EIGHTY-NINTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1999, through December 31, 1999

Jo Anne Sanford, Chair

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

William R. Pittman, Commissioner

J. Richard Conder, Commissioner

Robert V. Owens, Jr., Commissioner

*Sam J. Ervin, IV, 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.

*Commissioner Sam J. Ervin, IV, appointed July 1, 1999.

LETTER OF TRANSMITTAL

December 31, 1999

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, 1999, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1999, and ending December 31, 1999.

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

Jo Anne Sanford, Chair

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

William R. Pittman, Commissioner

J. Richard Conder, Commissioner

Robert V. Owens, Jr., Commissioner

Sam J. Ervin, IV, Commissioner

Geneva S. Thigpen, Chief Clerk

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OF THE
NORTH CAROLINA UTILITIES COMMISSION

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GENERAL ORDERS - GENERAL

DOCKET NO. M-100, SUB 126

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	ORDER CONCERNING
The Year 2000 Computer Issue	)	A YEAR 2000 TRANSITION
	)	STABILIZATION PERIOD

BY THE COMMISSION: On May 26, 1999, GTE filed a letter suggesting the Commission review the need to establish a regulatory moratorium leading up to, during and immediately following the millennium rollover to the Year 2000 (Y2K). In their letter, GTE suggested that the Commission agree to adopt a moratorium suspending any future implementation rulemaking and orders requiring telecommunication service providers to significantly alter their networks or information technology ("IT") systems, except in emergency situations. GTE is concerned that any government-required introduction of new computer code, or new network components could be disruptive to the Y2K transition.

GTE believes such a moratorium will minimize risks to the public switched network from Y2K-related problems by ensuring that a stable infrastructure is in place leading up to Y2K. In its request, GTE stated that the Commission's establishment of a regulatory moratorium, or stabilization period, is a prudent and responsible step to mitigate the threat of new, potentially untested components and software from being introduced into its operations, during this transition period in North Carolina and nationally.

GTE is suggesting that government-required introduction of new technical prerequisites such as the addition of new area codes, introduction of new features or network components, changes to information systems (billing, customer care and network provisioning) should be frozen for a brief period of time. GTE requested a brief period to freeze regulatory orders on network services from November 22, 1999, through January 7, 2000, for network services, and November 1, 1999, through February 1, 2000, for information services.

The Public Staff reviewed GTE's suggested stabilization period for the telecommunications industry and recommended at the Regular Commission Conference of June 21, 1999, that a stabilization period be adopted. After consulting with other members of the telecommunications industry, the Public Staff also recommended that such a stabilization period related to government mandates be flexible in order to fit the needs of the various companies. The Public Staff recommended that a stabilization period from November 22, 1999, through January 7, 2000, for network services, and November 1, 1999, through February 1, 2000, for information services, be established. During this stabilization period the Commission would not require any changes be made to either the telecommunications network or support systems, but requirements in place at the time would not be affected. The utilities will be preparing for the Year 2000 transition and ongoing operations during this period. If a telecommunications utility determines that it requires a longer stabilization period, the utility would petition the Commission and provide convincing justification for an extension.

The Commission considered this matter at its Regular Commission Conference of June 21, 1999, and approved a stabilization period from November 1, 1999, through February 1, 2000, for both network services and information services to assure the continued stability of the telecommunications industry's collective network and information service infrastructures through the millennium transition.

IT IS, THEREFORE, ORDERED as follows:

1. A regulatory moratorium leading up to, during and immediately following the millennium transition is established. The stabilization period will be from November 1, 1999, through February 1, 2000. If a telecommunications utility determines that it requires a longer stabilization period, the utility shall petition the Commission and provide convincing justification for an extension.

2. No non-emergency modifications to a local exchange carrier's or interexchange carrier's network and information technology systems will be imposed during the regulatory moratorium.

ISSUED BY ORDER OF THE COMMISSION.
This is the __25th__ day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

mz062499.03

DOCKET NO. M-100, SUB 126

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	FURTHER ORDER CONCERNING
Year 2000 Computer Issue	)	THE YEAR 2000 COMPUTER ISSUE

BY THE COMMISSION: Many computers still use the old six-digit dating system, which does not go beyond the year 1999. When the internal clocks of those computers reach midnight on December 31, 1999, unless remediated, they may reset to January 1, 1900. Furthermore, the year 2000 is a leap year, and not all computers are programmed to recognize February 29, 2000. Another Year 2000 (Y2K) issue is embedded chips. If these have the same problem, they could affect operating systems. Unless this issue is properly addressed, it could have very serious consequences for any date-sensitive transaction. Since most public utilities rely on computers for operational and billing requirements, both they and their customers would be affected.

On April 27, 1998, at the Commission's Regular Staff Conference, the Public Staff expressed concern that the North Carolina jurisdictional utilities anticipate and adequately address the Year 2000 computer issue. The Public Staff recommended that the Commission issue an order requiring utilities to complete a Year 2000 survey so that the Commission can assess how utilities are addressing the Year 2000 issue. On April 28, 1998, the Commission issued an order requiring all regulated utilities to fill out a Year 2000 survey and file it with the Commission, and mail copies to the Public Staff and the Attorney General no later than July 1, 1998.

On September 29, 1998, the Public Staff filed its Initial Report to the North Carolina Utilities Commission on the Year 2000 Analysis of Utilities Regulated in North Carolina (Initial Report). On October 5, 1998, at the Commission's Regular Staff Conference, the Public Staff requested that the Commission issue to each regulated utility an Order incorporating the Public Staff recommendations contained in that report. On October 19, 1998, the Commission issued an Order incorporating the Public Staff recommendations contained in the Initial Report.

On April 26, 1999, at the Commission's Regular Staff Conference, the Public Staff requested that the Commission issue a Second Y2K Survey. On April 28, 1999, the Commission issued an order requiring the major utilities to fill out a Second Year 2000 Survey.

On June 21, 1999, the Public Staff filed its Second Report to the North Carolina Utilities Commission on the Year 2000 Analysis of Utilities Regulated in North Carolina (Second Report). The Public Staff informed the Commission that this Second Report and the utilities' responses to the second Y2K survey are available on the Public Staff web site.

The Second Report details: (1) the Public Staff's monitoring of utilities' Y2K compliance plans, (2) the Public Staff's assessment of how utilities are addressing the Year 2000 issue, 3) Public Staff follow-up procedures, and (4) Public Staff recommendations. The Public Staff further stated that the major utilities were provided a copy of the Second Report for fact checking before it was filed with the Commission.

On June 21, 1999, the Public Staff also filed with the Commission its proposed Contingency Plan for the time frame of December 31, 1999, through January 2, 2000. The plan calls for a Public Staff presence during the rollover weekend and a requirement that utilities notify the Public Staff of certain outages during the rollover weekend. That information would be posted on the Internet for the public and the press to see at any time during the weekend. The Public Staff stated that the proposed Contingency Plan for the rollover weekend had been provided to the utilities for their suggestions and comments and their input had been incorporated into the plan.

After reviewing the Public Staff Second Report to the North Carolina Utilities Commission on the Year 2000 Analysis of Utilities Regulated in North Carolina and the Public Staff Contingency Plans for December 31, 1999, through January 2, 2000, the Commission concurs with the Public Staff recommendations.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff's proposed Contingency Plan is hereby adopted and the affected utilities are ordered to adhere to its requirements. Telephone membership corporations and ElectriCities and its members are invited to participate in this Contingency Plan. The Contingency Plan can be found on the Public Staff web site located at http://www.pubstaff.commerce.state.nc.us.

2. That all regulated utilities shall access the Public Staff's Y2K web site on the Internet and study the information contained therein.

3. That as utilities establish Y2K pages on the Internet, they shall inform the Public Staff, and the Public Staff will provide a link to that page from its own Y2K web site. Those utilities shall also provide a link to the Public Staff web site. All companies are urged to continue to keep their customers informed as to their progress in reaching Y2K compliance. Companies should consider bill inserts, advertisements, news releases and other means to disseminate Y2K information. All major utilities are ordered to continue to keep the Commission, the Public Staff, and the Attorney General informed of their Y2K educational efforts. The term "major utilities" in the Contingency Plan and this Order means the electric and natural gas companies, local exchange carriers, long distance companies with over 5,000 customers, electric membership corporations, and the two largest water companies (Utilities, Inc., and Heater Utilities, and their affiliated companies). When companies submit the information they should include a reference to Docket No. M-100, Sub 126.

4. That utilities should continue to cooperate fully with the Public Staff as it monitors Y2K compliance progress, requests information, requests meetings, and requests site visits. Utilities are directed to continue to invite the Public Staff to Y2K forums in which a Public Staff presence is appropriate.

5. That all major utilities as defined in paragraph 3 are required to file a report with the Commission by October 11, 1999, if their ability to provide utility service is endangered because they are not Y2K ready/compliant by October 1, 1999. The report should contain detailed explanations of the following:

Explain what part of their utility service, whether operational or business, is not Y2K ready/compliant. For each, explain:

a. Why is it not ready/compliant?

b. How can it be made ready/compliant?

c. When will it be made ready/compliant?

d. If it cannot be made ready/compliant by December 31, 1999, what will the effects be on the provision of utility service?

Copies should be mailed to the Public Staff and the Attorney General at the following addresses:

Public Staff - NC Utilities Commission
Attn: Legal Division
Post Office Box 29520
Raleigh, North Carolina 27626-0520

Attorney General Michael F. Easley
Department of Justice
Attn: Linda Cox
Post Office Box 629
Raleigh, North Carolina 27602

6. That each major utility as defined in paragraph 3 shall file with the Commission, and mail to the Public Staff and the Attorney General, a copy of any substantive and substantial report on Y2K issues that it files with any federal or state agency or department until January 1, 2001. When companies submit this information they should include a reference to Docket No. M-100, Sub 126.

7. That, not withstanding any Commission Order or any communication from the Public Staff, the management of all North Carolina regulated utilities are responsible for taking such action as is necessary to achieve a successful Year 2000 result.

8. That all regulated utilities are required to be Y2K ready/compliant before December 31, 1999.

9. The Chief Clerk of the Utilities Commission is directed to send a copy of this Order to all regulated utilities (including electric membership cooperatives), all telephone membership corporations, and ElectriCities.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

mz062499.04

DOCKET NO. M-100, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Amendment of Certain Commission	)	
Rules to Correct Clerical Errors and	)	ORDER AMENDING RULES
Outdated References	)	

BY THE CHAIR: It has come to the attention of the Chair that certain Commission Rules as published in the North Carolina Public Utilities Laws and Regulations - 1995 Edition and supplemented by the 1997 Supplement and subsequent Commission Orders, should be amended to correct the following clerical errors and outdated references. The amendments are as follows:

1. In Commission Rule R8-28, the reference to "National Association of Railroad and Utilities Commissioner's" should be changed to "National Association of Regulatory Utility Commissioners'";

2. In Commission Rule R6-71, the reference to "Natural Gas Policy Act of 1979" should be changed to "Natural Gas Policy Act of 1978";

3. In Commission Rule R1-17(k)(6)(a) and (b), the references to "North Carolina Gas Service, a Division of NUI Corporation" should be changed to "NUI North Carolina Gas"; and

4. In Commission Rules R8-53(b)(2)(ii) and R8-55(a) and (b), the references to "Duke Power Company" should be changed to "Duke Power, a Division of Duke Energy Corporation" and in Commission Rule R8-60(b), the reference to "Duke Energy Corporation, d/b/a Duke Power Company" should be changed to "Duke Power, a Division of Duke Energy Corporation."

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg102599.02

DOCKET NO. M-100, SUB 128

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Amendment of Certain Commission	)	ORDER AMENDING
Rules to Correct Clerical Errors and	)	RULE R1-19
Outdated References	)	

BY THE CHAIR: It has come to the attention of the Chair that Commission Rule R1-19, as published in the North Carolina Public Utilities Laws and Regulations - 1995 Edition, should be amended to eliminate potential confusion and to conform to current Commission practice. The amendments are as follows:

1. In Commission Rule R1-19(b), the first sentence should be changed to read as follows: "Petitions under this rule shall be filed with the Commission not less than ten (10) days prior to the time the proceeding is called for hearing, unless the notice of hearing fixes the time for filing such petitions, in which case such notice shall govern."; and

2. In Commission Rule R1-19(b), the second sentence, which refers to the number of copies to be filed, should be deleted.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg110299.07

GENERAL ORDERS - ELECTRICITY

DOCKET NO. E-100, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities - 1998	)))	ORDER ESTABLISHING STANDARD RATES AND CONTRACT TERMS FOR QUALIFYING FACILITIES

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," (hereinafter often referred to as QFs) 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 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 the 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 (MW) or less, thus excluding users of other types of renewable resources.

On July 22, 1998, the Commission issued its Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing. That Order made Carolina Power & 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 QFs and small power producers pursuant to Section 210 of PURPA and the FERC regulations associated therewith, and G.S. 62-156. The Order also required each electric utility to file proposed rates and proposed standard form contracts. The Order stated that the Commission would attempt to resolve all issues arising in this docket based on a record developed through public witness testimony, written statements, exhibits and avoided cost schedules verified by persons who would otherwise be qualified to present expert testimony in a formal hearing, and written comments on the statements, exhibits and schedules, rather than a full evidentiary hearing. CP&L, Duke, NC Power Nantahala and WCU were required to file their statements and exhibits by November 6, 1998. Other persons desiring to become parties were allowed to intervene and to file their statements and exhibits by January 8, 1999. All parties were allowed to file reply comments and proposed orders. The Commission scheduled a public hearing for February 2, 1999, solely for the purpose of taking nonexpert public witness testimony.

On August 3, 1998, Duke Power filed a letter with the Commission in Docket Nos. E-7, Sub 614 and E-13, Sub 178, advising that the merger of Nantahala with Duke Energy Corporation was complete on that date and that Nantahala was now a part of Duke Power's electric operations. On August 11, 1998, the Commission issued an order deleting Nantahala, as a separate entity, from all provisions of the July 22, 1998 Order in this docket.

On October 5, 1998, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene. By Order dated October 6, 1998, the Commission allowed CUCA to intervene. On November 3, 1998, CUCA filed a Motion to Withdraw Mr. Robert C. Ervin as attorney for CUCA and provided notice to the Commission of the appearance of James P. West as attorney on behalf of CUCA in these proceedings. On November 9, 1998, the Commission allowed the withdrawal.

On October 12, 1998, Carolina Industrial Groups for Fair Utilities Rates I & II (CIGFUR) filed a Petition to Intervene. By Order dated October 15, 1998, the Petition to Intervene was granted.

On November 3, 1998, WCU filed its initial statement and exhibits. On November 6, 1998, CP&L, Duke Power and NC Power filed their initial statements and exhibits.

On November 6, 1998, Southeastern Hydro Power, Inc. filed a Petition to Intervene and by Order dated November 17, 1998, was allowed to do so.

On December 14, 1998, the Town of Lake Lure filed a Petition to Intervene and by Order dated December 22, 1998, the Petition to Intervene was granted.

On December 23, 1998, the Public Works Commission of the City of Fayetteville filed a Petition to Intervene Out of Time in this docket and by Order dated January 7, 1999, the Commission allowed the intervention.

On January 6, 1999, the Public Staff filed a Motion for an Extension of Time for the filing of intervenor statements and exhibits and corresponding extensions of time for utility and intervenor reply comments on the initial statements and for filing of proposed orders. On January 7, 1999, the Commission granted the Motion for Extension of Time and established January 15, 1999 as the revised date for the filing of intervenor statements and exhibits, February 12, 1999 as the revised date for filing reply comments on the initial statements, and March 12, 1999 as the revised date for filing of proposed orders.

