and expects to spend, considerably more money for rate case expenses in this proceeding than represented in the Public Staff's exhibits. The Public Staff stated in its proposed order that it would be reasonable and appropriate to allow the actual documented expenses reasonably incurred by the Company for this proceeding and noted that at the time its proposed order was to be filed that Brookwood had not provided the appropriate documentation to support any additional rate case expenses.

The second area of disagreement involves the use of a three-year amortization period for rate case expenses as proposed by the Company with the unamortized balance to be included in rate base versus the Public Staff recommendation of a two-year period with no inclusion of any unamortized balance in rate base.

On September 13, 1995, Brookwood filed a late-filed exhibit showing the total rate case costs including actual payroll, legal fees and other expenses through the date of filing its proposed order. The total rate case expenses reflected by the Company in such exhibit was $35,298; the Company also showed that the total rate case expenses would be slightly reduced to $35,247 reflecting the exclusion of payroll expense related to witness Hilburn's time spent on her investigation into filing rebuttal testimony on the cost of debt issue which was stipulated by the parties and no Company testimony was filed on this issue. The Stipulation stated that any amount budgeted for a cost of capital witness for Brookwood would be removed from rate case expense.

Based upon its filing on September 13, 1995, the Hearing Examiner finds that Brookwood has provided appropriate documentation to support additional rate case expenses over the level recommended by the Public Staff. The Hearing Examiner finds that the total costs of $35,247 for rate case expenses consisting of $22,258 for payroll, $500 for filing fee, $5,119 for legal fees, $5,542 for postage, and $1,828 for printing and miscellaneous is the appropriate total cost of rate case expenses incurred in this case. Further, the Hearing Examiner concludes that a three-year amortization period for rate case expenses is reasonable and that it is appropriate to include the unamortized portion of $23,498 in rate base, as discussed elsewhere in this Order.

The Hearing Examiner, therefore, concludes that the appropriate level of rate case expense to be included in operating revenue deductions for this proceeding is $17,968, consisting of $11,749 relating to amortization of rate case expenses incurred in this docket, $1,132 related to unrecovered rate case expenses in Docket No. W-177, Sub 31, and $5,087 related to unrecovered rate case expenses in Docket No. W-177, Sub 34. The parties were in agreement on the inclusion of the Company's two prior rate case, unrecovered expense amounts and included these foregoing amounts in their total level of rate case expenses.

Annualization Adjustment

The difference between the Company and the Public Staff relates to the application of an annualization factor to the appropriate expense levels that would be affected by the customer growth factor.

Witness Furr recommended that the annualization factor not be applied to the transportation expense, since customer growth has been within existing service areas and not through the addition of new service areas. He stated that additional transportation expenses are not directly related to this type of growth.

Witness Tweed testified that transportation expense includes items such as gasoline, maintenance on vehicles, tires and other vehicle related expenses, and that primary factors which influence the expense are the number of miles traveled and the number of vehicle starts and stops.

He further testified that these factors increase with customer growth. He stated that most of Brookwood's growth involved the addition of new streets, and that the new customers increase the starts, stops and miles for meter readings, turn-ons, shut-offs, customer service visits, and more frequent visits to the new and existing well sites to replenish chemicals and service the pumping equipment and controls.

Upon cross-examination, witness Tweed testified that Brookwood tries to schedule such activities to be as efficient as possible.

The Hearing Examiner finds that growth has been within the Company's existing franchised service areas, and that with proper planning and scheduling, the transportation expense will not increase with customer growth as it would if travel were required to new service areas to serve new customers. Therefore, the Hearing Examiner finds that it is not appropriate to apply the customer growth annualization factor to transportation expense.

The annualization factor that is being applied is 1.0163 and it has been previously accepted and discussed elsewhere in this Order. As to all the other items of expense to which the annualization factor has been applied including expenses such as purchased power, chemicals, materials and supplies, small tools, postage etc., the parties were in agreement on the level of such other individual expense items to which the annualization factor should be applied and the Hearing Examiner has accepted those levels of various expense items as discussed herein. Based on those findings, the Hearing Examiner concludes that the appropriate level of total expenses to be adjusted for annualization purposes is $240,555. Therefore, the appropriate annualization adjustment for use in this proceeding is $3,919.

Total Operating and Maintenance Expense

Based on the findings and conclusions set forth above relating to operating and maintenance expenses, the Hearing Examiner concludes that the appropriate level of total operating and maintenance expense is $828,969.

Depreciation and Amortization Expense

The difference between the Company and the Public Staff for depreciation and amortization expense involves the same issue, previously discussed herein, related to the appropriate portion of Company vehicles for Messrs. Grantmyre, Tweed, Strickland, and Matthews to be included in utility operations. The Hearing Examiner finds that it is appropriate to use the allocated portion of company vehicles to utility operations as the basis for determining depreciation expense on these vehicles. Based upon prior evidence and conclusions set forth in this Order, the Hearing Examiner finds that the appropriate level of depreciation and amortization expense is $232,336.

Taxes - Other Than Income Taxes

The difference between the Company and the Public Staff for taxes other than income taxes is the amount excluded by the Public Staff for property taxes related to company vehicles assigned to Messrs. Grantmyre and Tweed. Based on conclusions previously reached herein on this issue, the Hearing Examiner concludes that it is appropriate to include the allocated portion of property taxes from expenses related to these vehicles, just as the parties have included property tax expense for the vehicles of Messrs. Strickland and Matthews. Therefore, the appropriate level of taxes other than income taxes for use in this proceeding is $44,116.

Gross Receipts Taxes

The difference between the Company and the Public Staff for gross receipts taxes involves the application of the appropriate statutory rate of 4% to differing levels of operating revenues. However, as previously noted, the parties have agreed on the appropriate level of operating revenues under present rates as discussed in the Evidence and Conclusions for Findings of Fact Nos. 9-12. Based upon the level of revenues under present rates that has been found appropriate for use in this proceeding, the Hearing Examiner concludes that the appropriate level of gross receipts taxes in this proceeding is $56,280.

State Income Taxes

The difference between the Company and the Public Staff for state income taxes relates to the application of the statutory tax rate of 7.75% to different levels of net taxable income. Based on conclusions set forth in this Order regarding the appropriate levels of revenues and expenses, the Hearing Examiner concludes that the appropriate level of state income taxes is $8,300.

Federal Income Taxes

The difference between the Company and the Public Staff for federal income taxes involves the application of the statutory income tax rate of 35% to different levels of net taxable income. Based on prior conclusions made by the Hearing Examiner related to the appropriate levels of revenues and expenses, the Hearing Examiner concludes that the appropriate level of federal income taxes is $25,909.

Total Operating Revenue Deductions

Based upon the foregoing, the Hearing Examiner concludes that the appropriate level of total operating revenue deductions, under present rates is $1,197,317.

Summary Conclusion

The following table summarizes the appropriate and reasonable levels of total operating revenue and total operating revenue deductions for use in this proceeding:

Item	Amount
Service revenue	$1,368,975
Miscellaneous revenue	41,729
Uncollectibles	(3 698)
Total operating revenues	1,407,006
Operating revenue deductions:	
Salaries and wages - field employees	137,932
Purchased water	5,688
Purchased power	115,930
Chemicals	76,986
Maintenance and repair	5,142
Testing fees	62,350
Transportation and equipment operation	14,844
Permit fees	1,675
Signal wires	1,506
Tank painting	8,315
Freight and other miscellaneous	2,206
Salaries and wages - office employees	179,439
Pensions and other employee benefits	56,979
Purchased power - office	3,307
Materials and supplies - office	12,616
Contract services	27,047
Rent	7,152
Transportation - general and administrative	1,118
Insurance	16,436
Regulatory commission expense	17,968
Miscellaneous - general and administrative	62,245
Interest expense - miscellaneous	8,169
Annualization adjustment	3,919
Total operating and maintenance expense	828,969
Depreciation and amortization	232,336
Taxes other than income taxes	44,116
Regulatory fee	1,407
Gross receipts taxes	56,280
State income taxes	8,300
Federal income taxes	25,909
Total operating revenue deductions	$1 197,317

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 45 - 47

The evidence supporting these findings of fact is contained in the Joint Stipulation filed by the Applicant and the Public Staff on June 14, 1995. The Public Staff and Brookwood agreed and stated in the Stipulation that it has no precedential value and that it would not be cited by either party in any future proceeding. Inasmuch as the Stipulation is uncontested, the Hearing Examiner concludes that it is reasonable and should be approved. Therefore, the Hearing Examiner finds that the reasonable capital structure in this case consists of 59.64% debt and 40.36% equity; with a cost of debt of 9.07% and a rate of return on equity of 11.95%. These capitalization ratios and cost rates result in an overall cost of capital of 10.23% which is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 48 AND 49

Based upon the foregoing findings and conclusions, the Hearing Examiner concludes that a total annual revenue requirement of $1,492,355 composed of $1,447,732 in service revenues, plus $48,534 in miscellaneous revenues, less $3,911 in uncollectible revenues, will allow Brookwood the opportunity to earn a return of 10.23% on its reasonable original cost rate base. The following schedules summarize the gross revenue requirement and the rate of return the Company should have a reasonable opportunity to achieve based on the approved increase. These schedules incorporate the findings and conclusions herein found reasonable by the Hearing Examiner as well as appropriate calculations for the regulatory fee, gross receipts taxes, and state and federal income taxes.

SCHEDULE I
BROOKWOOD WATER CORPORATION, INC.
DOCKET NO. W-177, Sub 40
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
For the Test Year Ended September 30, 1994

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$1,368,975	$78,757	$1,447,732
Miscellaneous Operating Revenue	41,729	6,805	48,534
Uncollectible Revenue	(3,698)	(213)	(3,911)
Total Operating Revenues	1,407,006	85,349	1,492,355
Operating Revenue Deductions:			
Operation and Maintenance Expenses	828,969	-	828,969
Depreciation and Amortization	232,336	-	232,336
Taxes - Other Than Income Taxes	44,116	-	44,116
Regulatory Fee	1,407	86	1,493
Gross Receipts Taxes	56,280	3,415	59,695
State Income Taxes	8,300	6,343	14,643
Federal Income Taxes	25,909	26,426	52,335
Total Operating Revenue Deductions	1,197,317	36,270	1,233,587
Net Operating Income for Return	$ 209,689	$49,079	$ 258,768

SCHEDULE II
BROOKWOOD WATER CORPORATION, INC.
DOCKET NO. W-177, SUB 40
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended September 30, 1994

Item		Amount
Plant in Service		$3,772,824
Less:	Customer Deposits	(143,530)
	Accumulated Deferred Income Taxes	(198,985)
	Accumulated Depreciation	(1,066,256)
	Investment Tax Credit	(21,930)
Plus:	Working Capital Allowance	164,756
	Materials and Supplies Inventory	22,041
Total Rate Base		$ 2,528,920
Rates of Return:		
	Present	8.29%
	Approved	10.23%

SCHEDULE III
BROOKWOOD WATER CORPORATION, INC.
DOCKET NO. W-177, SUB 40
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended September 30, 1994

Item	Ratio %	Original Cost Rate base	Embedded Cost %	Net Operating Income
		Present Rates		
Debt	59.64	$1,508,248	9.07	$136,798
Common Equity	40.36	1,020,672	7.14	72,891
Total	100.00	$2,528,920	-	$209,689
		Approved Rates		
Debt	59.64	$1,508,248	9.07	$136,798
Common Equity	40.36	1,020,672	11.95	121,970
Total	100.00	$2,528,920	-	$258,768

The Hearing Examiner further concludes that the rates contained in the attached Schedule of Rates will produce the revenue requirement found appropriate in this Order and are just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That Brookwood shall be, and hereby is, authorized to adjust its rates and charges for water utility service to produce an increase in total annual operating revenues of $85,562 based upon the adjusted test year level of operations.

2. That the Schedule of Rates attached as Appendix A shall be, and hereby is, approved for water utility service rendered by Brookwood on and after the effective date of this Order. This Schedule of Rates shall be deemed filed with the Commission pursuant to G.S. 62-138.

3. That Brookwood shall mail a copy of the Notice to Customers, attached hereto as Appendix B, to all of its customers in conjunction with the next, regularly scheduled billing statement following the effective date of this Order. Brookwood shall submit to the Commission the attached Certificate of Service properly signed and notarized not later than 15 days after the Notice to Customers is mailed as hereinabove ordered.

4. That, since the final rates herein authorized and approved are in excess of the interim rates previously authorized by the Interlocutory Order issued on August 23, 1995, no refund of the interim rates is required.