On January 7, 1999, Hydrodyne Industries, L.L.C. (Hydrodyne) filed a Petition to Intervene. On January 8, 1999, Michael R. Allen filed a Petition to Intervene in this docket and on January 11, 1999, Avalon Hydro, Inc., Mayo Hydro, Inc., Rocky Mount Mills, Cascade Power Company, Brushy Mountain Hydro-Electric Power Co., Inc., and Henderson Properties Inc. filed Petitions to Intervene in the current avoided cost proceedings. By Order dated February 1, 1999, the Commission allowed these parties to intervene.

On January 14, 1999, Hydrodyne filed Comments and on January 15, 1999, the Public Staff filed its Initial Statement.

On February 2, 1999, the Commission held a hearing solely for the purpose of taking non-expert public witness testimony. Mr. Tim Henderson testified at the February 2nd public hearing.

On February 12, 1999, Duke Power, CP&L and NC Power filed Reply Comments. On February 16, Duke Power filed a Revised Exhibit 1 to Duke Power's Reply Comments.

On March 11, 1999, NC Power requested an extension of time to and including March 19, 1999, for filing proposed orders. On March 12, 1999, the Commission granted the requested extension.

Based on the foregoing, all of the parties' comments and exhibits, the public witness testimony at the hearing and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. CP&L shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 MW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 MW or less capacity. 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. CP&L shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 MW or less capacity.

2. Duke shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 MW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 MW or less capacity. 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. Duke shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 MW or less capacity.

3. NC Power shall offer long-term levelized capacity payments and 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 (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 MW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 MW or less capacity. 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. NC Power shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 MW or less capacity. NC Power shall offer long-term levelized energy payments as an additional option for small qualifying facilities rated at 100 kW or less capacity.

4. CP&L, Duke and NC Power shall offer qualifying facilities not eligible for the standard long-term levelized rates the options of contracts to sell energy only at the variable rates established by the Commission or, as appropriate, contracts and rates derived by free and open negotiations with the utility or participation in the utility's competitive bidding process for obtaining additional capacity. The Commission expects all utilities to negotiate in good faith with qualifying facilities. The Commission will set no specific guidelines in this proceeding for such negotiations.

5. Duke and CP&L use the peaker method to develop avoided capacity costs. NC Power uses the differential revenue requirement (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.

6. A performance adjustment factor of 2.0 should be utilized by both CP&L and Duke for their respective avoided cost calculations for hydroelectric facilities with no storage capability and no other type of generation.

7. A performance adjustment factor of 1.2 should be utilized by both CP&L and Duke for their respective avoided cost calculations for all QFs in this proceeding except hydroelectric facilities with no storage capability and no other type of generation.

8. CP&L's proposal to: (1) require certain QFs to post a letter of credit/surety bond, and (2) require contract rates to revert to then current variable rates under certain electric industry restructuring conditions should be denied.

9. Duke's proposal to offer certain special considerations to eight existing run-of-river hydro QFs on the Duke system is rendered moot.

10. NC Power should not be required to offer capacity credits to QFs prior to year 2000 for purposes of this proceeding.

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

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

13. WCU's proposed Small Power Production Supplier Reimbursement Formula is reasonable and appropriate. WCU should not be required to offer any long-term levelized rate options to qualifying facilities.

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

Whether the Commission should require the electric utilities to offer long-term levelized rates to QFs as standard rate options has been an issue in prior avoided cost proceedings, and it is an issue in this proceeding as well. Long-term levelized rates are permitted, but not required, by the regulations implementing Section 210 of PURPA. Long-term contracts are "encouraged in order to enhance the economic feasibility of small power production facilities" by G.S. 62-156(b)(1).

Prior to the 1984 avoided cost proceeding in Docket No. E-100, Sub 41A, CP&L and Duke were required to offer standard long-term levelized rate options to all QFs, and NC 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 required by this Commission in order to encourage the development of cogeneration and small power production facilities. However, in the 1984 proceedings both the Public Staff and the utilities raised concerns about these options, and the Commission undertook a reexamination of the issue. The Commission sought a balance between the policy of encouraging QF development, especially the development of small power producers under G.S. 62-156, and the risks posed by defaults and by the uncertainty of the long-term projections on which long-term rates are based. The Commission resolved these concerns by requiring CP&L, Duke and NC Power to offer long-term levelized rates for 5-, 10-, and 15-year periods as standard options to hydro QFs of 80 megawatts or less capacity, i.e., small power producers under G.S. 62-3(27a), and to non-hydro QFs contracting to sell five megawatts or less capacity. Non-hydro QFs contracting to sell capacities of more than five megawatts were given the options of contracts at the variable rates set by the Commission or contracts negotiated with the utility. The Commission continued this basic framework of long-term levelized rate options through several biennial proceedings with two changes: (1) starting with the 1988 proceeding in Docket No. E-100, Sub 57, NC Power was allowed to change from a long-term levelized energy payment to energy payments based on a long-term levelized generation mix with adjustable fuel prices (NC Power was required to offer a long-term levelized energy payment as an additional option for small QFs of 100 kW or less) and (2) as utilities began to pursue competitive bidding (first NC Power in Docket E-100, Sub 57 in 1988, then Duke in Docket No E-100, Sub 64 in 1994, finally CP&L in Docket No. E-100, Sub 74 on April 25, 1996), non-hydro QFs desiring to sell capacities of five megawatts or more were required to participate in the bidding (rather than negotiating a contract with the utility).

In the previous biennial proceeding in Docket No. E-100, Sub 79, CP&L, Duke, and NC Power all proposed eliminating the 10- and 15-year levelized rate options from their standard rates available to QFs. CP&L pointed out in that proceeding that the 10- and 15-year levelized rates are based on long-term projections of costs which are inherently unstable. Furthermore, CP&L pointed out that its 15-year projections made in the early 1980's have grossly overstated actual avoided costs, resulting in overpayments for the purchase of power from QFs. It said that such overpayments are even more of a problem in today's more competitive environment. The Public Staff contended in that proceeding that eliminating the 10- and 15-year levelized rate options would be inconsistent with prior Commission rulings, especially with regard to encouraging hydro development. In addition, the Public Staff cited State policy encouraging reduction of landfill size and control of associated methane gas and argued that long-term levelized rate options should be retained for these types of facilities also. CP&L subsequently reached a compromise agreement with the Public Staff, pursuant to which CP&L would offer 5-, 10-, and 15-year levelized rates to hydro QFs of 5 MW or less capacity and to QFs of 5 MW or less capacity fueled by trash or methane from landfills or hog waste. They also agreed that CP&L would offer 5-year levelized rates to all other QFs with 3 MW or less capacity. The Commission adopted the CP&L/Public Staff compromise in the last biennial proceeding and made it applicable to Duke and NC Power also (except for the offering of 5-year levelized rates to all other QFs with 3 MW or less capacity).

In the current biennial proceeding in Docket No. E-100, Sub 81, Duke and NC Power again propose eliminating the 10- and 15-year levelized rate options from their standard rates available to QFs. CP&L proposes a continuation of its compromise with the Public Staff that was adopted by the Commission in the previous biennial proceeding.

Duke argued that repeal of the mandatory purchase provisions of PURPA has been a part of virtually all recent electric industry restructuring proposals in Congress, and that the former long-term planning horizon is no longer compatible with the increasingly competitive environment. Duke cites the 1 million or so electric customers in North Carolina who receive electric power from municipalities and EMCs not under the jurisdiction of this Commission. NC Power's arguments are similar to those of Duke.

The Public Staff recommended that its compromise agreement with CP&L should again be applied to Duke and NC Power. It cited the Commission's Order in the previous biennial proceeding that described a balance between the need to encourage QFs, particularly hydro and trash or methane fueled facilities, against the need to reduce the risk of overpayment and stranded costs.

Hydrodyne argued that eliminating the 15-year levelized rates would yield more hardship on small hydro QFs, and contended that bank financing would be harder to obtain.

Public witness Tim Henderson, an owner-operator of a small hydro project in the State, testified that there were thirty to thirty-five small independent hydro projects in North Carolina involving approximately fifty people. He contended that the continued existence of some of these projects is in question because their current contracts with the utilities, which were entered into in the early 1980's and compensate their owners "fairly reasonably," are due to expire.

In reexamining the availability of long-term levelized rate options in this docket, the Commission must balance concerns similar to those considered in previous proceedings--encouragement of QFs on the one hand and the risks of overpayments and stranded costs on the other. The increasingly competitive nature of the electric utility industry makes the latter considerations more compelling today than in previous years. The Commission concludes that its decision in the previous biennial proceeding based upon the CP&L-Public Staff agreement strikes an appropriate balance of these concerns. Consistent with its determination in the previous biennial proceeding, the Commission concludes in this proceeding that CP&L, Duke, and NC Power should each offer long-term levelized rate options of 5-, 10-, and 15-year terms to hydro QFs of 5 MW or less and to non-hydro QFs of 5 MW or less fueled by trash or methane from landfills or hog waste. These long-term rate options are more limited than in the past; these limitations serve important statewide policy interests while reducing the utilities' exposure to overpayments. The policy interests to be served are those such as G.S. 62-156(b)(1), which specifically provides that long-term contracts "shall be encouraged in order to enhance the economic feasibility of small power production facilities." This is a statewide policy and it supports our requiring long-term rate options for hydro QFs. G.S. 130A-309.01 et al, provides a statewide policy of reducing and managing solid waste landfills, and we believe that it supports extending these options to facilities fueled by trash or methane from landfills. Although there is no specific statute as to hog waste, the Commission nonetheless believes that there is an environmental policy to be served by encouraging facilities fueled by methane from hog waste. While the Commission believes that these policies should be furthered, the Commission is also concerned about reducing the utilities' exposure to overpayments, and our decision does this as well. The facilities entitled to long-term rates are generally of limited number and size. Few new hydro facilities are being certificated; most sites are already developed. The number of trash and methane sites large enough to support generation is also probably limited. Although G.S. 62-156(b)(1) applies to hydros of 80 MW or less, there are few large hydro sites available in North Carolina, and the Commission has limited long-term rates to hydros contracting to sell 5 MW or less in order to further reduce the exposure inherent in rates based on long-term forecasts of the utilities' costs. Reducing the utilities' risks in this way is an appropriate response to the more competitive environment of the electric utility industry today.

As to QFs other than hydros of 5 MW or less and non-hydros of 5 MW or less fueled by trash or methane from landfills or hog waste, CP&L has proposed to offer a standard 5-year levelized rate option to other QFs who contract to generate 3 MW or less capacity. Duke has proposed a 5-year levelized rate option for all QFs who contract to sell 5 MW or less capacity. NC Power has proposed to restrict its standard levelized rate option to QFs other than those eligible for 10- and 15-year terms herein who desire to sell 100 kW or less generating capacity; and NC Power proposes a contract period limitation (i.e., end all contract terms December 31, 2001, or earlier) that would effectively eliminate the 5-year contract period. As in previous proceedings, NC Power proposes to offer a fixed long-term levelized energy payment as an option to small QFs rated at 100 kW or less capacity.

The Public Staff recommended in this proceeding that 5-year levelized rates be offered by CP&L, Duke, and NC Power to all QFs contracting to sell 3 MW or less capacity. This would retain the 3 MW size limit proposed by CP&L, reduce the size limit proposed by Duke from 5 MW to 3 MW, and increase the size limit proposed by NC Power from 100 kW to 3 MW. The Public Staff argued that there would be less confusion and greater ease of administration if all three utilities adopted the same size limit for 5-year levelized rates.

The Commission is of the opinion that there is sufficient merit in the Public Staff recommendation of one size limit for 5-year rates to warrant its adoption. Therefore the Commission concludes that CP&L, Duke and NC Power should offer a standard 5-year levelized rate option to QFs not eligible for the 10- and 15-year levelized rate options adopted herein who contract to sell 3 MW or less capacity. Consistent with its adoption of 5-year levelized rates for all three utilities herein, the Commission concludes that the NC Power proposal to end all contract terms December 31, 2001, or earlier should be denied. However, as in previous biennial proceedings, the Commission approves the NC Power proposal to offer a fixed long-term levelized energy payment as an option to small QFs rated at 100 kW or less capacity.

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In earlier biennial proceedings, the Commission ordered that QFs not entitled to the standard long-term levelized rate options had the options of selling energy only at the variable rates set by the Commission or of negotiating contracts and rates with the utility. As utilities began to pursue competitive bidding for new capacity needs, the Commission ordered that utilities could require QFs not entitled to the standard long-term levelized rate options to participate in the bidding, rather than negotiating contract rates and terms. The Commission discussed this issue in a previous biennial proceeding (Docket No. E-100, Sub 74) and concluded that the exact point at which a utility could invoke a refusal to negotiate and require a QF to participate in bidding should be resolved by motion to the Commission.

Consistent with these earlier decisions, the Commission concludes in this proceeding that QFs not eligible for the standard long-term levelized rates established herein should have the options of contracts to sell energy only at the variable rates established by the Commission or, as appropriate, contracts and rates derived by free and open negotiations with the utility or participation in the utility's competitive bidding process for obtaining additional capacity.

If the QF undertakes negotiations with the utility, the Commission has stated in previous orders that the utility should negotiate in good faith for terms fair to the QF and ratepayers, that a QF may file a complaint if it feels that a utility is not negotiating in good faith, and that various factors listed by the Commission should be considered. There is no need to repeat these guidelines; they have been stated numerous times in past orders (see, e.g., the discussion of Findings 34 and 35 in the June 23, 1995 Order in Docket No. E-100, Sub 74); and these provisions remain in effect.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

CP&L and Duke have used the peaker methodology to develop their avoided costs in each of the past several avoided cost proceedings; NC Power has used the differential revenue requirement (DRR) methodology. Each utility proposes to continue using the same respective methodology in this proceeding. Various concerns have been expressed in these 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 QF activity occurring in the State. As a result, in previous biennial avoided cost proceedings, the Commission made detailed examinations of avoided cost methodologies. The examinations focused for the most part on three primary methods that have been used to estimate the cost of avoided capacity and energy: the peaker method, the DRR method, and the proxy unit method.

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 (a 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 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 a net cost equal to the capital costs of a peaker.

The DRR methodology 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.

The proxy unit methodology uses a specific plant as a proxy unit for calculating avoided costs. It argues that the peaker and DRR methods both mismatch low baseload fuel costs with low peaker capital costs, and 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.

In previous biennial proceedings, the Commission concluded that it should not require CP&L, Duke, and NC Power to utilize a common methodology 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. The peaker method and the DRR method are generally accepted and used throughout the electric utility industry. NC Power's comparison of the results of the peaker and DRR methodologies as applied to them in a previous proceeding showed very little difference between the methodologies.

The Commission also concluded in previous biennial proceedings that it should not require the utilities to adopt a specific generating unit or type of unit for calculating avoided costs. 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 <u>mix</u> is usually determinative, not the economics of a single unit.

For the purposes of this proceeding, the Commission concludes that both the peaker method and the DRR method are still generally accepted and used throughout the electric utility industry and are reasonable for use herein. The comments received in this docket have not provided new insights which would cause the Commission to revise its conclusions in the previous biennial proceeding regarding appropriate methodologies.

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

Avoided cost capacity rates established by the Commission using the peaker methodology have traditionally included a performance adjustment factor, the function of which is to allow a QF to experience some level of outages and yet still recover its full capacity credits. The calculation of a performance adjustment factor is a critical part of developing avoided cost capacity rates under the peaker methodology. A performance adjustment factor is not an essential part of calculating avoided cost capacity rates under the DRR method, and this is therefore not an issue as to NC Power.

The Commission found in the previous biennial proceeding that a performance adjustment factor of 1.2 is appropriate for CP&L and Duke for all QFs except hydro facilities with no storage capability and no other type of generation and that a performance adjustment factor of 2.0 is appropriate for such hydro facilities. The use of a 1.2 performance adjustment factor requires a QF to operate 83% of the time in order to collect its entire capacity credit, and the use of a 2.0 performance adjustment factor requires a QF to operate 50% of the time in order to collect its entire capacity credit. All parties agree that a QF should be allowed to have some appropriate level of outages without losing the ability to earn full capacity credits; the issue is the appropriate outage level to incorporate into the avoided cost capacity rate through the performance adjustment factor.

CP&L reached a compromise agreement with the Public Staff in the previous biennial proceeding that it would use a 1.2 performance adjustment factor for all QFs except hydro facilities with no storage capability and no other type of generation and that it would use a 2.0 performance adjustment factor for such hydro facilities. The Commission adopted the CP&L/Public Staff compromise in that proceeding as applicable to both CP&L and Duke. In the current biennial proceeding, CP&L again proposes to use the same set of performance adjustment factors.

The Public Staff contends in the current proceeding that the Commission should continue to prescribe a 1.2 performance adjustment factor for calculating avoided capacity costs, just as in previous proceedings. This performance adjustment factor allows a QF to experience outages 17% of the time and still receive its full capacity credits. The Public Staff pointed out that CP&L and Duke run their baseload nuclear units at capacity factors in the low 80% range (i.e., outages up to 20% of the time) and still recover the total cost of the units from ratepayers. They each have system-wide capacity factors near 60%. According to the Public Staff, it would be discriminatory to require QFs to operate at an average capacity factor of 85% to 90% in order to receive the total capacity payments to which they are entitled.

The Public Staff further contended that G.S. 62-156 encourages hydro generation, that hydro generation is environmentally friendly, and that run-of-river hydro facilities are generally unable to control the availability of their "fuel" and thus the timing of their capacity deliveries. The Public Staff therefore supported use of a 2.0 performance adjustment factor for hydro facilities with no storage capability and no other type of generation. The Public Staff argued that use of a higher factor does not change the avoided costs of the utility; it merely changes the manner of pricing out such avoided costs in payments to the QF.

Duke again contended in the current proceeding that the performance adjustment factor should be 1.129, which is comparable to the approximate 89% availability of its peaking units. (Duke called its proposed factor a "CT Availability Adjustment Factor.") Duke stated that the performance adjustment factor should be based upon neither a planning reserve margin (because a reserve margin incorporates factors such as load forecast error, weather variations and other unexpected operating conditions), nor upon the capacity factors of the utility's units or system (because the utility's capacity factors are influenced primarily by economic dispatch, not forced and schedule outages). In Duke's opinion, the fact that utilities are able to recover the full costs of their generating units that operate at low capacity factors is irrelevant to the establishment of an appropriate performance adjustment factor for a QF since utilities must build generation units that are idle for many hours of the year in order to meet reserve requirements when demand is high or other units are out of operation. Duke stated that the performance adjustment factor should be based on the capacity that Duke avoids by the presence of a QF, i.e. that the performance adjustment factor should be derived from the availability of a combustion turbine. Duke opposed the establishment of a separate performance adjustment factor for small hydroelectric qualifying facilities on the grounds, among others, that there is no basis in PURPA or state law to support special treatment of small hydroelectric projects through rates that exceed the utility's avoided cost. Duke contended that using a higher performance adjustment factor for certain types of QFs could eventually result in higher rates for all QFs, because each type of QF has some unique characteristics that might be addressed by higher performance adjustment factors.

The Commission has carefully reviewed all of the comments on this issue and concludes that a performance adjustment factor of 1.2 should continue to be used by CP&L and Duke in determining the avoided capacity cost rates for all QFs other than hydroelectric facilities with no storage capability and no other type of generation. This decision is generally based on the comments of the Public Staff and CP&L. It is also consistent with previous Commission decisions as well as the agreement reached between CP&L and the Public Staff. Duke proposes lower performance adjustment factors based on the projected availability of the capacity which is avoided by the presence of QFs, and therefore it contends such factors should be based solely on the availability of a combustion turbine. While the peaker methodology employed by CP&L and Duke relies on the cost of a combustion turbine to provide the purest estimate of avoided capacity costs, correct application of this method does not rely solely on a combustion turbine to determine a utility's avoided costs. For example, the peaker methodology does not rely only on the cost of fuel for a combustion turbine to determine avoided energy costs. Therefore, there is not necessarily a connection between use of the peaker methodology to determine avoided costs and the use of a combustion turbine to determine the appropriate performance adjustment factor. The Commission is unpersuaded by the Duke's arguments and concludes that a performance adjustment factor of 1.2 should continue to be used by CP&L and Duke for their respective avoided capacity cost calculations for all QFs other than hydroelectric facilities with no storage capability and no other type of generation.

The Commission also concludes that a performance adjustment factor of 2.0 should be utilized by CP&L and Duke in determining the avoided capacity cost rates for hydroelectric facilities with no storage capability and no other type of generation. This is consistent with previous Commission decisions as well as the agreement between CP&L and the Public Staff. Duke comments that a higher performance adjustment factor for certain QFs is discriminatory or in excess of avoided costs decreed by PURPA. These run-of-river QFs are unique since their ability to generate is beyond the control of their operators because their fuel is essentially stream flow which is influenced by rainfall and since G.S. 62-156 establishes a policy of encouraging hydro generation. Further, use of a higher performance factor for these hydro facilities does not necessarily exceed avoided costs. It allows these QFs to operate less in order to receive the full capacity payments to which they are entitled, and this seems appropriate and reasonable considering the limitations on their control of their generation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 8

CP&L requested two modifications to its standard avoided cost rate schedules in order to mitigate its exposure to overpayments to QFs under long-term contracts: (1) a provision requiring a QF to post a letter of credit or surety bond to indemnify CP&L in case the seller defaults, and (2) a provision converting all contract rates to the then current variable rates if state or federal laws were to change to allow retail electric customers to choose their electric supplier.

CP&L contended that the first provision is needed because levelized rates result in overpayments in the early years of a contract. In the event of early termination of the contract by the sellers, the seller is required to reimburse CP&L for the net overpayments to date. CP&L contended that, in some cases, the seller has not had funds available to make such reimbursements.

The Public Staff opposed the credit letter/bond provision asserting that utilities had sought similar provisions in previous avoided cost cases, and that the Commission had rejected those previous proposals. The Public Staff contended that utilities are adequately protected from overpayments because the sellers involved are relatively small QFs.

CP&L contended that the second provision is needed because all statutorily mandated contracts that require CP&L to purchase power at rates exceeding actual avoided costs will produce stranded costs that a utility is entitled to recover. Therefore, the Commission should not allow such stranded costs to continue to be incurred if retail customer choice is enacted into law.

The Public Staff opposed the "revert to variable rates" provision asserting that a variety of provisions were proposed in the 1980's that would allow rates in signed contracts to be changed, and that all were rejected by the Commission. It cited Commission language in one of its early Orders in these biennial proceedings concluding that such provisions "made the contract indefinite, which would cause the contract to have little more value than a day-to-day contract, thus seriously inhibiting the ability of a QF to obtain long-term financing."

The Commission is of the opinion that the contract modifications proposed by CP&L should be denied. The Commission continues to believe that its reasons for rejecting the proposals in previous biennial proceedings are still valid.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 9

Duke proposed in this proceeding to offer certain special considerations to eight existing run-of-river hydro QFs on the Duke system whose 15-year levelized rates expire within the next two years. Duke's proposal was subject to the Commission discontinuing two existing requirements: (1) that Duke offer 10-year and 15-year levelized avoided cost rates, and (2) that Duke use 2.0 performance adjustment factors in calculating avoided cost rates for run-of-river hydro QFs. The Public Staff did not oppose Duke's proposed offer to the eight existing QFs, but it did oppose discontinuing the requirements that Duke offer 10-year and 15-year levelized rates to certain QFs and that Duke use a 2.0 performance adjustment factor in calculating avoided cost rates for certain QFs.

As discussed earlier herein, the Commission concludes for purposes of this proceeding that the requirement to offer 10-year and 15-year levelized rates to certain QFs and to use a 2.0 performance adjustment factor to calculate avoided cost rates for certain QFs should be continued. Therefore, the Duke proposal described above is rendered moot.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 11

The issue of NC Power being required to offer capacity credits prior to 1999 was raised in the previous two biennial proceedings. In each of those proceedings, the Commission approved NC Power's proposal to withhold capacity credits from QFs until 1999 based on its having no additional capacity needs until 1999. In this proceeding, NC Power proposes that it not be required to offer capacity credits to QFs prior to the year 2000. NC Power cited the fact that its current forecast and capacity expansion plan indicate the first need for additional capacity is in year 2000. No other party commented on the NC Power proposal.

Consistent with its determination in the previous proceeding, the Commission concludes that NC Power should not be required to offer capacity credits to QFs prior to year 2000. There has been no showing in this proceeding that NC Power will need additional capacity prior to that time or that its current sunk capacity costs will be avoidable before that time.

The issue of NC Power being allowed to offer avoided cost rates to QFs based on the QF being either a baseload or a peaking operation was also raised by NC Power in the previous two biennial proceedings. The Commission rejected NC Power's proposal with the observation that such limitations would unduly discourage QF development.

In this proceeding, NC Power again proposes to offer avoided cost rates based on several optional modes of operation: (1) a non-reimbursement mode, (2) a non-firm mode (further subdivided into time-of-use and non-time-of-use modes), and (3) a firm mode (further subdivided into baseload and peaking modes). In discussing the baseload versus peaking modes of operation, NC Power contended that it does not need additional intermediate capacity over the study period, only baseload and peaking capacity. It therefore argues that no intermediate capacity can be avoided by purchases from QFs.

The Public Staff again commented that all QFs may not fall neatly into baseload or peaking categories, and pointed out that power generated from a QF operating as an intermediate plant still has value to the utility.

The Commission concludes that NC Power should not be allowed to offer standard avoided cost rates to QFs based on the QF being either a baseload or a peaking operation. The Commission's conclusion herein is consistent with its decision in the previous proceeding, and it recognizes that intermediate generation has value to the generation mix, just as peaking and baseload generation do.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The rate schedules and standard contracts proposed by CP&L, Duke, and NC Power in this proceeding are reasonable except as discussed herein, and they should be approved subject to the modifications required by this Order. CP&L, Duke, and NC Power will need to file new versions of their rate schedules and standard contracts within 10 days after the date of this Order in order to implement this Order. Duke and NC Power shall also file supporting documentation showing the calculations made to arrive at their avoided cost rates. (The avoided cost rates proposed by CP&L are not changed by this Order.)

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence pertaining to WCU's calculation of avoided costs is contained in the testimony and exhibits of WCU witness Knowles, which were stipulated into the record without witness Knowles being called to testify. 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 QF based on the rates charged to WCU by Nantahala at any point in time, and it 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 WCU's proposed Small Power Production Supplier Reimbursement Formula should be approved. Consistent with our conclusions in past proceedings, WCU should not be required to offer any long-term levelized rate options.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 MW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 MW or less capacity. 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. CP&L shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 MW or less capacity.

2. That Duke shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 MW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 MW or less capacity. 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. Duke shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 MW or less capacity.

3. That NC Power shall offer long-term levelized capacity payments and 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 (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 MW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 MW or less capacity. 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. NC Power shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 MW or less capacity. 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, Duke and NC Power shall offer qualifying facilities not eligible for the standard long-term levelized rates the options of contracts to sell energy only at the variable rates established by the Commission or, as appropriate, contracts and rates derived by free and open negotiations with the utility or participation in the utility's competitive bidding process for obtaining additional capacity.

5. That the rate schedules and standard contract terms and conditions proposed in this proceeding by CP&L, Duke, NC Power, and WCU are hereby approved except as otherwise discussed herein.

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

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of July, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

je071699.01

Commissioner Robert K. Koger, whose term on the Commission ended June 30, 1999, participated in the decision.

Commissioner Sam J. Ervin IV, whose term on the Commission began July 1, 1999, did not participate.

Commissioner Judy Hunt filed concurring opinion.

DOCKET NO. E-100, SUB 81

COMMISSIONER JUDY HUNT, CONCURRING:

I concur in the Commission's Order in this docket, but I want to express my continuing concern for the situation of the small hydro producers in the State and my hope that their unique role in the provision of electric service in North Carolina can be secured for the future.

\s\ Judy Hunt
Commissioner Judy Hunt

DOCKET NO. E-100, SUB 82

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Least Cost Integrated Resource Planning in North Carolina - 1998	) ORDER ADOPTING LEAST COST) INTEGRATED RESOURCE PLANS) AND CLARIFYING FUTURE FILING) REQUIREMENTS

BY THE COMMISSION: Least Cost Integrated Resource Planning (IRP) is intended to identify those electric resource options which can be obtained for the total least cost to ratepayers consistent with adequate, reliable service. Integrated Resource Planning is also a strategy which considers conservation, load management, and other demand-side options along with new utility-owned generating plants, nonutility generation and other supply-side options in providing cost-effective high quality electric service.

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

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

The General Statutes of North Carolina also require that planning to meet the long-range needs for future generating capacity shall include demand-side options, incentive mechanisms and least cost considerations. G. S. 62-2 provides, in part, that it is declared to be the policy of the State of North Carolina:

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

On February 20, 1996, the North Carolina Utilities Commission issued its most recent Order Adopting Least Cost Integrated Resource Plans in Docket No. E-100, Sub 75, in which it found that the Integrated Resource Plans by the electric utilities met the requirements of the Commission's IRP Rules.

On April 29, 1998, the Commission issued its Order Adopting Revised Rules in Docket No. E-100, Sub 78A, in which it repealed NCUC Rules R8-56 through R8-59 and adopted revised Rules R8-60 and R8-61 governing Integrated Resource Planning (IRP). Revised Rule R8-60 prescribes that by September 1st of each year, each designated electric utility shall furnish the Commission with an annual report of its ten-year load forecast and its ten-year generating capacity resource plan, said reports to also include certain other data described in the rule. Revised Rule R8-60 then prescribes that the Public Staff and other intervenors may file reports or comments within the next 90 days as to the utility filings; that all parties may then file reply comments within the next 14 days as to other parties' filings; and that the Commission may then schedule, at its discretion, public hearings to address any issues raised by the intervenors. The revised rules were intended to streamline the previous IRP procedure by utilizing a review procedure that does not mandate public hearings.

On or about September 1, 1998, the first IRP filings were made under the revised rules by Carolina Power & Light Company (CP&L), Duke Power Company (Duke), North Carolina Power (NC Power), and North Carolina Electric Membership Corporation (NCEMC). The following parties requested and were allowed to intervene in the proceeding: Carolina Utility Customers Association (CUCA), Carolina Industrial Group for Fair Utility Rates I and II (CIGFUR), and the Public Works Commission of the City of Fayetteville. The new filings were assigned to Docket No. E-100, Sub 82.