5. That Brookwood shall, within 60 days of the date of this Order, file an updated gross-up factor related to CIAC based upon the capital structure and cost rates found reasonable in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of December 1995.

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

APPENDIX A

SCHEDULE OF RATES
for
BROOKWOOD WATER CORPORATION

for providing water utility service
in all its service areas in North Carolina

Metered Rates: (monthly)

Base monthly charge for zero consumption

<1" meter	$ 6.44
1" meter	$ 16.10
1 ½" meter	$ 32.20
2" meter	$ 51.52
3" meter	$ 96.60
4" meter	$161.00
6" meter	$322.00

Commodity Charge - $1.40 per 1,000 gallons

Flat Rate: $13.75 per month

(Note: Meters may be installed and the applicable metered rate charged.)

Tap Fee:

<1" meter - $450.00 plus gross-up

1" meter or larger - 120% of actual cost of making tap, including setting meter and meter box, plus gross-up.

(Note: In some areas, connection charges may not apply pursuant to contract properly filed with the Commission.)

Meter Installation Fee: $70.00 plus gross-up

(Note: The fee will be charged only where cost of meter installation is not otherwise recovered through connection charges.)

Reconnection Charges:

If water service cut off by utility for good cause: $15.00

If water service discontinued at customer's request: $ 7.50

New Customer Account Fee: $15.00

Returned Check Charge: $20.00

Billing Frequency: Monthly for service in arrears

Bills Due: On billing date

Bill Past Due: Fifteen (15) days after billing date

Finance Charge 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.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-177, Sub 40, on this 12th day of October, 1995.

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-177, SUB 40

BY THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Brookwood Water Corporation, 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 its final order authorizing Brookwood Water Corporation to charge increased rates for water utility service to all of its water customers in North Carolina. This action follows approval of interim rates pending the final decision of the Commission in this case. The final rates are as follows and are effective for service rendered on and after the date of this Notice.

METERED RATES: (Monthly)

Meter Size	Base Charge for Zero Usage
< 1" meter	$ 6.44
1" meter	$ 16.10
1 ½" meter	$ 32.20
2" meter	$ 51.52
3" meter	$ 96.60
4" meter	$161.00
6" meter	$322.00

Commodity Charge - $ 1.40 per 1,000 gallons

FLAT RATE: $13.75 per month
(Meters may be installed and the applicable metered rate charged)

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of October 1995.

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

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice To Customers issued by the North Carolina Utilities Commission in Docket No. W-177, Sub 40 and the Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1995.

By: _____
Signature

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-177, Sub 40.

Witness my hand and notarial seal, this the ____ day of _____ 1995.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-177, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Brookwood Water Corporation, Post Office Drawer 4889, Cary, North Carolina 27519, For Authority to Increase Rates for Water Utility Service in All of Its Service Areas in North Carolina	))))))	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

Heard In: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, November 29, 1995, at 10:00 a.m.

Before: Commissioner Ralph A. Hunt, Presiding, and Commissioners Charles H. Hughes, Laurence A. Cobb, Judy Hunt and Jo Anne Sanford.

Appearances:

For Brookwood Water Corporation:

Robert F. Page, Attorney at Law, Crisp, Davis Page & Currin, 4011 Westchase Boulevard, Suite 400, Raleigh, North Carolina 27607-3954

For the Using and Consuming Public:

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

BY THE COMMISSION: On October 12, 1995, a Recommended Order was issued in this docket granting Brookwood Water Corporation (Brookwood) a partial rate increase.

Exceptions to the Recommended Order were filed by Brookwood on October 27, 1995. On November 2, 1995, the Commission scheduled oral argument on November 29, 1995, to consider the exceptions filed by Brookwood.

The matter came on for oral argument as scheduled.

Based upon a careful consideration of the Recommended Order of October 12, 1995, the oral argument of the parties before the Commission on November 29, 1995, and the entire record in this proceeding, the Commission is of the opinion, finds and concludes that all the findings, conclusions and ordering paragraphs contained in the Recommended Order are fully supported by the record; that the Recommended Order dated October 12, 1995, should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions of Brookwood Water Corporation to the Recommended Order of October 12, 1995, be, and the same are hereby, overruled and denied.

2. That the Recommended Order of October 12, 1995, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1995.

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

Chairman Hugh A. Wells and Commissioner Allyson K. Duncan did not participate in this decision.

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Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue and Sell Debt Securities
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Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue and Sell Securities
G-9, Sub 365 (7-11-95)

Public Service Company of North Carolina, Inc. - Order Granting Authority to Issue and Sell $50,000,000 of Senior Unsecured Debt
G-5, Sub 351 (12-19-95)

TARIFF

Piedmont Natural Gas Company, Inc. - Order Approving Tariff Filings for (1) a General Increase in Its Rates and Charges to Cover the Costs (Including a Return on Investment) of Additional Plant Constructed to Expand and Improve Natural Gas Services in North Carolina and (2) Approval of New Rate Design to Accommodate Changes in the Natural Gas Industry Resulting from FERC Order No. 636
G-9, Sub 351; G-9, Sub 356 (2-15-95)

Piedmont Natural Gas Company - Order on Application to Revise Tariffs
G-9, Sub 368 (9-13-95)

Public Service Company of North Carolina, Inc. - Order Revising Tariffs
G-5, Sub 348 (10-31-95)

MISCELLANEOUS

Piedmont Natural Gas Company, Inc. - Order Continuing Decrements
G-9, Sub 339 (2-2-95)

Piedmont Natural Gas Company, Inc., and Public Service Company of North Carolina, Inc. - Order Allowing Exchange of Territories
G-5, Sub 347; G-9, Sub 366 (8-29-95)

Public Service Company of North Carolina, Inc. - Order Allowing Implementation of a Statistical Sampling Program for Meter Testing
G-5, Sub 340 (4-5-95)

Public Service Company of North Carolina, Inc. - Order Authorizing Destruction of Records and the Implementation a Record Retention Policy
G-5, Sub 342 (3-30-95)

MOTOR BUSES

AUTHORITY GRANTED - COMMON CARRIER

Company	Charter Operations	Docket No.	Date
Atlantic Tours, Terry and Lyvone Wallace, d/b/a	Statewide	B-633	5-23-95
B & B Charter Service, James Louis Buie, d/b/a	Statewide	B-631	6-8-95
Brisco C., Inc.	Statewide	B-642	9-19-95
Cooper Van Service Water Isaiah Cooper, d/b/a	Statewide	B-617	2-9-95
East Coast Charters, Brent C. Polk & Patricia H. Cromwell, d/b/a	Statewide	B-628	3-21-95
ExecuBus, Inc.	Statewide	B-636	6-22-95
Great Destination Tours Company, Glenn Radford, d/b/a	Statewide	B-637	10-13-95
Harris Executive Travel, Winfred Dale Harris, d/b/a	Statewide	B-610	9-26-95
Ivey Coaches, Inc.	Statewide	B-477, Sub 3	5-8-95
Ivey Coaches, Inc.	Statewide	B-477, Sub 4	5-8-95
Jackson, Cliff Tours, BeJay Industries, Inc., d/b/a	Statewide	B-640	11-27-95
Jordan, Shelton & Company, Shelton Jordan, d/b/a	Statewide	B-623, Sub 1	9-7-95
Maharg Bus Company, Willie Carlisle Graham, d/b/a	Statewide	B-643	12-1-95
Mitchell, William Henry	Statewide	B-625	2-17-95
Royal Tours of Randolph, Inc.	Statewide	B-639	6-28-95

Shuttle's Speciality Vehicle Service, Inc.	Statewide	B-629	4-6-95
T.L.C. Motorcoach, Inc.	Statewide	B-641	9-19-95
Unique Charter & Tours Steve A. Williams, d/b/a	Statewide	B-634	5-31-95

BROKER'S LICENSE - (GRANTING)

Great Escapes, Inc. - Order Granting Broker's License No. B-632
B-632 (5-18-95)

Pleasure Tours, Barbara R. Strickland, d/b/a - Order Granting Broker's License No. B-626
B-626 (3-21-95)

Show Bound, Inc. - Order Granting Broker's License No. B-635
B-635 (6-2-95)

Travel Time, Bobbie Jean Ezzell, d/b/a - Order Granting Broker's License No. B-627
B-627 (2-17-95)

Word, Ken Tours, Kenneth Word, d/b/a - Order Granting Broker's License No. B-644
B-644 (10-5-95)

CERTIFICATES CANCELLED

Action Tours, Alex Averette & Co., d/b/a - Order Cancelling Broker's License No. B-621
B-621, Sub 1 (1-13-95)

Beamer, Nancy Tours, Nancy Beamer, d/b/a - Order Cancelling Broker's License No. B-393
B-393, Sub 3 (9-5-95)

C & E Charter & Tours Co. - Order Cancelling Certificate No. B-520
B-520, Sub 3 (1-13-95)

Electric City Shuttle Service, P. Douglas McAlister, d/b/a - Recommended Order Cancelling Operating Authority - Termination of Liability Insurance Coverage
B-589, Sub 1 (9-11-95)

Friendship Travel, Inc. - Recommended Order Cancelling Operating Authority - Termination of Liability Insurance Coverage
B-536, Sub 1 (10-31-95)

Great Escapes, Inc. - Order Cancelling Broker's License No. B-632
B-632, Sub 1 (8-15-95)

Ivey Tours, Inc. - Order Cancelling Certificate No. B-477
B-477, Sub 6 (11-2-95)

Manning Tours, Inc. - Order Cancelling Broker's License No. B-361
B-361, Sub 2 (1-19-95)

N. C. State Motor Club, Inc. - Order Cancelling Broker's License
B-453, Sub 1 (12-1-95)

Sun Line Tours, Inc. - Recommended Order Cancelling Operating Authority - Termination of Liability Insurance Coverage
B-574, Sub 1 (2-21-95)

Triad Lines, M & W Charters, Inc., d/b/a - Order Cancelling Certificate - Ceased Operations
B-359, Sub 6 (7-19-95)

RESCINDING CANCELLATIONS

Trinity Bus Service, Melvin R. Barnes and Martha M. Barnes, d/b/a - Order Rescinding Order Cancelling Authority
B-604, Sub 1 (4-5-95)

NAME CHANGE

East Coast Charters, Polk & Hardison, d/b/a - Order Approving Name Change from Brent C. Polk & Patricia H. Cromwell, d/b/a East Coast Charters
B-628, Sub 1 (4-5-95)

Holiday Tours, Inc. - Order Approving Name Change from Nancy & Dwight's Holiday Tours, Inc.
B-451, Sub 3 (9-13-95)

Ivey Tours, Inc. - Order Approving Name Change from Ivey Coaches, Inc.
B-477, Sub 5 (5-10-95)

Jordan, Shelton & Company, Shelton Jordan, d/b/a - Order Approving Name Change from Shelton Jordan & Company
B-623, Sub 1 (9-5-95)

Kirk Tours Enterprises LLC - Order Approving Name Change
B-595, Sub 1 (12-11-95)

Mitchell's Bus Line, William Henry Mitchell, d/b/a - Order Approving Name Change from William Henry Mitchell
B-625, Sub 1 (3-3-95)

Southeastern Tours, Inc. - Order Approving Name Change from Jeffrey Rodgers, d/b/a Southeastern Tours
B-608, Sub 1 (1-31-95)

Southern States Tours & Conventions, Peggy B. Bates and Penelope B. Noyes, d/b/a - Order Approving Name Change from Peggy B. Bates, d/b/a Southern States Tours & Conventions
B-600, Sub 2 (7-3-95)

MOTOR TRUCKS

APPLICATIONS AMENDED

Prestige Professional Moving & Storage, Grant M. LeRoux, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-4070 (5-3-95)

Professional Movers, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-4071 (7-18-95)

Rountree Movers, Donald Rountree, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-4069 (6-8-95)

APPLICATIONS DENIED/DISMISSED

Professional Movers, Inc. - Recommended Order Denying Application
T-4071 (4-17-95)

Taylor's Moving Company, Orlandus Dungee Taylor, d/b/a - Recommended Order Dismissing Application
T-4051 (9-28-95)

APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

Company	Docket Number	Date
Acme Moving and Storage Company, Inc.	T-4067	4-17-95
Beltmann Moving and Storage Company, Irving Kirsch Corporation, d/b/a	T-4084	12-5-95
Collective Distribution Systems, Inc.	T-4072	3-6-95
Duke, D. R. Moving Company, David Ray Duke, d/b/a	T-4073	5-31-95
Superior Moving, David Leonard Hight, d/b/a	T-4075	9-27-95
W. C. Mini Storage, William L. Norris, d/b/a	T-4068	3-28-95