On December 3, 1998, the Public Staff filed its comments on the utilities filings. No other party filed comments. On December 17 and 23, 1998, NC Power and Duke respectively filed reply comments addressing the Public Staff comments. CP&L and NCEMC did not file reply comments.

On January 21, 1999, the Commission issued its Order Requiring Supplemental Filing in which it directed NC Power to file a ten-year forecast and plan as prescribed by NCUC Rule R8-60 within 14 days of the Order. The Order specified that other parties could file reply comments regarding the NC Power filing within 14 days after the NC Power filing. The Order cited the fact that NC Power had previously filed a five-year forecast and plan instead of the ten-year forecast and plan specified by Rule R8-60. On February 12, 1999, the Commission issued its Order Granting Extension of Time to File in which NC Power was granted an extension to February 22, 1999, for making its filing. The NC Power ten-year IRP filing was made on February 17, 1999. No reply comments were received in response to the filing.

SUMMARY OF COMMENTS

The Public Staff's written comments on the IRPs addressed two basic areas. First, the comments pointed out approximately 10 items of data that the Public Staff contended made the filings by the utilities incomplete, the most noteworthy of which was NC Power's filing of a five-year forecast and plan instead of a ten-year forecast and plan. The Duke and NC Power reply comments supplied the deficient data in some instances, or they pointed to other documents in the Commission's files that contained the deficient data in other instances, or they contended that they had no information to supply in still other instances.

Second, the Public Staff comments addressed several issues that they contended needed further explanation by the utilities, although such explanations were not specified by the new rules. Foremost in this category was the issue of declining reserve margins.

Peak and Energy Forecasts

The Public Staff cited NC Power for an incomplete filing in view of NC Power's filing of a five-year forecast instead of a ten-year forecast. NC Power supplied the required information in its supplemental ten-year IRP filing, except as noted below. The Public Staff also cited Duke for failing to include a winter forecast in its filing. Duke responded by pointing out the table of "seasonal projections" in its IRP. Duke's table is actually labeled "annual projections."

Generating Capacity

The Public Staff cited CP&L and NC Power for incomplete filings of generating capability. It observed, however, that the CP&L deficiency was simply an error in transferring data from the previous 15-year analysis to the current ten-year analysis, and that CP&L had since supplied the correct data. NC Power's supplemental ten-year IRP filing suffers from the same defect as the original CP&L filing; i.e., it contains data for the years 1998 through 2007 instead of 1999 through 2008.

Reserve Margin

The Public Staff cited CP&L, Duke and NC Power for proposing significantly lower reserve margins in their IRPs than had been adopted in previous years without offering sufficient justification or discussion of the issue. The proposed reserve margins were also significantly lower than the 20% reserve margin "benchmark" value the Commission had cited in previous proceedings.

Transmission Facilities

The Public Staff cited Duke for incomplete filings of information regarding transmission lines planned or under construction. Duke responded by citing the capacity and planned operational date of one of its planned upgrades and stated that such details of other planned facilities were not available at the time of the IRP filing.

The Public Staff also cited Duke and NCEMC for not responding to Rule R8-62(p)(1) through (3) requiring information regarding construction of transmission lines. Duke's response stated that there were no transmission lines under construction so its filing should have stated "none."

The Public Staff also commented that the utilities should be asked to provide statements in response to Rule R8-60(c)(7) discussing in detail the adequacy of their transmission line systems and any potential impacts on overall system planning throughout the entire planning period. It stated that even if the information required by Rules R8-60(c)(7) and R8-62(p)(1) through (3) were provided, it would not give the Commission sufficient detail to assess the adequacy of the transmission system.

Demand Side Options

The Public Staff cited Duke for failing to provide a complete list of demand side options in its IRP filing. Duke responded that it did not include a list of energy efficiency demand side management (DSM) programs because the effects of such programs are captured in its load forecast. Duke referred the Public Staff to its 1997 Short Term Action Plan for a list of energy efficiency DSM programs.

The Public Staff also commented that none of the IRP filings received in this docket list any planned new DSM programs or any indication that new DSM programs are being considered. It concluded that the utilities are continuing to deemphasize the role of DSM as a future resource option.

Wholesale Purchases and Sales

The Public Staff cited Duke and NC Power for incomplete filings regarding wholesale power purchases. Duke responded by referring to a footnote in its IRP identifying some of its planned purchases and also to the fact that details of cogeneration and small power producers are available in separate reports filed annually with the Commission. NC Power responded by stating that it does not include specific wholesale purchases and sales activity in its forecast because it regards such activity as still too volatile to capture within planning studies, and that it considers wholesale purchase contracts with non-utility generators (NUGs) to be "firm purchases" rather than "wholesale purchase commitments." NC Power observed that Note 5 in its IRP specifies that "firm purchases" include (in addition to others) purchase agreements with NUGs.

The Public Staff also cited CP&L, Duke and NC Power for incomplete filings (or "unclear" filings) regarding wholesale power sales. Duke responded by furnishing a list of its wholesale customers under its schedule 10A. NC Power responded that its load forecast represents only native load customer data and excludes any planned wholesale power sales commitments beyond its current native load. CP&L did not respond for the record.

GENERAL ORDERS - ELECTRICITY

PUBLIC HEARING AND INFORMATIONAL PRESENTATIONS

On April 15, 1999, the Commission issued its Order Scheduling Public Hearing and Informational Presentation in this proceeding in which it scheduled a public hearing on June 2, 1999, for the purpose of taking non-expert public witness testimony. The Order also scheduled an informational presentation for June 2, 1999, beginning immediately after the public hearing for the purpose of receiving presentations from CP&L, Duke and NC Power regarding their respective projected reserve margins and their plans to meet load requirements during 1999.

At the public hearing on June 2, 1999, public witness Richard Harkrader, Chair of the North Carolina Solar Energy Association, presented testimony describing his review of the utilities' IRP plans. Among the points he noted were the utilities' declining reserve margins, no proposed new efficiency or DSM programs to reduce load growth, and declining contribution of existing efficiency and DSM programs to reduction of load growth. He contended that least cost and integrated resource planning is not working as a way of protecting ratepayers or the environment, and that vertically integrated utilities have too many conflicting goals for them to provide clean electricity at least cost to society. He advocated separating each utility into separate generation, transmission and distribution companies, with distribution companies being subject to regulation that requires a broad array of energy services — reliability, energy efficiency, conservation and protection of the environment. No other public witness appeared at the hearing.

At the informational presentation, CP&L described its 1999 Summer Supply Plan to the Commission with the assessment that CP&L expects to have adequate capacity to supply its forecast summer demand if resources are available as planned. CP&L expects a maximum net internal demand of 10,722 MW during summer 1999 to be served with total supply resources of 12,016 MW capacity — a 12.1% reserve margin. It cautioned, however, that regional reserves are at historically low levels, and that transmission systems are expected to be heavily loaded. Its specific areas of concern were availability and deliverability of off-system resources, transmission system loading due to loop flows, and FERC mandates on native load curtailment. To address these concerns, CP&L has purchased capacity specifically to help meet 1999 summer needs, it has arrangements with neighboring utilities to provide mutual assistance in emergencies, and it has made a variety of operational preparations to maximize the readiness of critical facilities.

Duke described its forecast and resource plan for summer 1999 with the assessment that Duke can meet its forecasted customer demand with the resources expected to be available. Duke noted that risks to be addressed include extreme weather (temperature and/or rainfall), unavailability of additional generation, and environmental constraints (river temperatures and atmospheric opacity). Duke expects a maximum control area load of 18,367 MW during summer 1999 to be served with total control area resources of 20,962 MW capacity — a 14.1% reserve margin.

Duke also described the summer 1999 assessment of the VACAR subregion of SERC, consisting of Duke, CP&L, NC Power (Virginia Power), South Carolina Electric & Gas, South Carolina Public Service Authority, and Yadkin. It indicated that reserve margins would average approximately 13.0%, that no transmission problems were expected, and that the assessment was contingent upon such significant factors as load forecast accuracy, weather conditions, generating unit availability rate or forced outage rate, and potential transmission constraints.

NC Power described its resource planning process and presented its 10-year forecast and plan through year 2007. NC Power (Virginia Power) expects a maximum forecasted load of 15,578 MW during summer 1999 to be served with total resources of 18,394 MW — an 18.1% reserve margin. Nevertheless, NC Power will rely to a much greater extent than CP&L or Duke on off-system purchases to meet its forecasted loads.

CONCLUSIONS

Future Filings

Review of the Duke and NC Power reply comments indicates that substantially all of the deficient data have now been supplied or accounted for, although the discovery process that was required by the Public Staff to obtain the deficient data was not consistent with the spirit of Rule R8-60, which was intended to streamline the IRP process in return for a full and complete filing by the utilities. The streamlined reporting process adopted in Rules R8-60 and R8-61, contemplates a full response to each required item of information in all future filings by each utility, including appropriate explanations for each item where the required information is not applicable. The Rules also contemplate that all required items of information will be filed in the same docket designated for such IRP filings, including appropriate explanations referencing the location of the information in the filings. Lastly, Rule R8-60 specifies that the ten-year forecast and plan shall include the ten years next succeeding the September 1 filing date. Each utility should ensure that future annual reports include a full response to each item of information required by the Commission's IRP Rules.

Reserve Margins

The Public Staff noted in its filed comments that in the late 1970's and early 1980's, the Commission generally found that a planning reserve margin of 20% was appropriate to assure adequate electric service to North Carolina consumers. The Public Staff expressed concern that the lower reserve margins reflected in the current IRP filings of CP&L, Duke and NC Power were offered without adequate explanation or justification. It described the responses it received from CP&L, Duke, and NC Power when it inquired about their respective reserve margin criteria. In brief, CP&L's response consisted of a 1995 Reliability Criteria Report; Duke's response was that no formal study was done and that it relied on its past experience; and NC Power's response consisted of a 1994 study. All of the studies (or "experience") supported reserve margins in the 15%-18% range.

The Commission, while not previously requiring utilities to maintain a 20% reserve margin, shares the Public Staff's concern that more detailed discussion should be offered for the lower reserve margins reflected in current IRP filings. The Commission concludes that the annual report due to be filed by each utility on September 1, 1999 should contain a detailed explanation of the basis for, and a justification for the adequacy and appropriateness of, the level of projected reserve margins for the 10-year period included in that IRP. In addition, each utility should similarly include such a detailed explanation and justification in any future IRP which proposes a revision to its projected reserve margins.

Further, the Commission notes that the reserve margins being forecast by CP&L, Duke and NC Power indicate a much greater reliance upon off-system purchases and interconnections with neighboring systems to meet unforeseen contingencies. Such a development is troubling in view of the electric industry restructuring that has taken place so far and remains under further consideration in this State. Such restructuring means greater reliance on a transmission system infrastructure which was not specifically designed for such use. The Commission will closely monitor the situation in future IRP reviews.

Transmission System Reliability

The Public Staff expressed concern in its filed comments that the utilities should discuss in more detail the adequacy of their transmission systems. Given the uncertainty of transmission reliability that would come with electric industry restructuring, such discussion now would probably be more general than the Public Staff envisions because the subject matter is still a moving target. The Commission is of the opinion that the best way to address this issue is to require such a discussion as a part of the written IRP filings due September 1, 1999.

Approval of IRPs

As indicated in earlier IRP dockets, the Commission is of the opinion that the IRP review is intended to ensure that each utility is generally including all of the considerations in its planning as required by the Commission's Rules; that each utility is generally utilizing state-of-the-art techniques for its forecasting and planning activities; and that each utility has developed a reasonable analysis of its long-range needs for expansion of generation capacity. Also, the Commission is of the opinion that evaluations of individual DSM programs, certificates to construct new generating plants or transmission lines, and individual purchased power contracts should be handled in separate dockets from the IRP proceeding. Consistent with this view, it should be emphasized that inclusion of a DSM program, proposed new generating station, proposed new transmission line or purchased power contract in the IRP does not constitute approval of such individual elements even if the IRP itself is approved.

The Commission concludes that the current IRPs should be approved. No party has argued that the IRP filed by any utility should be rejected. The Public Staff's objections as to completeness of the current IRP filings have been adequately addressed in the reply comments and supplemental filings of the utilities, the informational presentation held in conjunction with this docket, and the additional information ordered to be included in the utilities' next annual reports due to be filed September 1, 1999.

IT IS, THEREFORE, ORDERED:

1. That this Order shall be adopted as a part of the Commission's current analysis and plan for the expansion of facilities to meet the future requirements for electricity for North Carolina pursuant to G.S. 62-110(c);

2. That the Integrated Resource Plans filed by CP&L, Duke, NC Power, and NCEMC in this proceeding are hereby approved as hereinabove discussed;

3. That future filings by all utilities pursuant to NCUC Rules R8-60 and R8-61 shall include a full response to each item of information required by the Rules; that all required items of information shall be filed in the same docket designated for such IRP filings; that the filings shall

include appropriate explanations for each item where the information requested is not available; and that the filings shall include appropriate explanations referencing the location of information in the filings where such information does not follow the same general order of presentation as contained in the Rules;

4. That future filings by utilities pursuant to NCUC Rules R8-60 and R8-61 shall adhere to the requirement that each ten-year forecast and plan consist of the ten years next succeeding the annual September 1 filing date; and

5. That the filings due September 1, 1999, shall include a detailed explanation of the basis for, and a justification for the adequacy and appropriateness of, the level of projected reserve margins and a discussion of the adequacy of the respective utility's transmission system.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of July, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

jc0701299.01

Commissioner Sam J. Ervin IV, whose term on the Commission began July 1, 1999, did not participate.

GENERAL ORDERS - NATURAL GAS

DOCKET NO. G-100, SUB 75

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement	)	
G.S. 62-159 which Authorizes the Commission	)	ORDER ADOPTING
to Provide Funding From the Proceeds of	)	PRELIMINARY RULES
General Obligation Bonds or Appropriations	)	
for the Construction of Infeasible Natural Gas	)	
Infrastructure Projects to Unserved Areas	)	

BY THE COMMISSION: Session Law 1998-132, the Clean Water and Natural Gas Critical Needs Bond Act of 1998, authorized bonds for water and natural gas infrastructure. It includes G.S. 62-159, which authorizes the Utilities Commission to provide funding through the proceeds of general obligation bonds for the construction of natural gas facilities in unserved areas that would otherwise not be economically feasible. It also requires the Commission to adopt rules to implement the legislation. Voters approved issuance of $200 million in general obligation bonds for natural gas expansion on November 3, 1998. On November 16, 1998, the Commission initiated this rulemaking proceeding, published proposed Rules R6-90 through R6-94 for comments, and provided for public notice.

In addition to the Public Staff, comments have been filed by the following, all of whom are allowed to intervene as parties to this proceeding: North Carolina Natural Gas Corporation (NCNG); Public Service Company of North Carolina, Inc. (PSNC); Piedmont Natural Gas Company, Inc. (Piedmont); NUI North Carolina Gas (NUI); Frontier Energy, LLC (Frontier); Carolina Power and Light Company (CP&L); the Carolina Utility Customers Association, Inc. (CUCA); the Greenville Utilities Commission and Bessemer City, Lexington, Monroe, Rocky Mount, Shelby and Wilson (Gas Cities); the Albemarle Regional Energy Authority, composed of Camden, Chowan, Currituck, Pasquotank and Perquimans Counties and Edenton, Winfall, Hertford, and Elizabeth City (AREA); and the North Carolina Rural Economic Development Center, Inc.

The Commission has carefully considered all comments filed in this docket. This Order will not try to summarize all comments presented, but will instead identify issues, briefly state the positions taken, and explain the Commission's decision.

Proposed Rule R6-90. Application Process

CUCA argues that proposed Rule R6-90(a) should be amended to prohibit any use of the original, supplier refund-based expansion funds as long as money from the bonds is available. It argues that the expansion funds place a substantially higher burden on individual ratepayers than the bonds, that ratepayers should no longer be required to finance expansion since the public has provided adequate funding for several years through the bond referendum, and that supplier refunds should be returned to the ratepayers to reduce ratepayers' costs. The Public Staff believes that the legislature intended the bond funds to supplement the expansion funds, and the Commission agrees. Session

Law 1998-132 refers to the gas bonds as an "additional funding method." The Commission believes that the expansion funds should be left in place and rejects CUCA's argument.

Proposed Rule R6-90(a) includes a definition of "project." CP&L proposes that the definition for "project" be rewritten as follows:

> all of the natural gas facilities, including but not limited to, transmission and distribution lines, metering facilities, compressors, and all other facilities necessary to extend natural gas service to an unserved area from the closest existing natural gas line capable of supplying the amount of natural gas necessary to serve the area in question.

The Public Staff objects to CP&L's definition, pointing out that the closest line may not be the best one to serve an area. NUI proposes to rewrite the definition of "project" to refer to the broad definition of "costs" set out in Section 3(7) of the Session Law. The Public Staff agrees with NUI that a project is more than just physical facilities but says that recovery of costs will depend on the net present value analysis, rather than any definition of "project" in the Rule, and that the definition of "costs" in the Session Law is too broad and includes some elements that apply only to water projects. The Public Staff suggests this definition:

> For purposes of these rules, a "project" is defined as all of the natural gas facilities, including but not limited to, transmission and distribution lines, metering facilities, and compressors, and all of the activities necessary to extend and provide natural gas service to an unserved area that is eligible under the statutes for bond funding.

The Commission will adopt the Public Staff's definition above.

PSNC wants to add a number of other definitions to proposed Rule R6-90(a). It proposes the following, which come from the expansion fund rules:

> (b) Definitions.
> (1) Economically infeasible: The Project has a negative net present value.
> (2) Net present value: The present value of expected future net cash inflows over the useful life of a Project minus the present value of net cash outflows.
> (3) Project: The scope of the construction of facilities to extend service into unserved areas.
> (4) Unserved areas: Counties, cities or towns of which a high percentage is unserved.

The Public Staff opposes importing the definitions into the new bond rules, in the interest of maintaining flexibility and determining eligibility for bond funds case-by-case, rather than in advance. The Commission will not add these definitions. Some, such as the definition of "net present value," are so basic as to add little guidance. The definition of "project" has already been discussed. Experience has shown that "unserved areas" is a difficult term to define and is best left to determination case-by-case.

As pointed out in the order initiating this rulemaking proceeding, G.S. 62-159(a) includes some puzzling language about franchises. It provides that the Commission may provide bond funding "to either (i) an existing natural gas local distribution company or (ii) a person or a gas district awarded a new franchise..." The language could be interpreted as requiring all bond fund recipients not already an LDC to get a franchise from the Utilities Commission. However, the statutes dealing with creation of regional natural gas districts, Article 28 of Chapter 160A, do not require gas districts to get franchises from the Commission, and regional natural gas districts are specifically excluded from the definition of "public utility" subject to the Commission's jurisdiction. The parties comment at length on this issue, one way or the other. PSNC "believes that the appropriate reading of the statute is to require such franchises" of all bond fund recipients. AREA argues against gas districts having to get a franchise and submits an affidavit from Representative William Owens, who worked on the gas bond legislation, to the effect that he never intended to require gas districts to get a franchise. The Public Staff does not believe that the General Assembly ever intended to require a gas district to get a franchise and says that a technical amendment to clarify this will be proposed during the current General Assembly session. Gas Cities argue that although the phrase "awarded a new franchise" follows "gas district," it was meant to apply only to "person" and gas districts shouldn't have to get a franchise. The Commission has concluded that it will write these Rules to the effect that a gas district does not have to get a franchise from the Commission. Although the Public Staff states that a technical amendment clarifying the language of G.S. 62-159(a) to read "a person awarded a new franchise or a gas district" will be introduced in the current General Assembly, the Commission concludes that, even without the technical amendment, it is reasonable to interpret the relevant statutes as not requiring a gas district to get a franchise from the Commission. The requirement of a franchise is fundamental, and such a fundamental requirement, if intended, would undoubtedly have been addressed in Article 28 of Chapter 160A. Since the requirement is not found there, the Commission will not read it into the indirect language of G.S. 62-159(a). Further, G.S. 62-159(c), which provides for giving a new exclusive franchise to persons obtaining bond funds, specifically provides, "This subsection does not apply to gas districts..." The Commission will write all these Rules as if 62-159(a)(ii) read "a person awarded a new franchise or a gas district..."

Gas Cities present a related issue. They argue that the Commission should "expressly include municipalities as among the potential applicants" for bond funds. Gas Cities argue that some municipalities providing gas service are located near unserved areas and that municipalities have authority to serve beyond city limits, despite an LDC franchise. The Public Staff would not mention municipalities in the Rules, arguing that the General Assembly specifically mentioned gas districts but didn't mention municipalities at all, that bonds were not intended for areas adjacent to existing municipal systems, and that the issue can be dealt with case-by-case. The Commission will not include municipalities in these Rules as possible recipients of gas bond funds. There is no specific reference to "municipalities" in the bond fund legislation. Although there are references to "local government agencies" and "public entities" in other parts of the Session Law, Section 6(b) of the Session Law provides that proceeds of natural gas bonds "may be used in accordance with G.S. 62-159 or may be distributed in accordance with the provisions of legislation enacted by the General Assembly in 1998 or later..." Thus, for present purposes, the key language is that in G.S 62-159(a), which gives the Commission authority to approve use of bond funds for natural gas projects. The Gas Cities argue that they are included in G.S. 62-159(a) as a "person"; however, this argument has a flaw. As indicated above, the Commission concludes that the phrase "awarded a new franchise" applies to "persons." The Gas Cities themselves argued this interpretation. Now, however, the Gas

Cities argue that a municipality, although a "person" under G.S. 62-159, should nonetheless not have to get a franchise from the Commission. The Commission agrees that municipalities are not required to get franchises from the Commission; but the Commission interprets this as meaning that a municipality would therefore not be a "person awarded a new franchise" under G.S 62-159 and would therefore not be eligible for bond funds. G.S. 62-2(a)(9), which declares the policy of the State with respect to the extension of natural gas facilities, provides for creation of natural gas expansion funds "for natural gas local distribution companies or gas districts" to be administered by the Utilities Commission. Interpreting these statutes, the Commission concludes that municipalities were not meant to be recipients of the bond funds pursuant to G.S 62-159.

Proposed Rule R6-90(b) sets out what an application to use bond funds must include. The Public Staff wants to add a new paragraph as follows:

> (2) Details about any special permitting that may be required, such as from the National Park Service, the National Forest Service, the Federal Energy Regulatory Commission or the Army Corp of Engineers, and a statement as to how much time the permitting/licensing is likely to take;

Experience with expansion fund projects indicate that this would be relevant and helpful information, and the Commission will include it.

NUI questions why application requirements (b)(3), (5), (6), and (8) are included. The Public Staff comments that all of this information is needed based on past experience, especially with competing applications, and that the use of bond funds requires a high level of information. The Public Staff has adequately justified the requirements, and the Commission will leave the requirements in the Rule.

NCNG wants several of the application requirements to be made much more specific. For example, it argues that the requirement of "plans for obtaining capacity" should specify the types of capacity -- firm, interruptible, or storage; that the analysis of potential "volumes" should list peak day, annual and average day volumes; that the "probable conversions from other fuels" should be more specific; and that the required "engineering study" should be documented or otherwise substantiated. NCNG argues that all this is needed to assist the Commission in weighing competing applications and making well-informed decisions. The Public Staff does not oppose greater detail, but would "encourage" applicants to provide more detail rather than amend the Rules. Frontier objects to requiring greater detail about capacity, arguing that this would discriminate against applicants who do not already hold capacity. Frontier argues that the present market provides a great deal of flexibility and security and that applicants shouldn't be required to lock in too soon. The Commission will leave the requirements as proposed. Greater detail would of course be considered in weighing an application, but the requirements will remain as proposed.

CP&L also wants to expand on the application requirements. It wants applicants to submit a "comprehensive strategy" for providing service in all of the unserved areas surrounding the area that a particular project would serve. Piedmont makes a similar suggestion. The Public Staff doesn't believe that a comprehensive strategy should be required. The Commission agrees with the Public Staff. Although some explanation of possible service to surrounding areas, if included, might be considered in weighing an application, the statutes allow an applicant to choose the area it proposes to serve, and no strategy for other, surrounding areas will be required.

Proposed Rule R6-90(c) provides that for projects in counties where no LDC has an exclusive franchise, i.e., "use-it-or-lose-it" counties, a person, including an existing LDC, that is or would become a public utility under Chapter 62 by constructing, owning or operating natural gas facilities must file an application for a franchise as well as an application to use bond funds. NCNG would add language to recognize that an existing LDC may be able to expand into an unserved area by a contiguous extension, without getting a new franchise. The Public Staff responds that the "orderly administration of bond funds will be promoted" by requiring a new certificate, and the Commission agrees. G.S. 62-159(c) provides that for bond fund projects in counties "affected by the loss of exclusive franchise rights..., the Commission may conclude that the public interest requires that the person obtaining the franchise or funding...be given an exclusive franchise and that the existing franchise be canceled." The proposed Rule is consistent with this language. Further, the Commission notes that in its own "use-it-or-lose-it" proceeding, Docket No. G-21, Sub 373, NCNG asked that it immediately be given a new exclusive franchise to any counties where its exclusive franchise rights were taken away. NCNG was not willing to rely on a contiguous extension claim in its own proceeding.

CP&L wants the Commission to require all applicants either to use the same gas prices in their NPV analysis, so the Commission can "compare competing projects on an equal basis," or at least to "fully describe the basis for their sales projections and the prices assumed in their analyses." NCNG wants guidelines to ensure that NPV calculations are comparable. Frontier also says a generic NPV analysis format would be helpful. The Public Staff recognizes that differing NPV assumptions make comparisons difficult but says that the best way to deal with it is to direct how NPV studies should be filed, rather than to amend the proposed Rule. The Commission will not amend the Rules along these lines, but will solicit further input from the parties, as discussed below.

CP&L says applicants should be allowed to protect confidential information. The Public Staff agrees but sees no reason to address this in the Rules. The Commission also agrees that confidential information should be protected; however, the Commission frequently handles confidential filings and can do so in this context as well, without specifically amending the present Rules.

Proposed Rule R6-90(d) provides for recipients of bond funds subject to regulation as a public utility to file for approval of its financing "in accordance with G.S. 62-160 through G.S. 62-171 and Rule R1-16." NUI wants to change the phrase "in accordance with" to "to the extent required by." The Public Staff agrees. The Commission will change the phrase.

Proposed Rule R6-91. Approval of Projects and the Use of Bond Funds

NCNG says that the factors for the Commission to consider in approving an application, listed in proposed Rule R6-91(b), should be expanded to include the number of anticipated customers by class and the source of company-supplied funding. NCNG argues that this will assist the Commission in weighing competing applications and making well-informed decisions. CP&L wants the Commission to also consider whether a project could be expanded to serve growth in the surrounding area. The Public Staff agrees that anticipated customers should be listed by class. As to the other factors, the Public Staff says that they may be valid considerations but do not need to be listed in the Rule. The Commission agrees with the Public Staff.

Proposed Rule R6-91(c) provides that the Commission's order approving a project "shall specifically find the negative NPV of the approved project..." NCNG says that the specific findings for the Commission to make should be expanded to include the total cost of the project, the rates to be charged, whether the project will lead to growth, and whether the project will strengthen a transmission or distribution system. The Public Staff says that these might or might not be relevant findings, but that they don't need to be listed in the Rule. The Commission agrees. Each order will have to stand on its own and will be based on the evidence received and the issues presented in each application proceeding.

PSNC wants to add the following language, similar to language in the expansion fund rules, to proposed Rule R6-91(c):

> To the extent the Commission's order approving a Project is based on different assumptions, including design, projected load, or amount or sources of funding, than those used by the applicant in its request for approval, the applicant shall have the right not to proceed with the Project or to invest its funds in the same, and no use may be made of the bond funds on such project absent further order of the Commission.

The Public Staff objects that an applicant should have to justify a refusal to proceed, rather than have an automatic "out" in the rule. The Commission agrees with the Public Staff.

<u>Proposed Rule R6-92. Disbursements and Final Accounting</u>

PSNC wants to add the following language, similar to language in the expansion fund rules, to proposed Rule R6-92(a):

> The applicant shall not be required to commence or continue construction of any Project if it appears that the funds available from the general obligation bonds will be inadequate to complete construction.

The Public Staff objects that the authority to decide if a project should be discontinued should remain with the Commission since discontinuation of a project could lead to the waste of general obligation bonds of the State and an applicant shouldn't have such a right. The Commission agrees with the Public Staff.

Proposed Rule R6-92(b) allows requests for reimbursement "not more often than once a month" during construction. NCNG says that the requests should be made quarterly. "If an applicant is unable to operate for three months without reimbursement, the applicant probably lacks the financial strength to undertake a natural gas expansion project." The Public Staff sees no reason for the change and neither does the Commission. If NCNG or any other recipient of bond funds wishes to make requests for reimbursement quarterly rather than monthly, it may do so under the Rule as proposed.

Proposed Rule R6-92(b) provides for periodic reimbursements during construction of 75% of expenditures. CP&L and NUI want the periodic reimbursements to be 100%, unless the costs associated with delayed payments are recovered. The Public Staff says that 75% reimbursement is preferable since it requires the applicant to invest its own money up front, making it less likely that the project will be abandoned. The full negative NPV is paid at the final accounting, including the cost of delayed payments. The Commission sees no reason to change the proposed Rule.

Proposed Rule R6-92(c) provides that if a request for reimbursement is inadequate or if it raises issues of fact, the Commission "shall set the matter for hearing or otherwise resolve any issues...." CP&L says the Commission should have discretion on whether to conduct a hearing. The Commission concludes that the proposed Rule already provides for such discretion if issues can be resolved without a hearing.

Proposed Rule R6-93. Reports

The Public Staff says that reporting on use of bond funds will need to be far more detailed than the present expansion fund reports and that it will propose formats and additional reporting requirements for proposed Rule R6-93 within the next several months. These will likely include a requirement for "as-built" drawings and other information to determine whether a project is built as proposed. Frontier expresses the general concern that reporting requirements not become too burdensome. The Commission will await the Public Staff's reporting proposals and will act on them when filed.

The Public Staff wants the following substituted for the present proposed Rule R6-93(e):

> The Commission shall provide quarterly reports on the expenditure of moneys from the Natural Gas Bonds Fund to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division of the General Assembly.

Such reports are required by the legislation authorizing the gas bonds, and the Commission agrees that the Rules should mirror the requirements of the legislation. The Public Staff is working on the format of such reports, with the assistance of the State Budget Office, and will provide these to the Commission for approval.