AUTHORITY GRANTED - COMMON CARRIER

Ace Moving & Storage Co., Century Transport Systems, Inc., d/b/a - Recommended Order Granting Common Carrier Authority, In Part, to Transport Group 18, Household Goods, from Wilmington to All Points in North Carolina, and from All Points in North Carolina to Wilmington
T-4076 (8-10-95)

Carolina Moving & Storage Co., Wilkinson & Sons, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Household Goods, Statewide
T-4077 (8-29-95)

OmniStorage & Moving Co., OmniStorage, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Household Goods from Brunswick County to all Points in North Carolina and from all Points in North Carolina to Brunswick County
T-4080 (10-6-95)

Professional Movers, Inc. - Order Granting Common Carrier Authority to Transport Household Good Between Points in Transylvania, Swain, Macon, and Jackson Counties
T-4071 (9-28-95)

Scott's Moving Co. - Recommended Order Granting Application in Part to Transport Group 18, Household Goods, Between Points in Macon County
T-4066 (6-7-95)

AUTHORIZED SUSPENSION

Company	Certificate	Reason
Ace World Wide Moving & Storage Company of Raleigh, Inc. T-2597, Sub 3 (8-18-95)	C-1437	Auth. Susp.
Ace World Wide Moving & Storage Company of Raleigh, Inc. T-2597, Sub 3 (12-11-95)	C-1437	Auth. Susp.
Bournias, Inc. T-4074 (6-13-95)	C-601	Good Cause
Champion Storage & Trucking Company, Inc. T-212, Sub 2 (6-15-95)	C-126	Good Cause
City Transfer & Storage Company of Fayetteville, Inc. T-994, Sub 3 (7-6-95)	C-722	Good Cause
Coastal Carrier, Richard S. Bunting, d/b/a T-3816, Sub 1 (6-22-95)	C-2064	Good Cause
Jones, Henderson Jr. T-438, Sub 4 (6-12-95)	C-473	Good Cause
Jones, Henderson, Jr.	C-473	Good Cause
Smith Transfer and Storage T-1815, Sub 3 (6-23-95)	C-1067	Good Cause

CERTIFICATES/PERMITS CANCELLED

Corporate Moving Systems, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1132 - Termination of Liability Insurance Coverage
T-3712, Sub 2 (3-23-95)

Jiffy Moving & Storage Company, W. M. Poole Enterprises, Inc., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1453 - Termination of Liability Insurance Coverage
T-1975, Sub 3 (9-11-95)

COMPLAINTS

Turner Moving Service - Order Keeping Docket Open for Six Months in Complaint of Earl and Emma Quam
T-2387, Sub 4 (5-26-95)

Turner Moving Service - Order Closing Docket in Complaint of Earl and Emma Quam
T-2387, Sub 4 (11-29-95)

NAME CHANGE/TRADE NAME

ASE Moving Services, American Star Enterprises, Inc., d/b/a - Order Approving Name Change from American Star Enterprises, Inc.
T-3245, Sub 2 (6-12-95)

All My Sons Moving and Storage, Bournias, Inc., d/b/a - Order Approving Name Change from Bournias, Inc.
T-4074, Sub 1 (9-27-95)

American Star Enterprises, Inc. - Order Approving Name Change from Len Edward Fletcher, d/b/a ASE Moving Services
T-3245, Sub 1 (5-5-95)

SALES AND TRANSFER/CHANGE OF CONTROL

Bournias, Inc. - Order Approving Sale and Transfer of Certificate No. C-601 from No-Name Movers, Inc.
T-4074 (5-12-95)

Bekins Moving & Storage of the Carolinas Co. - Order Approving Sale and Transfer of Certificate No. C-2064 from Richard S. Bunting, d/b/a Coastal Carrier,
T-4081 (8-14-95)

Brooks & Broadwell Realty - Order Approving Sale and Transfer of Certificate No. C-1067 from Smith Transfer and Storage, Division of Smith Furniture Company
T-4079 (8-14-95)

Father and Son Moving and Storage of Jacksonville, Inc. - Recommended Order Granting Application for Sale and Transfer of Certificate No. C-2064 from Richard S. Bunting, d/b/a Coastal Carriers
T-4042 (1-27-95)

M. H. Movers, Inc. - Order Approving Sale and Transfer of Certificate No. C-126 from Champion Storage & Trucking Company, Inc.
T-4078 (7-19-95)

TROSA Moving, TROSA, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-726 from Haley Transfer and Storage Co., Inc.
T-4082 (9-15-95)

RAILROADS

COMPLAINTS

Aberdeen Carolina & Western Railway - Order Closing Docket in Company of Ruth J. Andrews
R-74, Sub 1 (3-8-95)

CSX Transportation - Order Closing Docket in Complaint of Howard H. Jones
R-71, Sub 213 (6-29-95)

MOBILE AGENCY AND NONAGENCY STATIONS

Norfolk Southern Railway Company - Order Granting Application to Close the Hickory Agency, Transfer Agency Duties and Mobile Agency NC-5 to Linwood, and Transfer Mobile Agency NC-2 to Asheville
R-4, Sub 171 (3-10-95)

Norfolk Southern Railway Company - Order Granting Application to Discontinue Mobile Agency Route SOU-NC-17 Based at Greensboro
R-4, Sub 172 (3-17-95)

TELEPHONE

APPLICATIONS CANCELLED, TERMINATED, WITHDRAWN OR DENIED

AIS Telecommunications Services, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-415 (1-3-95)

American Telesource International, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-485 (12-6-95)

Amtel Communications, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-465 (8-22-95)

CaroNet, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-462 (11-13-95)

Central Telephone Company and Carolina Telephone and Telegraph Company - Order Allowing Withdrawal of Agreements and Closing Docket
P-7, Sub 807; P-10, Sub 470 (3-17-95)

Cherry Communications, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-329, Sub 1 (1-23-95)

Concord Telephone Long Distance Company, Inc. - Order Allowing Withdrawal and Closing Docket
P-295, Sub 6 (3-4-95)

FiberSouth, Inc. - Order Denying Application to Permit to Operate as a Competitive Local Exchange Carrier of Business and Residential Services in Wake County
P-428 (2-6-95)

Graphic Results Corporation - Order Allowing Withdrawal of Application and Closing Docket
P-490 (12-28-95)

IDB WorldCom Services, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-404 (12-22-95)

Itelecon, Integrated Teletechnologies, Inc., d/b/a - Order Allowing Withdrawal of Application and Closing Docket
P-412 (4-5-95)

MTC Telemanagement Corporation - Order Denying Motion for Confidential Treatment of Financial Information
P-488 (11-14-95)

North American Communications Corporation - Order Denying Application to Provide Intrastate Long Distance Telecommunications Services
P-421 (2-14-95)

North American Communications, Inc. - Order Allowing Withdrawal and Closing Docket
P-388 (3-9-95)

One to One Communications - Order Concerning Dismissal of Application
P-440 (11-30-95)

PowerNet Communications, Inc. - Order Allowing Withdrawal of Application Without Prejudice
P-398 (7-24-95)

Quarter Call, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-449 (12-19-95)

SmarTalk TeleServices, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-487 (12-21-95)

SoutherNet Systems, Inc. - Order Canceling Certificate, Allowing Withdrawal of Tariff and Closing Docket
P-209, Sub 3 (12-19-95)

Technologies Plus; Met Link Communications - Order Denying Motion Without Prejudice (Chairman Wells and Commissioners Duncan and Ralph Hunt did not participate in this decision.)
P-452; P-453 (4-19-95)

Teltrust Communications Services, Inc. - Order Allowing Withdrawal of Application, Canceling Hearing and Closing Docket
P-434 (10-4-95)

Western Union Communications, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-459 (12-8-95)

CERTIFICATES

ACC National Long Distance Corp. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resale Basis
P-435 (6-19-95)

ADNET Telemanagement, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Service Within North Carolina
P-443 (6-11-95) Order Allowing Recommended Order to Become Final (7-17-95)

AMI Communications, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services Within the State of North Carolina
P-409 (11-14-94)

Access/ON Interexchange Services, Inc. - Recommended Order Granting Certificate to Provide Intrastate Long Distance Telecommunications Services on a Resale Basis and for Approval of a Proposed Tariff
P-418 (5-31-95) Order Allowing Recommended Order to Become Final (6-6-95)

American Express Telecom, Inc. - Recommended Order Granting Certificate as a Non-Facilities Based Switchless Reseller of Telecommunications Services
P-476 (10-11-95) Order Allowing Recommended Order to Become Final (10-17-95)

American Teletronics Long Distance, Inc. - Recommended Order Granting Certificate to Provide Intrastate Long Distance Telecommunications Services on a Resale Basis and for Approval of Rates
P-315, Sub 1 (1-11-95) Order Allowing Recommended Order to Become Final (1-24-95)

Bottom Line Telecommunications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Services
P-411 (5-9-95) Order Allowing Recommended Order to Become Final (5-16-95)

Capital Long Distance, Capital Network System, Inc., d/b/a - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Services
P-385 (1-19-95)

Caribbean Telephone and Telegraph Company, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resale Telecommunications Services
P-444 (10-31-95) Order Allowing Recommended Order to Become Final (11-7-95)

Century Telecommunications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services
P-484 (12-4-95)

Colorado River Communications Corp. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services Within the State of North Carolina
P-441 (10-31-95)

ConQuest Long Distance Corp. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resell Basis
P-324, Sub 1 (6-22-95)

Dial & Save, Dial & Save of North Carolina, Inc., d/b/a - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resold Telecommunications Services
P-414 (7-6-95)

DukeNet Communications, Inc. - Recommended Order Granting Certificate for the Provision of Long Distance Data Transmission Service to be Provided to Other Carriers and Resellers
P-426 (4-27-95) Order Allowing Recommended Order to Become Final (5-1-95)

Federal TransTel, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services on a Resale Basis
P-477 (12-19-95)

Group Long Distance, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services
P-350 (6-22-95)

ICG Telecom Services, Inc. - Recommended Order Granting Certificate to Provide Intrastate Long Distance Telecommunications Services on a Resale Basis and for Approval of a Proposed Tariff
P-438 (6-8-95)

IXC Long Distance, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Service within North Carolina
P-454 (11-2-95)

Inacom Communications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Services
P-424 (3-16-95)

Interstate FiberNet - Recommended Order Granting Certificate to Provide Intrastate Long Distance Telecommunications Services on a Resale Basis and for Approval of a Proposed Tariff
P-430 (7-19-95)

Long Distance Services, Inc. - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Services
P-413 (6-14-95) Order Allowing Recommended Order to Become Final (6-20-95)

Midwest Fibernet, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Service
P-429 (8-7-95)

National Telephone & Communications, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services within the State of North Carolina
P-423 (11-21-95) Order Allowing Recommended Order to Become Final (12-5-95)

Network Long Distance, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services Within the State of North Carolina
P-416 (1-11-95)

NOSVA - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Service
P-379 (5-9-95)

PSP Marketing Group, Inc. - Recommended Order Granting Certificate to Provide and Resell Intrastate Interexchange Telecommunications Services as a Non-Facilities Based Switchless Reseller
P-410 (8-11-95) Errata Order (12-18-95)

Premiere Communications, Inc. - Order Allowing Request to Amend Certificate
P-380, Sub 1 (6-9-95)

Qwest Communications, Qwest Communications Corporation, d/b/a - Recommended Order Granting Certificate to Provide Intrastate Telecommunications Services
P-433 (11-3-95)

SNET America, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Service Within North Carolina
P-473 (12-22-95)

Switched Services Communications - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Service within North Carolina
P-457 (11-7-95)

TWC, TW Communications, Inc., d/b/a - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Service Within North Carolina
P-455 (12-20-95)

TelaLeasing Enterprises, Inc. - Recommended Order Granting Certificate to Operate as a Reseller of Telecommunications Services Within the State of North Carolina
P-394 (1-6-95)

Telecarrier Services, Inc. - Recommended Order Granting Certificate to Provide Intrastate, Interexchange Telecommunications Services on a Resale Basis
P-432 (6-15-95) Order Allowing Recommended Order to Become Final (6-20-95)

TelMatch Telecommunications, Sunbelt Line, Inc., d/b/a - Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services Within the State of North Carolina
P-395 (1-25-95)

Thrifty Call - Recommended Order Granting Application for Certificate to Provide Intrastate Interexchange Resale Telecommunications Services
P-447 (10-26-95) Order Allowing Recommended Order to Become Final (10-31-95)

Time Warner Communications of North Carolina, L. P. - Recommended Order Granting Certificate to Offer Interexchange Telecommunications Services in North Carolina
P-472, Sub 1 (12-22-95)

TOTAL-TEL USA COMMUNICATIONS, INC. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services Within the State of North Carolina
P-417 (3-6-95) Order Allowing Recommended Order to Become Final (3-13-95)

US Signal Corporation, Teledial America, Inc., d/b/a - Recommended Order Granting Certificate to Operate as a Reseller of Interexchange Telecommunications Services within the State of North Carolina
P-399 (1-19-95)

United Wats, Inc. Order Granting Application for Certificate to Provide Long Distance Telecommunications Services within the State of North Carolina
P-445 (10-30-95)

Wats International Corporation - Recommended Order Granting Certificate to Provide Intrastate Interexchange Telecommunications Services Within the State of North Carolina
P-401 (3-16-95)

World Wide Communications, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resold Telecommunications Services
P-402 (3-3-95)

CERTIFICATES CANCELLED

Amerishare Communications, Inc. - Order Canceling Certificate
P-307, Sub 1 (6-19-95)

Paragon Communications, Inc., SCG Financial Corporation, d/b/a - Order Canceling Certificate and Closing Docket
P-262, Sub 2 (10-13-95)

Telegroup, Inc. - Order Closing Docket
P-292, Sub 1 (12-28-95)

United Telephone Technologies, Inc. - Order Canceling Certificate
P-261, Sub 1 (6-22-95)

World Telecom Group, Inc. - Order Granting Request to Cancel Certificate and Withdraw Tariffs
P-332, Sub 2 (11-16-95)

COMPLAINTS

BTI - Order Closing Docket in Complaint of W. T. Huckabee, III
P-165 (5-23-95)

Carolina Telephone and Telegraph Company - Order Dismissing Complaint of Edward B. McClendon, and Closing Docket
P-89, Sub 51 (11-28-95)

Central Telephone Company - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of David L. Thomas
P-10, Sub 472 (1-24-95)

GTE South - Order Closing Docket in Complaint of John Sharpe
P-19, Sub 275 (11-9-95)

Randolph Telephone Company - Order Not to Disconnect in Complaint of Housecalls Healthcare Group, Inc.
P-61, Sub 79 (12-19-95)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Company, BellSouth Telecommunications, Inc., d/b/a - Order Finding no Reasonable Grounds to Proceed, Dismissing Complaint, and Closing Docket in Complaint of Pay Hanks
P-89, Sub 47 (2-7-95)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation, BellSouth Telecommunications, Inc., d/b/a - Order Dismissing Complaint of F. Norwood Thompson, President, Triangle Environmental, Inc.
P-89, Sub 49 (5-23-95)

Southern Bell Telephone and Telegraph Company - Order Concerning Dismissal in Complaint of Claudette S. Stewart
P-55, Sub 998 (7-13-95)

Southern Bell Telephone and Telegraph Company and French Broad Electric Membership Corporation - Order Dismissing Complaints of Claudette S. Stewart
P-55, Sub 998; EC-46, Sub 23 (8-15-95)

Southern Bell Telephone and Telegraph Company, BellSouth Telecommunications, Inc., d/b/a - Order Tentatively Finding no Reasonable Grounds to Proceed, Providing Notice and Opportunity to be Heard in complaint of Harrell Jones, Inc.
P-55, Sub 1003 (3-7-95)

Southern Bell Telephone and Telegraph Company, BellSouth Telecommunications, Inc., d/b/a - Order Finding No Reasonable Grounds to Proceed, Dismissing Complaint, and Closing Docket
P-55, Sub 1003 (4-11-95)

Southern Bell Telephone and Telegraph Company - Order Denying Petition and Complaint of AT&T Communications of the Southern States, Inc. (Commissioner Ralph A. Hunt did not participate.)
P-55, Sub 1010 (6-27-95)

Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint of Gerald S. Haymond
P-55, Sub 1012 (8-8-95)

Tela-Leasing Enterprises, Inc.; Joe D. Hutchison, d/b/a Scott Communications, Inc. - Order Finding No Reasonable Grounds to Proceed, Dismissing Complaint and Closing Docket
SC-473, Sub 1; SC-578, Sub 2 (4-11-95)

EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company - Order authorizing Extended Area Service - Franklinton and Louisburg to Raleigh and Louisburg to Zebulon InterLATA Extended Area Service; and Requiring Application for Waiver
P-7, sub 809 (3-21-95)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service - Coinjock to Kill Devil Hills Extended Area Service
P-7, Sub 813 (5-31-95)

Carolina Telephone and Telegraph Company - Order Authorizing Polling - Holly Ridge to Scotts Hill and Wilmington InterLATA Extended Area Service (Commissioner Cobb did not participate in this decision.)
P-7, Sub 814 (2-14-95)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service and Requiring Southern Bell to Seek Waiver - Holly Ridge to Scotts Hill and Wilmington Extended Area Service
P-7, Sub 814 (6-13-95)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service - Fuquay-Varina and Wake Forest to Research Triangle Park Extended Area Service
P-7, Sub 816 (3-28-95)

Carolina Telephone and Telegraph Company - Order Authorizing Polling - Pittsboro to Apex, Cary, and Raleigh InterLATA Extended Area Service (Chairman Wells and Commission Cobb did not participate in this decision.)
P-7, Sub 817 (5-18-95)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service and Requiring Southern Bell to Seek Waiver - Pittsboro to Apex, Cary, and Raleigh Extended Area Service
P-7, Sub 817 (8-1-95)

Southern Bell Telephone and Telegraph Company - Order Authorizing Polling - Saxapahaw to Chapel Hill InterLATA Extended Area Service
P-55, Sub 1006 (4-26-95)

Southern Bell Telephone and Telegraph Company - Order Authorizing InterLATA Extended Area Service and Requiring Southern Bell to Seek Waiver - Saxapahaw to Chapel Hill Extended Area Service
P-55, Sub 1006 (7-12-95)

NAME CHANGE

Coin Telephones, Inc. - Order Reissuing Special Certificate Due to Name Change from Talton Carolina, Inc.
SC-864, Sub 2 (4-12-95)

Watchtower Communications Services, Jeffrey Pavletic, d/b/a - Order Reissuing Special Certificate Due to Name Change from Jeffrey Pavletic
SC-1064, Sub 1 (4-12-95)

MERGER

Affinity Corp. - Order Approving Merger and Transfer from Affinity Fund, Inc.
P-337, Sub 1 (2-10-95)

Dial Page, Inc.- Order Granting Dial Page Approval of Merger or Combination and Transfer of Assets
P-172, Sub 19 (5-10-95) Further Order Closing Docket (8-2-95)

RATES

MCI Telecommunications Corporation - Order Requiring Refunds (Commissioners Allyson K. Duncan and Ralph A. Hunt did not participate.)
P-141, Sub 27 (6-27-95)

SALES AND TRANSFER

American Telephone Network, Inc., of North Carolina; Mid-Com Communications, Inc., of North Carolina - Order Approving Transfer of Customers and Discontinuance of Intrastate Service
P-256, Sub 3; P-308, Sub 7 (4-19-95)

LCI International, Inc. - Order Approving Transfer of Control of Corporate Telemanagement Group, Inc., to LCI International, Inc. and LCI Telemanagement Corp., and Granting Authority to Incur Debt Obligations
P-469 (8-18-95)

Southern Bell Telephone and Telegraph Company, BellSouth Telecommunications, Inc., d/b/a - Order Allowing Sale of Intrastate Access Service Subject to Certain Conditions
P-55, Sub 1002; P-100, Sub 132 (5-17-95)

Telenational Communications; MidCom Communications, Inc., of North Carolina - Order Approving Transfer of Customers
P-250, Sub 1; P-308, Sub 9 (12-5-95)

WATS/800, Inc. Of North Carolina - Order Approving Transfer of Customers to Mid-Com Communications, Inc., of North Carolina
P-274, Sub 3; P-308, Sub 8 (10-24-95)

SECURITIES

ACC Corp. - Order Granting Authority to Incur Certain Debt Obligations
P-435, Sub 1 (10-24-95)

Frontier Corporation - Order Approving Transfer of to Acquire Control of Allnet Communication Services, Inc.
P-244, Sub 10 (7-31-95)

MFS Communications Company, Inc. - Order Granting Authority to Incur Certain Debt Obligations
P-396, Sub 2 (6-5-95)

Lexington Telephone Company - Order Approving Plan of Reorganization and Share Exchange and for Transfer of Control
P-31, Sub 130; P-323, Sub 3 (10-25-95)

Randolph Telephone Company - Order Approving Loan from Randolph Telephone Membership Corporation
P-61, Sub 76 (1-19-95)

Summit Telecommunications, Inc. - Order Approving Sale of Assets to Corporate Telemanagement Group, Inc.
P-252, Sub 8 (8-1-95)

Tele-Trend Communications, Inc. - Order Approving Sale of Assets to Phoenix Network, Inc.
P-239, Sub 5; P-340, Sub 1 (12-22-95)

Telecommunications Exchange Corporation - Order Approving Sale of Assets to Corporate Telemanagement Group, Inc.
P-252, Sub 10 (5-30-95)

SPECIAL CERTIFICATES (Issued and Reinstated)

Docket Number	Date	Company
SC-7, Sub 1	11-22-95	Communications Central, Inc.
SC-286, Sub 3	12-21-95	Peoples Telephone Company, Inc.
SC-298, Sub 2	9-11-95	George Melvin Dickerson
SC-322, Sub 2	9-28-95	Richard H. Raybon
SC-391, Sub 1	12-21-95	Param Investments, Inc., d/b/a Bel Air Motel
SC-418, Sub 1	5-15-95	North Carolina Department of Correction
SC-610, Sub 3	2-23-95	Robert Cefail & Associates American Inmate Communications, Inc.
SC-619, Sub 1	12-21-95	Ray Trevathan
SC-626, Sub 1	7-13-95	Pay Com, Inc.
SC-657, Sub 1	6-28-95	Fortelco, John M. Fortson and Norman J. Fortson, d/b/a
SC-710, Sub 1	5-15-95	R. Don Hoke, d/b/a RH Pay Phones
SC-727, Sub 1	7-13-95	Atlantic Diversified Technologies, Inc.
SC-841, Sub 1	11-2-95	Ronald C. Summerlin, d/b/a Hospitality Payphone Service
SC-847, Sub 1	8-7-95	Southeastern Telecom, Barbara T. Rogers, d/b/a
SC-894, Sub 1	5-25-95	Amtel Communications, Inc.
SC-907, Sub 1	9-6-95	Tony McNeill, d/b/a Sandhills Telephone Systems
SC-913, Sub 1	12-4-95	STY, Inc.
SC-962, Sub 1	9-29-95	E. T. King Telecommunications, Inc.
SC-972, Sub 1	9-29-95	Carl Spencer, d/b/a CS Communication
SC-1003, Sub 1	8-22-95	David I. Park, d/b/a DP Telecom
SC-1023, Sub 1	1-6-95	James A. Vansickle, Jr., d/b/a JA Systems
SC-1040	1-6-95	A Enterprises, Inc.
SC-1041	1-6-95	Rick D. Bash
SC-1042	1-6-95	Advanced Public Data Systems, Glenn A. Stump, d/b/a
SC-1044	1-6-95	William A Gavilan - Errata Order (2-24-95)
SC-1045	1-6-95	Anthony Corfios, Jr. - Errata Order (2-24-95)
SC-1046	1-6-95	X-Cel Communication, Terrance Lee Merriweather
SC-1047	1-6-95	Nassim M. Ayache
SC-1048	1-23-95	Glenda C. Lee
SC-1049	1-23-95	J.C.'s Payphones, Jane Cox, d/b/a
SC-1050	1-23-95	Richard William Nagel
SC-1051	1-23-95	Mike Eied
SC-1052	1-23-95	Andrew B. Raines
SC-1053	1-23-95	Stephen Murphy, d/b/a Triad Telecomp
SC-1054	1-23-95	Gerald Hinshaw
SC-1055	1-25-95	Maurice Williams
SC-1056	1-25-95	Fluidtec Engineered Products, Carlock, Inc., d/b/a
SC-1057	2-8-95	RKB Enterprises, Ronald W. Bailey, d/b/a