G.S. 62-159(b) provides that if a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of bond funding to remit "appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission." Piedmont, Frontier, NCNG, and CP&L all express concerns about the return of bond funds when a project becomes "feasible" and how feasibility will be determined. Piedmont expresses the following concerns: neither the statute nor the proposed rules explain what is meant by "appropriate funds" or when or how those funds must be returned; neither provides guidance on the rate of interest, the date on which interest begins or whether interest is simple or compound; neither provides guidance as to how the NPV will be computed at this future date; the fact that the project sponsor may be required to refund some unknown amount with an unknown rate of interest for an unknown period of time may make it impossible for the project sponsor to raise the money that it must provide to construct the project in the first place; and the potential obligation to remit funds to the State may prevent the granting of a first priority lien. CP&L says that the interest rate shouldn't exceed the rate on the bonds and that interest shouldn't begin until feasibility is achieved. The Public Staff acknowledges "valid concerns" but recommends that the Commission not act at this time. The Commission acknowledges the concerns about the statutory language on buy-back and the need for clarification. Still, it is the Commission's understanding that the State Treasurer is presently considering whether the gas bonds can be issued as tax-exempt or taxable bonds and that the buy-back provisions impact this decision. The Commission will await progress on the tax issues before deciding how to proceed on the buy-back issues. Parties may want to discuss buy-back guidelines, as hereinafter provided. In the meanwhile, the Commission will simply track the language of the statute in the Rules.

Proposed Rule R6-94. Accounting and Ratemaking for Regulated Recipients

NUI wants to add "except to the extent such funds have been remitted by the company pursuant to order of the Commission" to proposed Rule R6-94(a) and (b) to recognize that project facilities may be put in rate base if the bond funding is paid back. The Public Staff does not object. The Commission will add the phrase since it is based on language in G.S. 62-159(b).

Finally, the Public Staff notes that whatever Rules are adopted herein may need to be changed based on subsequent events, such as the tax issues being considered by the Treasurer or technical corrections proposed in the current General Assembly. In the meanwhile, the Public Staff offers suggestions as to further steps the Commission might undertake. For example, the Public Staff suggests that it would be helpful to get some idea of how much interest there is in using bond funds and where. The Public Staff suggests that interested persons be given 60 days to file non-binding statements of interest, to include the scope of potential projects (number of counties and customers) and a rough estimate of costs and NPVs. The Public Staff also suggests "a process in the nature of a workshop in which all interested parties could participate to determine the most appropriate way to proceed." CP&L questions the value of any preliminary statements of interest. Frontier and AREA are willing to participate in a workshop. NCNG wants the Commission to act "deliberately" before finalizing any Rules. CUCA, on the other hand, wants the Commission to proceed "expeditiously" to adopt Rules now.

These Rules may require reconsideration, and the Rules adopted herein will be regarded as preliminary, pending further Commission order. There seems to be an advantage in getting interested persons, both parties to this proceeding and non-parties, to file brief, non-binding statements of interest within 30 days. These need only identify the person interested in using bond funds and the area the proposed gas facilities would serve. It is probably unrealistic to expect much more detail so soon. The statements will not be considered binding, but everyone is urged to file a statement as it will help the Commission and the State Treasurer in deciding how to proceed. At least two matters need further consideration: the NPV guidelines discussed above and the timing of application filings. How should the Commission receive applications to use bond funds? Would it be advantageous to set a deadline, which would help present competing applications together, or should the Commission wait for applications to be filed as the applicants are ready? The Commission sees benefits in the Public Staff's recommendation for parties to meet in an informal workshop to consider these and other matters that need clarification and to report back. The Commission will then consider any recommendations or get further comments on disputed issues.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission hereby adopts the Rules attached hereto as Appendix A, as preliminary rules, pending further order of the Commission;

2. That interested persons are requested to file within 30 days brief, non-binding statements of interest in using natural gas bond funds, identifying the person interested in using bond funds and the area the proposed gas facilities would serve, and that notice of this request shall be given by mailing a copy of this Order to all natural gas LDCs franchised in North Carolina, to all persons on the natural gas mailing list of the Chief Clerk of the Commission, to the economic development officers of all North Carolina counties unserved by natural gas, and to additional interested persons suggested to the Chief Clerk by Commission Staff or requesting information about this proceeding from the Chief Clerk, and by placing a copy of this Order on the Commission's web site; and

3. That the Public Staff shall take the initiative to convene a workshop of interested parties to discuss the matters cited above and other matters relating to use of bond funds that need clarification and to make recommendations to the Commission, all within 45 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of March, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

gt030899.01

Appendix A

ARTICLE 13

ADDITIONAL FUNDING FOR NATURAL GAS EXPANSION

RULE R6-90. Application Process.

(a) The purpose of these Rules is to implement G.S. 62-2(a)(9) and G.S. 62-159 by providing a process pursuant to which funding from the proceeds of the general obligation natural gas bonds approved by referendum in November 1998 can be made available to (i) existing North Carolina local distribution companies (LDCs) or (ii) a person awarded a new franchise or a regional gas district for the construction of natural gas facilities in unserved areas that would otherwise not be economically feasible to construct (hereinafter collectively referred to as "eligible recipients" or "applicants"). For purposes of these Rules, a "project" is defined as all of the natural gas facilities, including but not limited to, transmission and distribution lines, metering facilities, and compressors, and all of the activities necessary to extend and provide natural gas service to an unserved area that is eligible under the statutes for funding from the natural gas bonds.

(b) For projects involving a county or counties for which an existing LDC has the exclusive franchise, only the existing LDC or a regional gas district may file an application for approval to use natural gas bond funds pursuant to G.S. 62-159 and this Rule. An application for approval to use bond funds shall contain the following information:

(1) A precise geographic description, a map or maps of the area(s) proposed to be served, a detailed description of the proposed physical facilities, including their projected operating parameters and characteristics, the arrangements that have been or are proposed to be made to obtain rights-of-way and plans for obtaining capacity to supply the projected demand;
(2) Details about any special permitting or licensing that may be required, such as from the National Park Service, the National Forest Service, the Federal Energy Regulatory Commission or the Army Corp of Engineers, and a statement as to how much time the permitting or licensing is likely to take;
(3) A market study, including an analysis of potential customers and volumes, probable conversions from other fuels, and projected growth resulting from population growth and economic development;
(4) An engineering study that includes the proposed design of the system (including a pipe network flow analysis), routing (including a review of planned or proposed state highway improvements), and construction cost estimates;
(5) A net present value (NPV) analysis conducted in a generally accepted manner that provides support for the amount of natural gas bond funding requested in the eligible recipient's application;
(6) A demonstration of the applicant's technical, operational, and financial management capabilities that will ensure the successful and safe construction and operation of the project;
(7) A financing plan for the feasible part of the project that includes the amounts, sources, and costs for common equity, debt, and/or other types of financing;
(8) The estimated beginning and ending dates of the proposed construction, including the date service to one or more customers is proposed to begin, specific itemized construction budgets and a timetable for disbursements from the bond fund; and
(9) A schedule or schedules of proposed rates.

(c) For projects involving a county or counties for which no LDC has an exclusive franchise, a person, including an existing LDC, that is or would become a public utility under G.S., Chapter 62 by constructing, owning or operating the proposed natural gas facilities, must file an application for a certificate of public convenience and necessity pursuant to G.S. 62-110 and an application for approval to use natural gas bond funds pursuant to G.S. 62-159. For such projects, a regional gas district must file an application for approval to use natural gas bond funds pursuant to G.S. 62-159. Applications for approval to use bond funds must include the information required by subsection (b) of this Rule.

(d) If not otherwise addressed in its application, an eligible recipient that is or would become subject to regulation as a public utility if its application were granted, shall file for approval of its proposed financing for the feasible portion of an approved project to the extent required by G.S. 62-160 through G.S. 62-171 and Commission Rule R1-16.

(e) A regional gas district proposing to use revenue bonds to finance the feasible portion of a project for which bond funds have been approved shall file for a certificate of convenience and necessity in accordance with G.S. 159-95.

RULE R6-91. Approval of Projects and Use of Natural Gas Bond Funds.

(a) Eligible recipients applying for bond funds pursuant to Commission Rule R6-90 shall publish a notice of the application at the direction of and in a form approved by the Commission.

(b) The Commission shall consider the following in determining whether to approve the use of bond funds: the scope of the proposed project, including the number of unserved counties and the number of anticipated customers by class that would be served; the total cost of the proposed project; the extent to which the proposed project is feasible; and other relevant factors affecting the public interest.

(c) The Commission shall enter an order approving or denying the use of natural gas bond funds on a project-specific basis. Natural gas bond funds shall be used only pursuant to an order of the Commission after a public hearing. Such an order shall specifically find the negative NPV of the approved project and shall limit the bond funding pursuant to G.S. 62-159 to that negative NPV.

(d) As soon as practicable after an order approving funding of a project becomes final, the Commission shall notify the State Treasurer of such approval and the amount of bond funding that has been approved.

(e) If construction has not begun on a project for which bond funding has been approved within one year after the date on which the order granting approval became final, the Commission shall require the recipient to show cause why the approval should not be rescinded; why its franchise should not be revoked, if appropriate; and why it should not be required to reimburse bond monies paid to it, if any.

RULE R6-92. Disbursements and Final Accounting.

(a) Monies from bond funds shall be disbursed only to an eligible recipient awarded the right to use bond funds and only as ordered by the Commission. All disbursements shall be used solely for the specific project for which they were approved. A project for which bond funding has been approved must be constructed as proposed unless the eligible recipient awarded the bond funding petitions the Commission to make modifications to the project and the Commission finds that the public interest requires that modifications be made.

(b) Disbursements shall be in the form of reimbursements for actual amounts paid by an eligible recipient awarded the right to use bond funds for an approved project. Eligible recipients awarded the right to use bond funds shall submit requests for reimbursement not more often than once a month. Such requests shall specify the work performed on and the materials and equipment delivered to the approved project during the period covered by the request for reimbursement and shall be accompanied by the Project Status Report described in Commission Rule R6-93. Requests also shall contain a certification that the amounts sought by the eligible recipient awarded the right to use bond funds have been paid for work completed on and materials and equipment provided to the approved project. The maximum amount of each reimbursement shall be 75% of total expenditures during the period covered by the request. Cumulative reimbursements for an approved project shall never exceed the approved negative NPV.

(c) If the request for disbursement complies with these Rules and the Commission order approving the use of bond funds, the request shall not be subject to any further proceedings or orders and shall be paid as promptly as possible. If the request is not in compliance or if the request raises issues of material fact as to whether such a disbursement is appropriate, the Commission shall set the matter for hearing or otherwise resolve any issues as to the appropriateness of the disbursement.

(d) Within three years from the date of a final Commission order approving a project and use of bond funds, the recipient shall file a final accounting showing the actual expenditures to date, disbursements to date, the negative NPV determined by the Commission, and the balance of funds requested to be disbursed, if any. This information shall be provided in formats approved by the Commission. Unless the Commission specifically finds that good cause has been shown, no disbursement will be approved after the final accounting is approved by the Commission. If the total amount of the approved negative NPV has not been disbursed by the time the final accounting is approved, the Commission shall, upon motion by recipient awarded the right to use bond funds and notice to all parties, approve a further disbursement up to the lesser of the approved negative NPV or the actual expenditures to date.

RULE R6-93. Reports.

(a) Each eligible recipient awarded the right to use bond funds shall file a Project Status Report in the format approved by the Commission for each approved project with each request for reimbursement, or at least quarterly. This report shall contain four separate sections: (1) budgeted versus actual cost data; (2) construction cost summary; (3) summary of construction cost reimbursements already received; and (4) current reimbursement requested. To the extent extraordinary delays have occurred, a report on such delays and expected progress shall be included in this report.

(b) Recipients of bond funds, if subject to the biennial reporting requirement in G.S. 62-36A, shall provide customer and construction cost information on projects for which use of bond funds has been approved in their Biennial Expansion Reports filed every two years pursuant to G.S. 62-36A. Recipients not subject to the reporting requirement in G.S. 62-36A shall provide customer d construction cost information on projects for which use of bond funds has been approved every 'o years in a report filed at the same time as the Biennial Expansion Reports, beginning with the first ιe date of those reports following approval of the use of bond funds for a project.

(c) The Commission shall use the information provided by subsection (b) of this Rule to termine whether an investigation is warranted to determine if a project for which use of bond funds .s been approved has become economically feasible. If the Commission finds that a project has come economically feasible, the Commission shall require the recipient of the bond funds to remit the Commission appropriate funds related to the approved project, and the Commission may order ɔse funds to be returned with interest in a reasonable amount to be determined by the Commission .d deposited with the State Treasurer.

(d) If a regional gas district wishes to sell or otherwise dispose of facilities financed with ınd funds received pursuant to G.S. 62-159, it must first notify the Commission, which shall termine at that time the method of repayment or accounting for those funds.

(e) The Commission shall provide quarterly reports on the expenditure of moneys from ɜ Natural Gas Bonds Fund to the Joint Legislative Commission on Governmental Operations, the ıairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal ɜsearch Division of the General Assembly.

JLE R6-94. Accounting and Ratemaking for Regulated Recipients.

(a) The gas plant accounts for recipients of bond funds regulated by the Commission shall reduced by the amount of bond funds utilized to construct such plant, except to the extent such nds have been remitted by the company pursuant to order of the Commission.

(b) No depreciation expense on the portion of the plant cost financed by disbursements ' bond funds shall be included in the cost of service of recipients regulated by the Commission, :cept to the extent such funds have been remitted by the company pursuant to order of the ɔmmission.

DOCKET NO. G-100, SUB 75

ƎFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
ılemaking Proceeding to Implement	)	
S. 62-159 which Authorizes the Commission	)	ORDER ADOPTING GUIDELINES,
Provide Funding From the Proceeds of	)	AMENDING COMMISSION RULES,
ɜneral Obligation Bonds or Appropriations	)	AND CALLING FOR WORKSHOP
r the Construction of Infeasible Natural Gas	)	
frastructure Projects to Unserved Areas	)	

BY THE COMMISSION: Session Law 1998-132, the Clean Water and Natural Gas Criti Needs Bond Act of 1998, authorized bonds for water and natural gas infrastructure. It includes G 62-159, which authorizes the Utilities Commission to provide funding through the proceeds general obligation bonds for the construction of natural gas facilities in unserved areas that wo otherwise not be economically feasible. It also requires the Commission to adopt rules to implem the legislation. Voters approved issuance of $200 million in general obligation bonds for natural expansion on November 3, 1998.

On November 16, 1998, the Commission initiated this rulemaking proceeding. On March 1999, the Commission issued its Order Adopting Preliminary Rules in this docket. The Marc Order adopted Rules R6-90 through R6-94 for implementing G.S. 62-159, provided for parties hold a workshop on certain issues that needed further clarification, and asked the Public Staff to f a report and recommendations following the workshop. That report was filed on June 16, 1999

Adoption of Guidelines for Net Present Value Analysis

One of the matters identified as needing further clarification was guidelines for net pres value (NPV) analysis. G.S. 62-159 provides that in administering the general obligation bonds natural gas expansion, the Commission

> shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company, person, or gas district to construct. In no event shall the Commission provide funding under this section of an amount greater than the negative net present value of any proposed project as determined by the Commission.

Commission Rule R6-90(b) requires that applications to use bond funds shall include "A net pres value (NPV) analysis conducted in a generally accepted manner that provides support for the amo of natural gas bond funding requested..." Commission Rule R6-91(c) provides that the Commissio order approving a project "shall specifically find the negative NPV of the approved project and sh limit the bond funding pursuant to G.S. 62-159 to that negative NPV." The Commission's Marc Order recognized that the Commission may sometimes have to choose between competing propos for the same unserved area and that it would need to compare such competing proposals on an eq basis. The Commission therefore provided for a workshop to get input from the parties on guideli for NPV analysis.