SC-1058	2-9-95	PAS Services, A. Fred Smith, d/b/a
SC-1059	2-8-95	Anthony F. Eggs
SC-1060	2-9-95	McManus Telecommunications, Inc.
SC-1061	2-8-95	Hair Cuttery, Creative Hairdressers, Inc., d/b/a
SC-1062	2-23-95	R. S. McKee, Inc.
SC-1063	2-23-95	William C. Cushman
SC-1064	2-23-95	Jeffrey Pavletic
SC-1065	2-24-95	VKB Communications, V. Keim Bateman, d/b/a
SC-1066	2-23-95	Smokes, Unlimited, Paul V. Sitler, d/b/a
SC-1067	2-24-95	John L. Fetzer
SC-1068	8-22-95	BellSouth Telecommunications, Inc., d/b/a BellSouth Public Communications
SC-1069	3-10-95	Southern Connections Coin Telephone Company, P. D. Harrell, Jr., d/b/a
SC-1070	2-24-95	Delbert R. Vick
SC-1071	3-10-95	David J. Paluck
SC-1072	3-10-95	Reggie S. Elledge, d/b/a A & E Telcom
SC-1073	3-10-95	Cap Enterprises, Inc.
SC-1074	3-16-95	Chuck Bonner
SC-1075	3-16-95	Steven Monroe Brock
SC-1076	3-29-95	Daryl Kilian
SC-1077	4-27-95	Linda Arledge
SC-1078	3-29-95	Sue Ellen Oetken
SC-1079	3-29-95	Super Service Southwest, Inc.
SC-1080	3-29-95	My Mart Incorporated
SC-1081	3-29-95	Daniel Craig Smith
SC-1082	3-29-95	Dan B. Cook
SC-1083	3-29-95	Champ Enterprises, Inc.
SC-1084	4-12-95	All Park Corp., d/b/a Beaufort Grocery Co.
SC-1085	4-12-95	Notae, Inc., d/b/a Notae Group, Inc.
SC-1086	4-12-95	Sharyn's Ltd., d/b/a Pres Com.
SC-1087	4-12-95	Rodney B. Paul, d/b/a Paul's Phones
SC-1088	4-12-95	Helen M. Cawood
SC-1089	4-12-95	Capital Pay Phone Group, LLC
SC-1090	4-20-95	Wyman Rankin Haywood, Sr.
SC-1091	4-20-95	Marjorie L. Acker, d/b/a Acker Enterprises
SC-1092	4-20-95	T. Todd Faw
SC-1093	4-20-95	William Dowding
SC-1094	4-27-95	Alexander Mullinax
SC-1095	4-27-95	Marsha B. Barringer
SC-1096	5-15-95	Glenda Goodman
SC-1097	5-15-95	Tim Martin, d/b/a Shuckers Oyster Bar
SC-1098	5-15-95	Harry Clinkscale
SC-1099	5-15-95	Steven Evangelis

SC-1100	5-25-95	Basdi Enterprises, Inc.
SC-1101	5-25-95	Daryl Anderson, d/b/a TPC
SC-1102	6-6-95	Markques Council
SC-1103	6-6-95	Maurice C. Gortney
SC-1104	6-19-95	Dave Lombardi, d/b/a B & L Chatters
SC-1105	6-16-95	Douglas J. Martin
SC-1106	6-19-95	William Dixon, Jr.
SC-1113	7-13-95	Ameritel Pay Phones, Inc. (Reissued 11-30-95)
SC-1114	7-13-95	Invision Telecom, Inc.
SC-1115	7-13-95	Alpha Tel-Com, Inc.
SC-1116	7-13-95	Ronnie Douglas Fox
SC-1117	8-4-95	Kimberly Howell
SC-1118	7-13-95	Rowena M. Sweezy
SC-1119	7-13-95	Thomas A. McCullough
SC-1120	7-25-95	John T. Panzner
SC-1121	7-25-95	Trinity Furniture, Inc.
SC-1122	7-25-95	Jasrone Tropicana Mart, Emily I. Onuzuruike, d/b/a
SC-1123	7-25-95	Town of Kernersville
SC-1124	7-25-95	Morris L. Cruse
SC-1125	7-25-95	Gerald Tod Jones
SC-1126	7-25-95	North American Intelecom, Inc., Errata Order (8-9-95)
SC-1127	8-4-95	Roy Randy Pierce
SC-1128	8-4-95	Wayne Gooch
SC-1129	8-8-95	Jay S. Milam
SC-1130	8-8-95	Johnny O. Milam, Jr.
SC-1131	8-8-95	John A. Luzzi
SC-1132	8-7-95	Shawn Bippley
SC-1133	8-22-95	Joseph W. Watson, Jr., d/b/a Watson Communications
SC-1134	8-22-95	Michael R. Goodnight
SC-1135	8-22-95	Spencer S. Fitts
SC-1136	8-22-95	Mountain Crossing Mercantile, LLC
SC-1137	8-22-95	Robert Lee Jones
SC-1138	8-22-95	Jevic Transportation, Inc.
SC-1139	9-5-95	Gordhan H. Kathrotia
SC-1140	9-5-95	Dennis Tarlton
SC-1141	9-5-95	Alonzo Rayner
SC-1142	9-5-95	Stanley E. Randall
SC-1143	9-5-95	Romie K. Throckmorton
SC-1144	9-5-95	Greensboro Subway, Inc., d/b/a Boone Dairy Queen
SC-1145	10-24-95	Hoai Thanh Tran, d/b/a Starcoin Payphone Company
SC-1147	9-15-95	Richard P. Gigante, d/b/a RPG Communications
SC-1148	9-15-95	Fineline, Inc., d/b/a Fastprint, Inc.

SC-1149	9-15-95	Janie W. Kirk
SC-1150	9-15-95	Michael E. Gray
SC-1151	9-29-95	Thomas Brantley Jenkins II, d/b/a T.B.J. Communications
SC-1152	9-15-95	Victoria R. Attorri, d/b/a VAR Liberty Telcom
SC-1153	9-15-95	Xiaoming Zhou
SC-1154	9-15-95	Dianne D. Robinson
SC-1155	9-29-95	Jerry Leon Brown, d/b/a J&B Telecom Systems & Equipment Co.
SC-1156	9-29-95	Charles E. Britt
SC-1157	9-29-95	Thomas Arthur Farr
SC-1158	9-29-95	Kenneth L. Huffman, Jr.
SC-1159	9-29-95	Edith A. Raether
SC-1160	9-29-95	William P. Edwards, Jr., d/b/a Sunbelt Telecommunications
SC-1161	10-9-95	Mark A. Ewell
SC-1162	10-9-95	Robert L. Hager, d/b/a Foneway
SC-1163	10-9-95	Roger D. Grady, d/b/a G & S Communications (reissued 12-21-95)
SC-1164	10-9-95	Gary W. Robbins, d/b/a GWR Communications
SC-1165	10-9-95	William F. Houghton
SC-1166	10-9-95	Gregory A. Upper, d/b/a Diversified Vending
SC-1167	10-9-95	Maxville C. O'Neal
SC-1168	10-24-95	Mikel James Fogt
SC-1169	10-24-95	Franklin C. Ezzell, III / Franklin A. Ezzell, d/b/a Bud-Al Enterprises
SC-1170	10-24-95	Caltel, Inc. Of North Carolina
SC-1171	10-24-95	George W. Cates
SC-1172	11-2-95	Well Informed, Inc., d/b/a Reds
SC-1173	11-2-95	Gregory S. Sizemore
SC-1174	11-2-95	Robert Harris, Jr.
SC-1175	11-2-95	Corinthian Outerbridge
SC-1176	11-2-95	NC Telco, L.L.C.
SC-1177	11-2-95	Abdelaal A. Elmehrath
SC-1178	11-30-95	Carolyn D. McKinney
SC-1179	11-30-95	Joseph Brancato
SC-1180	11-30-95	Benjamin Celinski
SC-1181	11-30-95	William Wade Hamilton
SC-1182	11-30-95	Autumn Rose and Michael E. Melson, d/b/a Payphones Unlimited
SC-1183	11-30-95	Darryl E. Dodd
SC-1184	12-4-95	BTA Incorporated, d/b/a Eggleston's Community Grocery, Inc.
SC-1185	12-4-95	Dominion Tele-Systems, Inc.
SC-1186	12-4-95	Charles W. Ivins
SC-1187	12-4-95	Payphone Management Systems, Inc.

SC-1188	12-4-95	Gerald R. Griffin
SC-1189	12-21-95	Jeffrey A. Martin
SC-1190	12-21-95	Robert L. Claypool
SC-1191	12-21-95	Waheed & Taiwo Tijani, d/b/a Carolina Payphone Company
STS-32	12-21-95	Executive Perspectives, Inc.
STS-35	6-23-95	Landfall Business Center Executive Suites
STS-36	6-23-95	BASF Corporation

SPECIAL CERTIFICATES AMENDED, REVOKED, CANCELLED OR CLOSED

Docket No.	Date	Company
SC-165, Sub 1	9-15-95	Call Center Communications, Inc.
SC-215, Sub 1	10-13-95	Linn Corriher
SC-222, Sub 1	1-17-95	Greenville Express Car Wash
SC-262, Sub 1	8-7-95	Terry Simon
SC-326, Sub 1	2-9-95	Mr. and Mrs. Clifton Shipman
SC-337, Sub 1	10-13-95	Eric M. Buchanan, d/b/a Piedmont Area Phone Company
SC-364, Sub 1	11-21-95	Thomas E. Stephens
SC-382, Sub 1	11-21-95	Joe King
SC-411, Sub 1	2-27-95	George Scott
SC-465, Sub 1	12-13-95	New Topsail Market
SC-494, Sub 1	10-9-95	Larry Thomas Ellis
SC-499, Sub 1	10-13-95	Newton-Conover High School
SC-566, Sub 1	6-23-95	A R. Steele
SC-590, Sub 1	6-23-95	Daniel Boone
SC-599, Sub 1	7-21-95	Mayfield & Associates, Inc.
SC-603, Sub 1	1-30-95	Burns High School
SC-606, Sub 1	10-30-95	Fike High School
SC-613, Sub 1	10-30-95	Gary T. Cliett
SC-648, Sub 1	9-15-95	Special Operator Services, Inc.
SC-661, Sub 1	11-21-95	Medical Facilities of America LXVIII, d/b/a Carolina Health Care Center
SC-667, Sub 1	2-20-95	Thomas A. Hamme, Jr.
SC-700, Sub 1	10-30-95	Alfred Ma
SC-714, Sub 1	3-10-95	Jerry Mazzurco
SC-741, Sub 2	6-23-95	Vernon Shanks
SC-779, Sub 1	1-20-95	Martha Drummond
SC-780, Sub 1	8-10-95	Fisher Communications, Inc.
SC-803, Sub 1	11-21-95	Paul Daniel Bradford
SC-805, Sub 1	7-10-95	Allen Griffin
SC-816, Sub 1	5-3-95	Gerald R. Smith
SC-819, Sub 1	7-31-95	Accelerated Communications Corporation

SC-820, Sub 1	6-12-95	Inter-Texas Leasing, Inc.
SC-830, Sub 1	1-20-95	Edward C. Martin
SC-835, Sub 1	6-12-95	Lynn P. Lewis
SC-843, Sub 1	1-17-95	Carolina Orange Phone, Ronald B. Hunter, d/b/a
SC-848, Sub 1	1-30-95	CoinTel Carolina, Dugan Enterprises, Inc., d/b/a
SC-854, Sub 1	2-9-95	North Henderson High School
SC-856, Sub 1	9-15-95	Joseph Adu
SC-860, Sub 1	11-21-95	Adams Computer Sales
SC-867, Sub 1	5-25-95	Laurel Hill Telcom, Christine Baxter, d/b/a
SC-874, Sub 1	4-3-95	Theodore Hammerman
SC-889, Sub 1	7-18-95	Joseph A. Santoro
SC-892, Sub 1	7-10-95	MARIAG Communications, R. Craig Gentry, d/b/a
SC-894, Sub 1	5-25-95	Amtel Communications Payphones, Inc.
SC-899, Sub 1	3-10-95	Carolina Sportsbar and Billiards, Inc.
SC-905, Sub 1	9-15-95	Brian Shields, d/b/a Desktop Plus
SC-906, Sub 1	1-30-95	Golden Receivers, Thomas J. Hathaway, d/b/a
SC-915, Sub 1	10-13-95	Larry Hilker, d/b/a Surf Communications
SC-918, Sub 1	9-5-95	Burlington Postal & Package Service, Inc.
SC-919, Sub 1	1-30-95	Max Pritchard
SC-944, Sub 1	11-30-95	Trussie Taylor
SC-954, Sub 1	7-7-95	Mitchell Communications, Earl H. Mitchell and Cheryl S. Mitchell
SC-955, Sub 1	8-17-95	James Calvin Faulkner
SC-962, Sub 2	10-30-95	E. T. King Telecommunications, Inc.
SC-964, Sub 1	11-21-95	H. Elnathan Brown
SC-970, Sub 1	7-13-95	B & L Communications, Brian D. Oliva, d/b/a
SC-977, Sub 1	11-21-95	Charles Vish
SC-985, Sub 1	11-30-95	Robert Longbrake
SC-986, Sub 1	4-19-95	William A. Moss and Russell S. Moss, Jr.
SC-987, Sub 1	12-21-95	Collins Enterprises, Robert Collins, d/b/a
SC-991, Sub 1	6-29-95	Henry L. Ritchie
SC-994, Sub 1	12-18-95	Albert Alan Schrimp, d/b/a TS Communications
SC-997, Sub 1	12-21-95	Jambon's Grille & Smokehouse, LLC
SC-999, Sub 1	7-7-95	Kamal F. Rizk
SC-1004, Sub 1	5-24-95	J & J Communique, John and Janet Hughes, d/b/a
SC-1007, Sub 1	5-3-95	Staley and Debbie Green
SC-1011, Sub 1	7-31-95	Robert "Bob" D. Duffy
SC-1013, Sub 1	4-3-95	Vernon and Pam Abrams
SC-1021, Sub 1	11-21-95	Edka, Inc., d/b/a University Place Restaurant
SC-1026, Sub 1	11-21-95	Freddie R. Clouse, d/b/a Clouse Communications
SC-1028, Sub 1	10-30-95	Dick Durkin
SC-1030, Sub 1	6-15-95	Joseph R. Kuley
SC-1040, Sub 1	11-21-95	A. Enterprises, Inc.
SC-1041, Sub 1	5-24-95	Rick D. Bash

SC-1042, Sub 1	12-21-95	Advanced Public Data Systems, Glenn A. Stump, d/b/a
SC-1046, Sub 1	12-13-95	Terrance Lee Merriweather, d/b/a X-Cel Communication
SC-1047, Sub 1	7-18-95	Nassim M. Ayache
SC-1048, Sub 1	12-13-95	Glenda G. Lee
SC-1051, Sub 1	8-17-95	Mike Eied
SC-1052, Sub 1	10-30-95	Andrew B. Raines
SC-1054, Sub 1	10-9-95	Gerald Hinshaw
SC-1064, Sub 1	11-30-95	Jeffrey Pavletic, d/b/a Watchtower Communications Services
SC-1065, Sub 1	7-31-95	VKB Communications, V. Keim Bateman, d/b/a
SC-1066, Sub 1	12-13-95	Paul V. Sitler, d/b/a Smokes, Unlimited
SC-1072, Sub 1	4-7-95	A & E Telcom, Reggie S. Elledge, d/b/a
SC-1088, Sub 1	7-21-95	Helen M. Cawood
SC-1095, Sub 1	10-13-95	Marsha B. Barringer
SC-1098, Sub 1	12-13-95	Harry Clinkscale

TARIFFS

Central Telephone Company - Order Allowing Tariff to Increase Basic Rates in 23 Exchanges and to Reduce Touch-Tone Rates
P-10, Sub 475 (5-9-95)

GTE South, Inc. - Order Allowing Tariff with Modified Effective Date
P-19, Sub 259 (3-14-95)

GTE South, Inc.; Triangle J. Regional Calling Plant - Order Requiring Tariff Revision Concerning Free Call Detail
P-55, Sub 952; P-19, Sub 259 (2-1-95)

Southern Bell Telephone and Telegraph Company - Order Allowing Permanent Tariff and Requiring Notice
P-55, Sub 925 (8-31-95) Errata Order (9-5-95)

Southern Bell Telephone and Telegraph Company - Order Allowing Modified Tariff to Become Effective
P-55, Sub 1005 (2-22-95)

Southern bell Telephone and Telegraph Company - Order Allowing Tariff to Establish Rates for Native Mode LAN Interconnection
P-55, Sub 1008 (3-21-95)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariff to Introduce Back-Up Line Service
P-55, Sub 1009 (4-18-95)

Southern Bell Telephone and Telegraph Company - Order Allowing Revised Tariff Proposed by Southern Bell to Establish Frame Relay Service for FiServ and Central Carolina Bank
P-55, Sub 1011 (4-26-95)

MISCELLANEOUS

Allnet Communications Services, Inc. - Order Granting Allnet Communication Services, Inc., Exemption from Commission's Prior Approval and Other Requirements Under North Carolina General Statutes Chapter 62, Article 8 - Securities Regulation
P-244, Sub 8 (3-24-95)

Allnet Communications Services, Inc. - Order Dismissing Motion to Cease and Desist, and Requiring Allnet to Provide Information and to Send Notice
P-244, Sub 9 (8-2-95)

AT&T - Order Requiring AT&T to take Measure to Discourage Uncertificated Resellers
P-140, Sub 45 (8-2-95)

BellSouth Telecommunications, Inc. - Order Approving Notice
P-55, Sub 1013 (11-9-95) Errata Order (11-14-95)

Bottom Line Telecommunications, Inc. - Order to Cease and Desist, Provide Accounting, and Pay Penalty
P-411 (3-21-95)

Bottom Line Telecommunications, Inc. - Order Granting Temporary Stay of Accounting and Penalty
P-411 (4-12-95)

Business Discount Plan, Inc. - Order Reactivating Certificate
P-344, Sub 3 (11-1-95)

Carolina Telephone and Telegraph Company - Order Authorizing No-Protest Notice (Commissioner Cobb dissents as to the sending of no-protest notices. Commissioner Cobb supports polling. Commissioner Duncan did not participate.)
P-7, Sub 813 (2-8-95)

Carolina Telephone and Telegraph Company - Order Authorizing Consolidation Survey - Centerville Exchange into the Louisburg Exchange
P-7, Sub 821 (6-13-95)

Carolina Telephone and Telegraph Company - Order Approving Consolidation of the Centerville Exchange into the Louisburg Exchange (Chairman Wells concurs. Commissioner Duncan dissents. Commissioner Cobb joins in Commissioner Duncan's dissent. Commissioner Hughes did not participate.)
P-7, Sub 821 (11-30-95)

Carolina Telephone and Telegraph Company - Order Approving Notices
P-7, Sub 825; P-10, Sub 479 (11-22-95)

Equity Pay Telephone Company, Inc. - Order Approving Joint Stipulation
SC-871, Sub 1 (11-29-95)

GTE South Incorporated - Order Granting GTE South Inc. Waiver of Securities Regulation
P-19, Sub 273 (9-20-95)

GTE South Incorporated - Order Approving Notice
P-19, Sub 277 (11-22-95)

Inacom Communications, Inc. - Order Denying Motion to Cease and Desist, Assessing Penalty, Approving Rebate Plan, and Setting Hearing
P-424 (2-7-95)

LDDS Communications, Inc. - Order Approving Stipulation as Modified
P-283, Sub 8 (1-24-95)

SmarTalk TeleServices, Inc. - Order Denying Confidential Treatment of Financial Information
P-487 (11-8-95)

Southern Pacific Telecommunications Company - Order Denying Confidential Treatment of Financial Information
P-433 (2-22-95)

Tel-Save, Inc.; Target Telecom, Inc.; Business Network Communications, Inc. - Order Approving Joint Stipulations and Requiring Penalties
P-303, Sub 1; P-325, Sub 1; P-436 (3-7-95)

Tel-Save, Inc. - Order Dismissing Cease and Desist Motion and Requiring Provision of Information and Notice
P-303, Sub 3 (9-26-95)

Telegroup, Inc. - Order to Cease and Desist and Require Refunds (Commissioner Duncan concurs.)
P-292, Sub 1 (8-2-95)

Total National Telecom - Order to Cease and Desist, to Pay Penalties and to Make Refunds
P-463 (8-8-95)

Wynn Communications Group, Inc. - Order Requiring Additional Data
P-184, Sub 4 (2-14-95)

WATER AND SEWER

ABANDONMENT

Hawkins, Paul T. And Company - Recommended Order Allowing Partial Abandonment of Water Utility Service in Caroleen and Henrietta Communities, Rutherford County
W-550, Sub 4 (10-23-95)

Hidden Valley Campground Water System - Recommended Order Authorizing Abandonment of Water System Effective April 3, 1995
W-915, Sub 1 (1-13-95)

APPLICATIONS WITHDRAWN, DENIED, OR DISMISSED

Ashe Mountain Water System, Selleck Properties, Inc., d/b/a - Order Dismissing Transfer Application and Requiring Report
W-1055 (9-6-95)

Bach's Mobile Home Park - Recommended Order Denying Application to Abandon and Approval of Tariff Revision
W-735, Sub 1 (8-21-95) Errata Order (8-22-95)

Bradfield Farms Water Company - Order Dismissing Appeal and Closing Docket
W-1044 (2-23-95)

Bradfield Farms Water Company - Order Allowing Withdrawal of Application and Closing Docket
W-1044, Sub 1 (12-1-95)

C&P Enterprises, Inc. - Order Denying Motion to Dismiss and Motion for a Preliminary and Permanent Injunction and Response to Motion to Schedule A Public Hearing
W-1063 (8-24-95)

Carolina Water Service, Inc. Of North Carolina - Order Allowing Withdrawal of Application and Closing Docket
W-354, Sub 142 (1-12-95)

CANCELLED, CLOSED OR REVOKED

Cinnamon Woods Utility Company - Order Closing Docket
W-991 (7-17-95)

EnviroServe Utilities, Inc. - Order Canceling Utility Status and Closing Docket
W-1025 (12-12-95)

Grove Supply Company, Inc. - Order Closing Docket
W-587, Sub 4 (5-10-95)

Johnson Properties, Inc. - Order Closing Docket
W-1030 (9-11-95)

Mid South Water Systems, Inc. - Order Closing Docket
W-720, Sub 100 (12-14-95)

Mountain Ridge Estates Water System - Order Closing Docket
W-975, Sub 2 (2-20-95)

Oakwood Land Development Corporation - Order Closing Docket
W-1053 (8-25-95)

Parris, Steddy, Jr. - Order Canceling Temporary Operating Authority and Closing Docket
W-563, Sub 3 (1-20-95)

Pelican Trace Utilities, Inc. - Order Canceling Franchise and Closing Docket
W-833, Sub 1 (1-20-95)

Ruff Water Company, Inc. - Order Closing Docket
W-435, Sub 15 (5-10-95)

Ruff Water Company, Inc. - Order Closing Docket
W-435, Sub 16 (5-10-95)

S & G Development Corporation - Order Canceling Franchise and Closing Docket
W-800, sub 1 (1-20-95)

White, Billy - Order Canceling Franchise
W-600, Sub 1 (5-9-95)

Worsley Company - Order Closing Docket
W-100, Sub 26 (7-19-95)

CERTIFICATES

Brookwood Water Corporation - Order Granting Franchise to Furnish Water Utility Service in Raintree II Subdivision, Cumberland County, Approving Rates, Requiring a Final Accounting, and Requiring Customer Notice
W-177, Sub 39 (4-17-95) Errata Order (8-18-95)

Crooked Creek Utilities, C. C. Partners, Inc., d/b/a - Final Order Granting Certificate to Furnish Sewer Utility Service in Crooked Creek Subdivision, Wake County, and Approving Rates
W-1048 (2-3-95)

Deerwood at Preston, Preston Grove Associates, d/b/a - Recommended Order Granting Certificate to Provide Water and Sewer Utility Service in Deerwood at Preston Grove Apartments, Wake County, and Approving Rates
W-1067 (11-16-95) Errata Order (11-20-95)