In the June 16 report, the Public Staff stated that there was "a substantial amount agreement about the guidelines and an acknowledgment by all that if an applicant varied from guidelines, a detailed explanation of why such a variation is appropriate should accompany application." The Commission commends the Public Staff and other parties for their efforts duri the workshop. Their agreement should greatly facilitate the Commission's administration of G.S. 159. The NPV guidelines agreed upon are attached hereto as Appendix A, and the Commissi adopts them for purposes of administering G.S. 62-159 and the related Commission Rules. A application that varies from the guidelines must include a detailed explanation of why such a variati is appropriate.

Amendment of Commission Rules

A second matter discussed during the workshop was how to coordinate the application process so that competing applications could be presented and considered together. Again, there was substantial agreement. The Public Staff reported as follows:

> The parties generally agreed that the process should be application driven, not driven by pre-established deadlines. The approach for applications involving a county or counties for which the applicant does not have an exclusive franchise generally agreed to is as follows:
>
> (1) A potential applicant would be required to file a letter of intent 30 days before it intended to file an application for a certificate of public convenience and necessity and to use bond money. No letter of intent would be necessary if the applicant has the exclusive franchise for the county or counties proposed to be served.
>
> (2) The Commission would issue an order as soon as possible establishing a deadline for competing letters of intent. This deadline typically would be 30 days from the date of the Commission's order, and the order would be sent to the Commission's natural gas service list and all other interested parties.
>
> (3) Upon the expiration of the deadline, a filing deadline for all applications that include one or more of the same counties would be set. Sixty days was generally considered a long enough period for the filing of applications, but the Commission could shorten it or lengthen it as appropriate.
>
> (4) After one or more applications were filed, the Commission would set the application or applications for hearing, consolidate them if appropriate, and establish a procedural schedule.
>
> The parties were in general agreement that every effort should be made to limit the potential for an applicant to manipulate the process in its favor. To this end, the Public Staff recommends that the Commission require applications to be as accurate as possible, particularly the estimates used in the calculation of a project's negative NPV.
>
> In addition, because there are (a) time limitations on the use of bonds after their issuance, (b) budget constraints on bond issuances, and (c) negative effects of changes in bond awards on the quarterly reports required of the Commission to various government bodies, more accurate estimates of costs and revenues (e.g., construction costs based on actual bids, substantial progress toward obtaining rights-of-way and permits) are necessary than have been required for expansion fund projects. Amendments should be discouraged.
>
> Because of the expense involved, however, actual construction bids and the like should not be required in cases involving competing applications during the initial stage.

> A preliminary award of a certificate and bond money should be made, and the winner should then be required to refine estimates and get final approval of the amount of bond money to be awarded. If significant changes to the project or to the negative NPV were made, the Commission could reopen the preliminary award to reconsider its decision. Once a final negative NPV was approved, the Treasurer's office could sell the required amount of bonds during the time it would take for construction contracts to be awarded, rights-of-way and permits to be obtained, and all other pre-construction activities finalized.

The Public Staff recommended that the Commission amend its Rules accordingly. The Commission has incorporated these recommendations into Rule R6-90. The Commission finds it appropriate to require letters of intent both when there is an exclusive franchise to the unserved area and when there is not, since even an application from a public utility with an exclusive franchise may face a competing application from a natural gas district, and the purpose of the letter of intent is to group competing applications together for consideration. The Commission has also made some editing changes, for clarification, to Rule R6-90, and amended Rule R6-90 is attached hereto as Appendix B.

Second Workshop

Certain matters relating to implementation of G.S. 62-159 still require clarification. The first such matter is the buyback provision. G.S. 62-159(b) provides

> If at any time a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of funding to remit to the Commission appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission.

At the time of the March 8 Order, the Commission noted numerous concerns that had been raised as to the buyback provision. However, the Commission also noted uncertainty as to whether the bonds would be issued as taxable or tax-exempt, and (since this matter is related to the buyback) the Commission took no action. It now appears that the bonds will be issued as taxable bonds. It is therefore appropriate and necessary to proceed with clarification of how the buyback provision will be implemented. The first workshop was successful in dealing with the issues under consideration, and the Commission believes it best to call upon the parties to conduct a second workshop to discuss and make recommendations as to issues related to the buyback provision. Piedmont raised a related issue in its earlier comments, namely the priority of claims against a project funded in part with natural gas bonds. This issue should also be discussed in the second workshop.

Finally, the June 16 report stated that reports by recipients to the Commission on the use of the natural gas bond funds will need to be more detailed than the reports currently required for use of natural gas expansion funds and that, pursuant to statute, the Commission itself will have to make a number of quarterly reports on expenditure of bond funds. The Public Staff suggested that it propose reporting requirements and formats which would be discussed at the second workshop. The Commission agrees and urges the parties to consider this matter as well.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission hereby adopts the NPV guidelines attached hereto as Appendix A for purposes of administering G.S. 62-159 and the related Commission Rules and that any application that varies from the guidelines must include a detailed explanation of why such a variation is appropriate;

2. That the Commission hereby amends Commission Rule R6-90 to read as set forth in Appendix B attached hereto; and

3. That the Public Staff shall take the initiative to convene a second workshop of interested parties to discuss the matters cited above and any other matters relating to use of natural gas bond funds that need clarification and to make recommendations to the Commission, all within 75 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of August, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg080299.04

Commissioner Judy Hunt filed a concurring opinion.
Commissioner Ervin did not participate.

Docket No. G-100, Sub 75

Commissioner Judy Hunt, Concurring:

While I agree with the part of the order amending rules and requiring workshop, I am skeptical of the net present value analysis. My past concerns about NPV validity have been expressed in the gas expansion fund dockets. As the Commission endeavors to fairly allocate the gas bond money, the negative net present value analysis is equally significant, if not more so. I believe the strength of the Commission's decisions could be enhanced by NPV analysis from outside, independent sources.

\s\ Judy Hunt
Commissioner Judy Hunt

Appendix A

Guidelines for Net Present Value Studies
Filed in Support of Applications for Gas Bond Funds
Docket No. G-100, Sub 75

1. Studies should be prepared for a 40-year period.

2. The discount rate should be computed on a net of income taxes basis.

3. For a utility company, the discount rate should reflect the weighted cost of capital as approved by the Commission in the company' s last general rate case. For other entities, the discount rate should reflect the weighted cost of capital that results from the financing plan for the feasible part of the project in accordance with Rule R6-90(c)(7). The same discount rate should be used for each year of the 40-year period and encompass <u>all</u> security issuances for each type of financing regardless of when they are executed. The financing plan for the feasible portion should specify each type of financing: debt (short-, medium-, and long-term); preferred stock; common equity; and other types of financing - please specify. For each type of financing, <u>each</u> individual security that has been or is anticipated to be issued should be clearly identified by: date of issuance; amount; cost rate(s); source(s) of funds such as underwriter, bank, government, taxpayers, and/or other - please specify; debt or preferred stock rating by a rating agency or private service; provisions for sinking funds, call, etc.; amortization schedule; and other relevant features.

4. Periodic cash flows should be discounted based on the assumption that they occur at the mid-point of the period.

5. Interest expense and other financing costs should not be reflected as a cash flow item. Instead, the cost of debt and other financing costs should be reflected as an element in the computation of the discount rate.

6. The effects of inflation should be incorporated in the determination of all cash flows.

7. The inflation rate applicable to all cash flow items should represent a forecasted long-term inflation rate.

8. The timing for receipt of the gas bond proceeds by the applicant should be reflected in the study in accordance with the provisions of Rule R6-92.

9. Interstate pipeline capacity and storage charges should, for applicants that do not presently have a Commission-approved fixed gas cost true-up mechanism, represent the incremental costs that the applicant expects to incur as the direct result of the project. If an applicant that presently has a Commission-approved fixed gas cost true-up mechanism elects to use its existing rate structure in the study, interstate pipeline capacity and storage charges should be assigned to the project in a manner that is consistent with its true-up mechanism.

10. Operation and maintenance expenses should represent the incremental expenses that the applicant expects to incur as the direct result of the project.

11. Property and other general taxes (except the gas tax) should represent the incremental taxes that the applicant expects to incur as the direct result of the project.

12. Income tax expenses or savings should represent the incremental tax effect of the project on the applicant.

13. The NPV study should clearly cross-reference the engineering study provided in accordance with Rule R 6-90(c)(4). Construction estimates for the initial system should clearly show the cost components for the project. Details regarding the number of units (e.g. feet of pipe, acres of ROW) and the related unit costs for items such as materials, contractor installation, directional drilling, rights-of-way, permitting, engineering, surveying, design, etc. that the applicant expects to incur should be provided.

14. The tax basis of the assets constructed by an applicant that is a taxable entity should be adjusted to incorporate the impact of the gas bond proceeds.

15. Detailed estimates of the cost to attach each type of customer should be provided. The estimates should clearly show the cost related to attaching customers, including the cost for service lines and meter sets. Contributions in aid of construction that the applicant expects to collect from potential customers should be deducted in determining the applicant's cost to attach customers.

16. The NPV study should clearly cross-reference the market study of potential large users provided in accordance with Rule R6-90(c)(3). The large user market study should include a survey of each potential large user in the area. The survey should present for each potential large user, the name, identity of the contact person, location, current fuel use by fuel type, the natural gas equivalent usage, a description of any prospective facility modifications that might utilize gas, and an evaluation by the applicant as to the likelihood that the customer will convert to natural gas if made available.

17. The NPV study should clearly cross-reference the market study of the residential and small general service market provided in accordance with Rule R6-90(c)(3). Market studies of large geographic areas should be broken into segments that can be evaluated separately. The small user market study should include a compilation of the potential number of customers, an analysis of prices for current energy sources (electricity, propane, oil, etc.) in the market area and an evaluation of the likelihood that users of other energy sources will convert to natural gas, expected usage and the expected customer growth rate. The study should also set forth the percentage of customers expected to ultimately convert to natural gas for each fuel type and the portion expected to convert in each year after gas service is made available.

18. A computation of the margin rates that the applicant plans to charge each type of customer should be provided. The margin rate is defined as the price charged to the customer less the commodity cost of gas (including the cost of unaccounted for and company use gas costs),

temporary increments and decrements, and the gas tax. The computation of the margin rates should be cross-referenced to the proposed rates provided accordance with Rule R6-90(c)(9).

19. A narrative explanation of the assumptions and computational conventions used in the study by the applicant should be provided.

20. Studies should conform as nearly as possible to the generic NPV study format attached as Exhibit I to the Public Staff's filing of June 16, 1999, in this docket. An electronic version of the generic NPV study is available in Excel (Office 97 and 5.0) format at the Public Staff s web site (http://www.pubstaff.commerce.state.nc.us/).

21. Each applicant should provide a fully functional electronic version of its NPV study spreadsheet model in either Excel (Office 97 or lower version) or Lotus 1-2-3 (97 Edition or lower version) format.

Appendix B

RULE R6-90. Application Process.

(a) *Purpose.* The purpose of these Rules is to implement G.S. 62-2(a)(9) and G.S. 62-159 by providing a process pursuant to which funding from the proceeds of the general obligation natural gas bonds approved by referendum in November 1998 can be made available to (i) existing North Carolina local distribution companies (LDCs) or (ii) a person awarded a new franchise or a regional gas district for the construction of natural gas facilities in unserved areas that would otherwise not be economically feasible to construct (hereinafter collectively referred to as "eligible recipients" or "applicants"). For purposes of these Rules, a "project" is defined as all of the natural gas facilities, including but not limited to, transmission and distribution lines, metering facilities, and compressors, and all of the activities necessary to extend and provide natural gas service to an unserved area that is eligible under the statutes for funding from the natural gas bonds.

(b) *Letters of intent.* All applicants who intend to file an application for approval to use natural gas bond funds shall first file a letter of intent 30 days before the projected filing date of the application. The letter shall give notice of the intention to file an application and shall identify the counties involved in the project to be proposed. Upon the filing of such a letter of intent, the Commission will promptly issue an order establishing a filing deadline for competing letters of intent, i.e., letters of intent as to applications that include one or more of the same counties. Typically, this deadline will be 30 days from the date of the Commission's order, and the order will be sent to those on the Commission's natural gas service list, representatives of the counties involved, and all other known interested persons. Upon expiration of the deadline for competing letters of intent, if no competing letter of intent has been filed, the applicant shall file its application for approval to use natural gas bond funds forthwith. If a competing letter of intent is filed, the Commission will promptly issue an order establishing a filing deadline for all applications that include one or more of the same counties. Typically, this deadline will be 60 days from the date of the Commission's order, but the Commission may establish some other period as appropriate. Upon expiration of the deadline and upon the filing of a competing application, the Commission shall consolidate the competing applications as appropriate, set the applications for hearing, and establish a procedural schedule.

(c) *Projects involving a county or counties for which an existing LDC has the exclusive franchise.* For projects involving a county or counties for which an existing LDC has the exclusive franchise, applications for approval to use natural gas bond funds pursuant to G.S. 62-159 and this Rule may be filed only by the existing LDC or by a regional gas district. An application for approval to use bond funds shall contain the following information:

(1) A precise geographic description, a map or maps of the area(s) proposed to be served, a detailed description of the proposed physical facilities, including their projected operating parameters and characteristics, the arrangements that have been or are proposed to be made to obtain rights-of-way and plans for obtaining capacity to supply the projected demand;
(2) Details about any special permitting or licensing that may be required, such as from the National Park Service, the National Forest Service, the Federal Energy Regulatory Commission or the Army Corp of Engineers, and a statement as to how much time the permitting or licensing is likely to take;
(3) A market study, including an analysis of potential customers and volumes, probable conversions from other fuels, and projected growth resulting from population growth and economic development;
(4) An engineering study that includes the proposed design of the system (including a pipe network flow analysis), routing (including a review of planned or proposed state highway improvements), and construction cost estimates;
(5) A net present value (NPV) analysis conducted in a generally accepted manner that provides support for the amount of natural gas bond funding requested in the eligible recipient's application;
(6) A demonstration of the applicant's technical, operational, and financial management capabilities that will ensure the successful and safe construction and operation of the project;
(7) A financing plan for the feasible part of the project that includes the amounts, sources, and costs for common equity, debt, and/or other types of financing;
(8) The estimated beginning and ending dates of the proposed construction, including the date service to one or more customers is proposed to begin, specific itemized construction budgets and a timetable for disbursements from the bond fund; and
(9) A schedule or schedules of proposed rates.

(d) *Projects involving a county or counties for which no LDC has an exclusive franchise.* For projects involving a county or counties for which no LDC has an exclusive franchise, applications for approval to use natural gas bond funds may be filed by any person, including an existing LDC, that is a public utility or would become a public utility by constructing, owning or operating the proposed natural gas facilities or by a regional gas district. For projects involving such counties, a person, including an existing LDC, that is a public utility or would become a public utility by constructing, owning or operating the proposed natural gas facilities also must file an application for a certificate of public convenience and necessity pursuant to G.S. 62-110. All applications for approval to use natural gas bond funds must include the information required by subsection (c) of this Rule.