Fairways at Piper Glen Apartments, Piper Glen Associates, d/b/a - Recommended Order Granting Certificate to Provide Water and Sewer Utility Service in Fairways at Piper Glen Apartments, Mecklenburg County
W-1066 (11-3-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Old South Trace Subdivision, Wake County, and Approving Rates
W-274, Sub 92 (1-26-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Broadhurst Subdivision, Wake County, and Approving Rates
W-274, Sub 93 (1-26-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Wynstone Subdivision, Wake County, and Approving Rates
W-274, Sub 94 (2-14-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Jordan Ridge Subdivision, Wake County, and Approving Rates
W-274, Sub 95 (2-14-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Creekstone Subdivision, Johnston County, and Approving Rates
W-274, Sub 96 (2-14-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in South Lake Subdivision, Wake County, and Approving Rates
W-274, Sub 99 (4-4-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Royal Senter Ridge Subdivision, Wake County, and Approving Rates
W-274, Sub 100 (9-12-95)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Millrace (Phase I & II) Subdivision, Wake County, and Approving Rates
W-274, Sub 101 (9-12-95)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Utility Service in Auburndale Subdivision, Guilford County, and Approving Rates
W-218, Sub 106 (6-26-95) Errata Order (6-27-95)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water and Sewer Utility in Diamond Head and Malibu Pointe Subdivisions, Iredell County, and Approving Rates
W-720, Sub 110 (10-24-95)

Rayco Utilities, Inc. - Order Granting Franchise to Furnish Water and Sewer Utility Service in McCarron Subdivision, Mecklenburg County, Approving Rates, and Requiring Customer Notice
W-899, Sub 15 (9-12-95)

River Run Utility Company, Inc., d/b/a River Run at Davidson - Recommended Order Granting Franchise to Provide Sewer Utility Service in River Run Subdivision and pages Pond Subdivision, Mecklenburg County, and Approving Initial Rates
W-1057 (6-1-95) Order Adopting Recommended Order (6-6-95)

West Johnston Water Company, West Johnston Mobile Acres, d/b/a - Recommended Order Granting Water Utility Franchise to Furnish Water Utility Service in West Johnston Mobile Acres, Johnston County, and Approving Rates
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COMPLAINTS

CWS Systems, Inc. - Order Closing Docket in Complaint of Hilltop Homeowners Association
W-778, Sub 25 (7-18-95)

CWS - Order Dismissing Complaint of Robert S. Medvecky
W-778, Sub 27 (5-26-95)

Cape Fear Utilities - Order Dismissing Complaint Without Prejudice, Canceling Hearing and Closing Docket in Complaint of James T. Hargrove
W-279, Sub 28 (6-19-95)

Cape Fear Utilities - Order Dismissing Complaint and Closing Docket in Complaint of Curtis J. Wright
W-279, Sub 29 (6-22-95)

Carolina Water Service of North Carolina - Order Closing Docket in Complaint of Robert Morra
W-354, Sub 138 (2-20-95)

Carolina Water Service of North Carolina - Order Denying Complaint of Jack Durkin
W-354, Sub 144 (6-22-95)

D & W Water Systems - Order Closing Complaint Docket in Complaint of Samuel D. Craig
W-929, Sub 1 (7-31-95)

Fairways Utilities Company - Order Closing Docket in Complaint of Patricia B. Lowe
W-787, Sub 4 (7-20-95)

Fisher Utilities, Inc. - Recommended Order Requiring Respondent to Improve Service in Complaint of Jerry Mizak and Other Residents of Garner Estates
W-365, Sub 35 (5-23-95)

Flanagan, Jackie - Recommended Order Denying Complaint in Complaint of Fisher Utilities, Inc.
W-365, Sub 34 (1-23-95)

Goose Creek Utility Company - Order Keeping Docket Open for Six Months in Complaint of Mr. and Mrs. Gary L. Edwards
W-369, Sub 12 (11-16-95)

Goose Creek Utility Company - Order Finding no Jurisdiction and Dismissing Complaint of Mr. and Mrs. Gary L. Edwards
W-369, Sub 12 (12-20-95)

Hydraulics, Ltd. - Order Giving Notice of Settlement in Complaint of Laurie Snipes, and Closing Docket
W-218, Sub 99 (10-5-95)

Hydraulics, Ltd. - Recommended Order Denying Complaint of Kelly and Jim Woodard
W-218, Sub 105 (4-20-95)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Andrew V. Petkash
W-720, Sub 142 (2-20-95)

Mid South Water Systems, Inc. - Order Keeping Docket Open for Six Months in Complaint of Fox Ridge Homeowners Association
W-720, Sub 146 (2-23-95)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Fox Ridge Homeowners Association
W-720, Sub 146 (8-29-95)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Andrew V. Petkash
W-720, Sub 151 (6-14-95)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of William and Janice Avery
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North Topsail Water & Sewer, Inc. - Order Closing Docket in Complaint of Rick G. Watson
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R.O.E. Water Utility Company - Order Keeping Docket Open for Six Months in Complaint of Debre Ann Brouwer
W-820, Sub 12 (11-16-95)

DISCONTINUANCE OF SERVICE AND DISCONNECTIONS

Combs, Robert F. - Order Authorizing Discontinuance of Service and Closing Docket for Providing Water Utility Service in Clearview Acres, Horseshoe, and Island Ford Park Subdivisions, Iredell County
W-328, Sub 5 (1-23-95)

Heater Utilities, Inc. - Order Authorizing Disconnection of Water Service
W-274, Sub 98 (6-26-95)

Hydraulics, Ltd. - Order Authorizing Discontinuance of Service and Discharging Emergency Operator for River Run Subdivision, Randolph County
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Independence Water System, Gerald T. Smith, d/b/a - Order Authorizing Discontinuance of Service and Requiring Notice to Customers to Discontinue Water Utility Service in Independence Village Subdivision, Union County
W-858, Sub 2 (2-7-95)

Intech Utilities, Inc. - Order Authorizing Disconnection of Water Service for Nonpayment of Sewer Bills
W-957, Sub 1 (11-21-95) Errata Order (12-5-95)

Juniper Water Company, Thomas B. Allen, d/b/a - Order Canceling Hearing, Authorizing Discontinuance of Utility Service in Milhaven Park Subdivision, Mecklenburg County, and Requiring Customer Notice
W-868, Sub 4 (3-21-95)

Lynn Drive Water System - Order Authorizing Discontinuance of Temporary Operating Authority and Requiring Notice to Customers for Water Utility Service in Lynn Drive Subdivision, Cabarrus County
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Ocean Side Corporation - Order Authorizing Discontinuance Water and Sewer Utility Service in Ocean Gate Subdivision, Brunswick County
W-636, Sub 4 (8-8-95)

Springfield Village - Order Authorizing Discontinuance of Utility Service in Springfield Village Subdivision, Scotland County, and Requiring Customer Notice
W-650, Sub 2 (9-13-95)

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Compass Utilities - Recommended Order Discharging Emergency Operator and Approving Accounting
W-885, Sub 2 (11-2-95)

Intech Utilities, Inc. - Recommended Order Appointing New Emergency Operator for Utility Service at Yates Mill Run Subdivision, Wake County, and Approving Rates
W-957, Sub 1 (3-21-95)

Mobile Hill Estates Subdivision - Order Appointing Heater Utilities, Inc. as the New Emergency Operator for Mobile Hill Estates Subdivision, Wake County
W-224, Sub 9 (10-16-95)

Mobile Hill Estates Subdivision - Order Appointing Heater Utilities, Inc. as the New Emergency Operator for Mobile Hill Estates Subdivision, Wake County
W-224, Sub 9 (10-25-95) Errata Order (10-30-95)

North State Utilities, Inc. - Order Discharging Emergency Operator at Piney Mountain Subdivision
W-848, Sub 16 (6-13-95)

North State Utilities, Inc. - Order Authorizing Emergency Operator to Salvage Equipment at Oakcroft Subdivision
W-848, Sub 16 (6-13-95)

Northwestern Woods Well System, Mr. Lawrence Litaker, d/b/a - Order Appointing Emergency Operator for Northwest Woods Subdivision, Cabarrus County, Setting Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-860, Sub 1 (12-20-95)

RATES

Brookwood Water Corporation - Recommended Order Granting Partial Rate Increase for Water Utility Service in All of Its Service Areas in North Carolina
W-177, Sub 40 (10-12-95)

Carolina Trace Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in Carolina Trace Development, Lee County
W-1013, Sub 1 (1-30-95) Order Allowing Recommended Order to Become Effective (2-1-95)

Fearrington Utilities - Order Granting Partial Rate Increase for Sewer Utility Service in Fearrington Village, Chatham County, and Requiring Customer Notice
W-661, Sub 4 (11-28-95)

4 Seasons Mohovilla Utilities, G. P. McConiga, d/b/a - Order Granting Rate Increase for Water Utility Service, Canceling Hearing, and Requiring Notice to Customers
W-1002, Sub 1 (1-31-95)

Fox Fire Water System, James A. Cunningham, d/b/a - Recommended Order Granting Rate Increase for Water Utility Service in Fox Fire subdivision, Gaston County
W-725, Sub 1; W-725, Sub 2

H & M Water Company, Inc. - Order Granting Rate Increase for Water Utility Service in Mansfield Park and Mitchell Village Subdivisions, Carteret County
W-147, Sub 4 (5-24-95)

Hart Water Systems, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in Its Service Areas, Catawba County, and Requiring Notice to Customers
W-739, Sub 4 (1-17-95)

Heater Utilities, Inc. - Recommended Order Granting Rate Increase for Water Utility Service in All Its Service Areas in North Carolina
W-274, Sub 91 (12-22-95)

Homestead Community Water - Order Granting Partial Rate Increase for Water Utility Service in Homestead Mobile Estates Subdivision, Pitt County, Canceling Hearing, and Requiring Customer Notice
W-452, Sub 2 (7-31-95)

Hydrologic, Inc. - Recommended Order Granting Partial Increase in Rates for Water Utility Service in Skyview Park Subdivision, Gaston County
W-988, Sub 11 (10-11-95)

Laurel Hill Water Company - Order Granting Rate Increase for Water Utility Service in Laurel Hill Subdivision, Scotland County, Canceling Hearing, and Requiring Notice to Customers
W-67, Sub 10 (2-14-95)

Marper, Inc. - Order Granting Rate Increase for Water Utility Service in Rambling Ridge Subdivision, Henderson County, Canceling Hearing, and Requiring Customer Notice
W-770, Sub 1 (11-28-95)

North State Utilities, Inc. - Order Approving Rate Reduction for Oakcroft Customers
W-848, Sub 16 (6-13-95)

North Topsail Water & Sewer, Inc. - Recommended Order Allowing Partial Rate Increase for Sewer Utility Service in Its Service Area in Onslow County
W-754, Sub 19 (6-7-95)

Penny Park Water System, James A. Cunningham, d/b/a - Recommended Order Granting Rate Increase for Water utility Service in Penny Park Subdivision, Gaston County
W-1060 (9-6-95)

Poplar Terrace Mobile Home Park, Charley Williams, d/b/a - Order Granting Rate Increase for Water and Sewer Utility Service in Poplar Terrace Mobile Home Park, Buncombe County, Canceling Hearing and Requiring Notice to Customers
W-775, Sub 4 (1-13-95)

Rayco Utilities, Inc., Willowbrook Utility Company, Hidden Creek Utility Company, and Mountain Point Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in All Their Service Areas in North Carolina, and Assessing Rate of Return Penalty
W-899, Sub 14; W-981, Sub 2; W-982, Sub 1; W-989, Sub 2 (9-22-95)

Ridgecrest Baptist Conference Center - Recommended Order Granting Partial Rate Increase for Water Utility Service to Local Residents of the Ridgecrest Area, Buncombe County
W-71, Sub 7 (7-25-95) Order Changing Effective Date (8-11-95)

Scotsdale Water and Sewer, Inc. - Recommended Order Granting Partial Rate Increase, Terminating EPA Surcharge, and Requiring Refunds
W-883, Subs 21, 22, and 23 (10-9-95)

Shamrock Water Corporation - Order Granting Partial Rate Increase for Water Utility Service in Shamrock Park Subdivision, Catawba County, Approving Tariff Revision, and Requiring Customer Notice
W-432, Sub 2; W-432, Sub 3 (9-19-95)

Sherwood Forest Utility, Inc. - Order Granting Partial Interim Rates for Sewer Utility Service in Sherwood Forest Subdivision, Transylvania County, and Requiring Customer Notice
W-706, Sub 5 (3-28-95)

Transylvania Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in Connestee Falls Subdivision, Transylvania County
W-1012, Sub 2 (3-10-95) Order Overruling Exceptions, Affirming Recommended Order, and Requiring Refund Plan (8-10-95)

West Wilson Water Corporation - Recommended Order Granting Partial Increase in Rates for Water utility Service in All Its Service Areas in North Carolina
W-781, Sub 22 (8-30-95) Order Approving Recommended Order (8-30-95)

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A & D Water Service, Inc. - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Cinnamon Woods Subdivision, Henderson County, from Max S. Ambach, d/b/a Cinnamon Woods Utility Company
W-1049 (5-30-95) Order Adopting Recommended Order (6-2-95)

Apple Lane Mobile Home Court, J. M. Yost, d/b/a - Order Granting Transfer of Water Utility System in Apple Lane Mobile Home Court to Community Landowners Water Service, Inc.
W-514, Sub 3 (6-13-95)

Blue Farm Water System - Order Approving Transfer of Franchise to Provide Water utility Service in Blue Farm Subdivision, Moore County, to the Town of Southern Pines (Owner Exempt from Regulation), and Requiring Customer Notice
W-926, Sub 2 (9-12-95)

Carolina Blythe Utility Co. - Order Approving Transfer of Ownership of Its Water and Sewer Systems, Brunswick County, to the Town of Calabash (Owner Exempt) from Regulation, and Requiring Public Notice
W-503, Sub 7 (6-22-95)

Carolina Water Service, Inc. Of North Carolina - Order Approving Transfer of Ownership of the Water Utility System, Mecklenburg County, to the City of Charlotte (Owner Exempt from Regulation) (Chairman Wells and Commissioner Redman dissent. Commissioners Duncan and Ralph Hunt did not participate.)
W-354, Sub 140 (2-3-95)

Carolina Water Service, Inc. Of North Carolina - Order Approving Transfer of Franchise Serving the Hidden Hills and Farmwood-Section 18 Subdivisions, Mecklenburg County, to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets
W-354, Sub 143 (5-24-95)

Carolina Water Service, Inc. Of North Carolina - Order Approving Transfer of Franchise Serving the Habersham Subdivision, Mecklenburg County, to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets, and Scheduling Hearing on Treatment of Gain of Sale
W-354, Sub 145 (6-26-95)

Carolina Water Service, Inc. Of North Carolina - Order Approving Transfer of Water Utility Systems Serving the Hampton Green, Courtney, and Courtney II Subdivisions, Mecklenburg County, to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets, and Deferring Decision on Treatment of Gain of Sale
W-354, Sub 148 (10-3-95)

Carolina Water Service, Inc. Of North Carolina - Order Approving Transfer of Water Utility System Serving the Idlewood Subdivision, Mecklenburg County, to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets, and Deferring Decision on Treatment of Gain of Sale
W-354, Sub 149 (10-3-95)

Carolina Water Service, Inc. Of North Carolina - Order Approving Transfer of Water Utility System Serving the Brandywine and Forest Ridge Subdivisions, Mecklenburg County, to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets, and Deferring Decision on Treatment of Gain on Sale
W-354, Sub 150 (10-3-95)

Carolina Water Service, Inc. Of North Carolina - Order Approving Transfer of Water Utility System Serving the Providence West Subdivision, Mecklenburg County, to the City of Charlotte (Owner Exempt from Regulation) and to Transfer Assets, and Deferring Decision on Treatment of Gain of Sale
W-354, Sub 151 (10-3-95)

Environmental Maintenance Systems, Inc. - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Holly Hills Subdivision, Jackson County, from Donald Miller d/b/a Holly Hills Water, and Approving Rates
W-1054 (1-27-95)

Environmental Maintenance Systems, Inc. - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in flat Mountain Estates Subdivision, Macon County, from Cleaveland Enterprises Water System, Inc. d/b/a Flat Mountain Estates Water System, and Approving Rates
W-1054, Sub 1 (1-4-95)

Environmental Maintenance Systems, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Brightwater Subdivision, Henderson County, from Brightwater Water Department, Inc., to Environmental Maintenance Systems, Inc., and Approving Rates
W-1054, Sub 2 (5-23-95) Errata Order (6-19-95)

Franklinville Waste Treatment Company - Order Approving Transfer Ownership of the Sewer Utility System Serving a part of Franklinville, Randolph County, to the Town of Franklinville (Owner Exempt from Regulation)
W-905, Sub 3 (4-6-95)

H & M Water Company, Inc. - Order Approving Transfer of Ownership of the Water Utility System Serving Mansfield Park and Mitchell Village, Carteret County, to the Town of Morehead City (Owner Exempt from Regulation)
W-147, Sub 5 (9-19-95)

HIPOA Water and Sewer, Holiday Island Property Owners Association, d/b/a - Recommended Order to Transfer the Franchise to Provide Water Utility Service to Perquimans County (Owner Exempt from Regulation)
W-386, Subs 12 and 13 (9-27-95) Order Allowing Recommended Order to Become Final (9-27-95)

Havelock Development Corp. - Order Canceling Hearing and Approving Transfer of Ownership of the Water Utility System Serving Westbrooke Subdivision, Craven County, to the City of Havelock (Owner Exempt from Regulation)
W-223, Sub 9 (3-17-95)

H. C. Huffman Water Systems, Inc. - Order Approving Transfer of Ownership of Its Water Utility System in Lakeview Park Subdivision, Caldwell County, to Caldwell County (Owner Exempt from Regulation)
W-95, Sub 19 (1-20-95)

Hydraulics, Ltd. - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Laurel Woods Subdivision, Gaston County, from Laurel Woods Water System, and Approving Rates
W-218, Sub 104 (1-27-95) Errata Order (3-23-95)

Hydraulics, Ltd. - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Mar-Lynn Forest Subdivision, Gaston County, from Gaston Builders, Inc., and Approving Rates
W-218, Sub 102 (1-19-95)

Hydraulics, Ltd. - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Rolling Hills and South Bourne Subdivisions, Gaston County, from Walls Construction Company, Inc., d/b/a Rolling Hills Mobile Home Park, and Approving Rates
W-218, Sub 103 (1-12-95)

Jewell Acres Water System, A. Gordon Jewell, d/b/a - Order Approving Transfer of Ownership of the Water Utility System Serving Jewell Acres Subdivision, Buncombe County, from A. Gordon Jewell to Jewell Acres Water Authority (Owner Exempt from Regulation)
W-651, Sub 1 (10-24-95)

Mercer Environmental Corporation and Onslow County Water Department - Order Approving Transfer of Franchise to Provide Water Utility Service in Kenwood, Oak Ridge, Regalwood/Windsor, White Oak Estates, and Montclair/Walnut Creek Subdivisions, and Belleauwoods, Piney Green, Eastwood, Hickory Hills and Hillcrest Mobile Home Parks, Onslow County, from Mercer Environmental Corporation to Onslow County Water Department (Owner Exempt from Regulation)
W-198, Sub 33 (12-20-95)

Mid South Water Systems, Inc. - Recommended Order Approving Transfer of Franchises to Provide Water Utility Service in All of Ruff Water Company, Inc.'s Service Areas, Gaston County, From Ruff Water Company, Inc., to Mid South Water Systems, Inc., and Approval of Rates
W-720, Sub 143 (6-7-95) Order Adopting Recommended Order (6-20-95)

Mid South Water Systems, Inc. - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in All of Ralph L. Falls Water Systems' Service Areas, Gaston County, From Ralph L. Falls Water Systems, and Approval of Rates
W-720, Sub 145 (6-7-95) Order Adopting Recommended Order (6-20-95)

Mid South Water Systems, Inc. - Order Approving Transfer of Water Utility System in Landen Meadows Subdivision, Mecklenburg County, to Charlotte Mecklenburg Utility District (Exempt from Regulation), and Canceling Franchise
W-720, Sub 147 (2-22-95)

Mid South Water Systems, Inc. - Order Approving Transfer of Franchises to Provide Water Utility Service in Chesney Glen, Heathers, Wexford, and Brantley Oaks Subdivisions, and Sewer Utility Service in Wyndhan Subdivision, Mecklenburg County, From Mid South Water Systems, Inc., to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation)
W-720, Sub 148 (6-1-95) Errata Order (6-9-95)

Mid South Water Systems, Inc. - Order Approving Transfer of Water Utility Service in Oakcroft Subdivision, Mecklenburg County, from Mid South Water Systems, Inc., to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation
W-720, Sub 153 (12-13-95)

River Hills Sanitation Service, Inc., Richard L. and Cheria R. Goodman, d/b/a - Order Approving Transfer of Franchise to Provide Sewer Utility Service in River Hills Estates Subdivision, Cabarrus County, from Richard L. Goodman, d/b/a River Hills Sanitation Service
W-912, Sub 1 (12-12-95)

Riviera Utilities of North Carolina, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Lake Royale Subdivision, Franklin and Nash Counties, from Johnson Properties, Inc.
W-665, Sub 2 (12-12-95)

Stately Pines Utilities, Inc. - Order Approving Transfer Ownership of Sewer Utility System Serving Stately Pines Subdivision, Craven County, to the Neuse River Water and Sewer District (Owner Exempt from Regulation) and Authorizing Release of Bond
W-968, Sub 2 (7-14-95)

Wilson Water Service, Inc. - Order Granting Transfer of Franchise to Provide Water Utility Service in Eden Oaks Subdivision, Granville County, to the Eden Oaks POA, Inc., (Owner Exempt from Regulation
W-554, Sub 3 (12-5-95)

SECURITIES

Alpha Utilities, Inc. - Order Requiring Bond
W-862, Sub 15 (8-22-95)

Bright Leaf Landing Corporation - Order Approving Irrevocable Letter of Credit and Releasing Cash Bond
W-994 (8-1-95)

CWS Systems, Inc. - Order Requiring Posting of Bond and Authorizing Release of Bond
W-778, Sub 8 (8-22-95)

CWS Systems, Inc. - Order Requiring Posting of Bond
W-778, Sub 8 (11-21-95)

Deerwood at Preston, Preston Grove Associates, d/b/a - Order Requiring Bond
W-1067 (8-10-95)

Fairways at Piper Glen Apartments, Piper Glen Associates, d/b/a - Order Requiring Bond
W-1066 (8-10-95)

G & F Utilities, G & F Construction, Inc., d/b/a - Order Denying Release of Bond
W-940, Sub 1 (8-29-95)

Marshall, Inc. - Interlocutory Order Requiring Bond
W-1056 (2-24-95)

Mid South Water Systems, Inc. - Order Requiring Bond
W-720, Sub 136 (6-6-95)

Mid South Water Systems, Inc. - Order Requiring Bond
W-720, Sub 149 (6-6-95)

Mid South Water Systems, Inc. - Order Requiring Bond
W-720, Sub 150 (6-6-95)

North State Utilities, Inc. - Order Directing Repayment of Bond Funds
W-848, Sub 16 (12-1-95)

Porters Neck Company, Inc. - Order Requiring Bond
W-1059 (9-5-95)

Whitwood Properties, Inc. - Order Requiring Bond and Conditionally Approving Partial Increase in Rates
W-1004, Sub 2 (11-9-95)

TARIFFS

Barrier Grain Company - Order Approving Tariff Revision to Increase Rates for Water Utility Service in Green Oaks Subdivision, Cabarrus County, due to Increased Expenses Associated with Recently Implemented EPA Water Testing Requirements
W-688, Sub 4 (7-24-95) Errata Order (7-25-95)

Bear Den Acres Development, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service in Bear Den Acres Subdivision, McDowell County, due to Increased Expenses Associated with Recently Implemented EPA Water Testing Requirements
W-1040, Sub 1 (7-21-95)

Brookside Water Company - Order Approving Tariff Revision to Increase Rates for Water Utility Service in Brookside Subdivision, Haywood County, Due to Increased Expenses Associated with Recently Implemented Water Testing Requirements
W-330, Sub 8 (7-24-95)

CWS Systems, Inc. - Order Amending Tariff for Water and Sewer Utility Service in Fairfield Harbour Subdivision, Craven County, Fairfield Mountains Subdivision, Rutherford County, and Fairfield Sapphire Valley Subdivision, Jackson County, for Authority to Implement a Recoupment of Capital Fee in Sapphire Valley, and for Authority to Increase Miscellaneous Service Charges
W-778, Sub 20 (8-24-95)

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CWS Systems, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service in Amber Acres North, Ashley Hills North, Country Crossing, Jordan Woods, Neuse Woods, Oakes Plantation, Sandy Trails, Stewart's Ridge, and Tuckahoe Subdivisions, Wake County, Heather Glen Subdivision, Durham County, Wilder's Village Subdivision, Franklin County, and Ransdell Forest Subdivision, Nash County, Due to Increased Expenses Related to Recently Implemented EPA Mandated Testing Requirements
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Carolina Water Service, Inc. of North Carolina - Order Approving Tariff for Water Utility Service to Delete Provisions for the EPA Testing Surcharge
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