(e) *Accuracy required.* In all cases, applications for approval to use natural gas bond funds shall be as accurate as possible when filed, particularly as to the estimates used in the NPV analysis of the project. Amendments are discouraged. In cases of competing applications, the Commission shall first give preliminary approval to use natural gas bond funds, and the winning applicant shall then be required to refine the estimates and move for final approval of the amount of bond money to be awarded. If significant changes to the project or to the NPV analysis are made, the Commission may in its discretion re-open the preliminary approval and conduct such further proceedings as appropriate to reconsider the decision.

(f) *Other applications.* If not otherwise addressed in its application, an applicant that is a public utility or would become subject to regulation as a public utility if its application were granted, shall file for approval of its proposed financing for the feasible portion of an approved project to the extent required by G.S. 62-160 through G.S. 62-171 and Commission Rule R1-16. A regional gas district proposing to use revenue bonds to finance the feasible portion of a project for which bond funds have been approved shall file for a certificate of convenience and necessity in accordance with G.S. 159-95.

DOCKET NO. G-100, SUB 76

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motion of Gas Research Institute for the Entry of)
an Order Authorizing Local Distribution Companies) ORDER ON MOTION OF
in North Carolina to Continue to Make Research) GAS RESEARCH INSTITUTE
Contributions to Gas Research Institute)

BY THE COMMISSION: On January 6, 1999, Gas Research Institute (GRI) filed a motion requesting the Commission to enter an order authorizing the local distribution companies (LDCs) in North Carolina to make voluntary contributions to GRI for research and to recover such contributions in their annual gas cost adjustment proceedings pursuant to G.S. 62-133.4. In support of this motion, GRI states that it is the cooperative research and development organization of the natural gas industry and that it has been funded primarily by surcharges collected by its interstate pipeline member companies pursuant to tariffs approved by the Federal Energy Regulatory Commission (FERC) for natural gas transportation services. Payments by North Carolina LDCs under such tariffs are recoverable pursuant to G.S. 62-133.4 as part of the LDCs' cost of gas. However, on April 29, 1998, the FERC approved a negotiated settlement providing for the funding of GRI at progressively reduced levels beginning in 1999 and continuing until the surcharges are eliminated in their entirety after December 31, 2004.

GRI states that its research has benefited the natural gas industry and the LDCs in particular over the years and has resulted in cost reductions and improved safety for the consuming public. Therefore, GRI has proposed to LDCs around the country that they continue to fund GRI at present levels by voluntarily contributing the difference between the 1998 FERC-approved surcharge level and the future, reduced FERC-approved surcharge levels. Total funding under this proposal would not exceed the current surcharge level, which is equivalent to 1.74 cents per dekatherm. In return for making voluntary contributions, the LDCs would be allowed to allocate the funds to the types of research they wish to support. GRI states that the Alabama Public Service Commission has authorized Alabama Gas Corporation to make such voluntary contributions and that numerous other LDCs and municipal gas authorities throughout the country have agreed to join the program and are seeking regulatory approval where necessary. The North Carolina LDCs have expressed an interest in joining the program.

The Public Staff presented GRI's proposal to the Commission at its Regular Staff Conference on January 25, 1999. The Public Staff stated that the proposal raises a number of important legal and policy issues, and the Public Staff recommended that the Commission issue an order requesting comments on the proposal and requesting GRI to describe in further detail how other state commissions have addressed the matter. The Public Staff also recommended that the order direct each LDC to respond to certain questions generally dealing with the LDC's level of past contributions to GRI, its use and support of GRI research, and possible ways to recover future contributions to GRI.

On January 27, 1999, the Commission issued an Order Requesting Comments based on the Public Staff's recommendations. Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (PSNC), North Carolina Natural Gas Corporation (NCNG), NUI North Carolina Gas (NUI) and Frontier Energy LLC (Frontier) were requested to file comments. Carolina Utility Customers Association, Inc. (CUCA) and the Public Works Commission of the City of Fayetteville (PWC) also intervened in this docket.

Initial comments were filed by GRI, CUCA, NCNG, NUI, Piedmont and PSNC. Reply comments were filed by GRI, CUCA, Frontier, NCNG, Piedmont, the Public Staff, and the Attorney General. Subsequently, GRI filed a Motion for Permission to Respond to Public Staff's Reply Comments and a Response to Public Staff's Reply Comments. The Public Staff filed a Clarification of Public Staff's Reply Comments, and GRI filed a Response to Clarification of Public Staff's Reply Comments. All comments have been accepted and considered.

From the comments and filings herein, the following facts appear undisputed:

1. GRI is the natural gas industry's voluntary, cooperative research organization. GRI was founded in 1976 in response to a Federal Power Commission (now the FERC) finding that interstate pipelines were conducting insufficient research.

2. In the past, GRI has been funded primarily by surcharges collected by member interstate pipelines and passed on to LDCs and their customers through the interstate pipelines' FERC-approved transportation tariffs.

3. G.S. 62-133.4 provides for gas cost adjustment proceedings for North Carolina LDCs "to track changes in the cost of natural gas supply and transportation." The statute allows the Commission to define gas costs by rule or order, but limits the definition to costs "related to the purchase and transportation of natural gas to the natural gas local distribution company's system." Commission Rule R1-17(k)(2)(b) defines "Gas Costs" as "the total delivered cost of gas paid or to be paid to Suppliers, including but not limited to all commodity/gas charges, demand charges, peaking charges, surcharges . . . service fees and transportation charges, and any other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply."

4. North Carolina LDCs paid net GRI interstate pipeline surcharges of $3,648,370 in 1997 and $3,439,409 in 1998. Since they were a part of the interstate pipelines' tariffs, these surcharges were recoverable by North Carolina LDCs as "gas costs" pursuant to G.S. 62-133.4 and Commission Rule R1-17(k)(2)(b). They were recorded in each LDC's deferred gas cost account and trued-up in the annual gas cost adjustment proceeding.

5. In 1998, FERC approved a settlement pursuant to which the FERC-approved surcharges supporting GRI will be reduced from $164,000,000 in 1998 down to $132,000,000 in 1999, $98,000,000 in 2000, $70,000,000 in 2001, $60,000,000 in 2002, 2003 and 2004, and zero in 2005.

6. GRI has proposed that LDCs continue to support GRI on a voluntary basis at the 1998 surcharge level, with the LDCs making up the difference between the 1998 level and the shrinking FERC-approved surcharges through voluntary contributions to GRI.

7. In this docket, GRI requests that the North Carolina LDCs be authorized by this Commission to make voluntary contributions to GRI and to recover such contributions in their annual gas cost adjustment proceedings pursuant to G.S. 62-133.4. Alternatively, GRI proposes that the Commission authorize the recovery of contributions to GRI through a surcharge mechanism in a rulemaking proceeding.

8. The Public Staff proposes that voluntary contributions to GRI be treated as operation and maintenance (O&M) expenses and considered in general rate case proceedings. However, the Public Staff proposes a special accounting treatment for such contributions which includes a deferred charges account for contributions made through the end of 2004 or until the time of each LDC's next rate case, whichever is earlier, and the accrual of carrying charges on the deferred contributions. The Public Staff further proposes to reclassify a reasonable ongoing level of GRI funding, whether FERC-approved or voluntary, as O&M expenses in each LDC's next general rate case. The Public Staff contends that its proposal "permits full recovery of all reasonable and prudently incurred GRI contributions."

9. Electric utilities' contributions to the Electric Power Research Institute have not been treated as a part of fuel costs or as a surcharge; they have been treated as O&M expenses in the electric utilities' general rate cases.

Based on the undisputed facts and upon the comments and arguments herein, the Commission reaches the following conclusions:

First, GRI's motion was not verified as required by Commission Rule R1-5(d). CUCA states that "GRI's unverified request is deficient and should be rejected on that basis alone." GRI responds by referring to Rule R1-5(e), which states that pleadings shall be "liberally construed" and that "errors or defects which do not mislead or affect the substantial rights of the parties involved shall be disregarded." The Commission concludes that no party's substantial rights were affected by the lack of verification, and the Commission will consider GRI's motion.

Turning to the merits of the motion, GRI requests that the LDCs be authorized to make voluntary contributions to GRI and to recover such contributions in their annual gas cost adjustment proceedings under G.S. 62-133.4. GRI argues that Rule R1-17(k)(2)(b) defines "gas costs" in terms of a lengthy list of fees and charges including "surcharges" and that the Commission has the authority to amend the definition of gas costs by rule or order. GRI points out that Rule R1-17(k)(3)(c) states that the intent of the gas cost adjustment procedures "is to permit an LDC to recover its actual prudently incurred Gas Costs," and GRI contends that if payments to GRI were recoverable as a legitimate gas cost when included in interstate pipeline rates, then "the mere change from being totally FERC authorized to partially FERC and partially Commission authorized (and ultimately fully Commission authorized) should not affect their recoverability." GRI states that the Commission, in this docket, could find that gas research is essential for an LDC to furnish adequate, reliable and economical utility service to its customers and could characterize contributions to GRI as a prudently incurred gas cost recoverable under G.S. 62-133.4.

NCNG argues that when G.S. 62-133.4 was enacted, the General Assembly decided to allow the Commission to define costs for gas cost adjustment purposes. G.S. 62-133.4(e) delegates that authority to the Commission to be exercised through rule or order. NCNG contends that Commission Rule R1-17(k) defines gas costs broadly, so as to cover "100 percent of prudently incurred costs applicable to North Carolina operations." NCNG asserts that the Commission could further amend the definition by order in this docket to include voluntary contributions to GRI. NUI agrees that voluntary contributions to GRI should be considered a cost of gas and recovered as such. Piedmont agrees that a case can be made for treating GRI contributions as gas costs under G.S. 62-133.4, but Piedmont instead focuses on the more general argument that the Commission has the authority to adopt a surcharge mechanism to recover voluntary contributions through a rulemaking in this proceeding. PSNC supports continuation of current procedures at least until its next rate case.

CUCA argues that the Commission's authority to modify rates through G.S. 62-133.4 is limited to modifications that "track changes in the costs of natural gas supply and transportation." Since GRI is neither a supplier nor a transporter of natural gas, the definition of gas costs under Rule R1-17(k) cannot be stretched to include voluntary payments by the LDCs to GRI. GRI surcharges were appropriately considered a part of gas costs as long as they were surcharges assessed and collected in interstate pipeline rates; however, voluntary LDC contributions to GRI cannot be considered as part of gas costs under G.S. 62-133.4.

The Attorney General agrees with CUCA, pointing out that as long as FERC authorized recovery of GRI payments as part of interstate pipeline rates, the GRI payments were part of the cost of obtaining pipeline service. The LDCs did not have any discretion about whether to pay the GRI component of interstate pipeline rates and FERC, not the North Carolina Utilities Commission, was charged with oversight of the prudence of payments to GRI.

The Public Staff also agrees with CUCA that voluntary contributions to GRI cannot be treated as gas costs. In addition, the Public Staff argues that the LDCs' annual gas cost adjustment proceedings should not be broadened to encompass a review of the prudence of GRI expenditures since GRI expenditures present entirely different issues and require a different type of investigation.

The Commission concludes that the plain language of G.S. 62-133.4 decides this issue. GRI is not a supplier of gas, and voluntary contributions to GRI are not costs "related to the purchase and transportation of natural gas to the [LDC's] system." Therefore, such contributions do not come within the scope of gas cost adjustment proceedings now, and G.S. 62-133.4(e) cannot be used to expand the definition of gas costs to cover such contributions. The Commission concludes that voluntary contributions made by the LDCs to GRI cannot be considered gas costs recoverable under G.S. 62-133.4.

GRI next contends that even if the Commission lacks authority to allow the recovery of GRI contributions as gas costs, the Commission does have the authority to authorize recovery of GRI contributions through a surcharge and true-up mechanism in a rulemaking proceeding. GRI notes two occasions in which the Commission altered rates and charges through a rulemaking proceeding and was subsequently upheld by the North Carolina Supreme Court. Piedmont supports GRI, stating, "The North Carolina Supreme Court has clearly and unambiguously established the authority of the Utilities Commission to make and enforce rules and regulations relating to the public utilities it regulates, including the power and authority to change rates and charges . . . through a rulemaking proceeding."

In 1975, the Commission ordered the establishment of an exploration and drilling program and set up a mechanism for the recovery of its costs through a rulemaking proceeding. Among other things, the Commission found that: (1) an emergency gas shortage existed; (2) unless the LDCs were able to obtain additional gas supplies, they would be unable to render adequate and efficient service to their customers; (3) without additional supplies, many industries in North Carolina would be unable to continue operations; and (4) without additional supplies, substantial increases in rates would be necessary to meet increases imposed by the sole interstate supplier as well as to cover the spreading of fixed costs over smaller sales volumes. The Commission also found that prudent expenditures of funds for exploration purposes during periods of severe and deepening curtailment of gas supplies were ordinary and reasonable operating expenses of an LDC. The North Carolina Supreme Court held that the recovery of exploration and drilling surcharges could be allowed through a tracking mechanism set up in a rulemaking proceeding and that it was not necessary that general rate cases be instituted. *State ex rel. Utils. Comm'n v. Edmisten*, 294 N.C. 598, 242 S.E.2d 862 (1978). The Court took note of the findings of fact in the Commission's Order and ruled as follows:

> In view of these findings of fact, we hold that the Commission, in ordering that the reasonable costs of approved exploration projects were to be recoverable through tracking rate increases, acted within its acknowledged duty and authority to compel adequate and efficient utility service to the citizens of this State. It is clear from the

> Commission's findings that, without additional gas supplies, the gas utilities would be unable to render adequate service to their customers, that exploration programs were the most feasible means for obtaining these additional supplies, and that the utilities were unable, through traditional methods of financing, to fund sufficient exploration projects to obtain these supplies. Under those circumstances, the Commission was well within its authority in approving the exploration concept and including the excess gas costs in the price of gas to consumers, since these expenses were incurred for their benefit and the excess profits, under the Commission's order, were preserved for the customers paying the rate increase.

In the second case cited by GRI and Piedmont, the Commission ordered that the benefits of the Tax Reform Act of 1986 be passed on to ratepayers by all utilities through a rulemaking proceeding, rather than in individual rate cases. The North Carolina Supreme Court held this to be an appropriate procedure. *State ex rel. Utils. Comm'n v. Nantahala Power & Light Co.*, 326 N.C. 190, 388 S.E.2d 118 (1990). The Court referenced the *Edmisten* decision and added the following:

> The Commission properly formulated a rule which applied uniformly to the affected utilities which were similarly situated. The circumstances surrounding this procedure made it appropriate for the Commission to use a rulemaking procedure because: (1) the tax reduction affected all utilities uniformly; (2) a large number of utilities were affected, making individual hearings for all inappropriate; and (3) no adjudicative-type facts were in dispute so as to require a trial-type hearing for each individual utility.

Relying on these cases, Piedmont argues that the Commission could establish a GRI surcharge in this docket by finding that GRI research serves the public interest and that the surcharge is a reasonable and necessary way to support GRI research. Piedmont points to the "numerous research and development projects which positively impact ratepayers and citizens . . . through lower costs, more efficient utilization of energy resources, and greater safety in the transmission and distribution of natural gas within the state." In addition, Piedmont notes the fact that GRI funding is already being paid for in rates and concludes that "the continuation of reasonable levels of GRI funding through a state-sponsored surcharge is imminently reasonable." Piedmont argues that the adoption of a surcharge would be consistent with several State policies, including those set forth in G.S. 62-2(3), G.S. 62-2(3a), G.S. 62-2(4), G.S. 62-2(5), and G.S. 62-2(8).

The Public Staff states that it does not believe that any automatic surcharge or flow-through mechanism for voluntary GRI contributions is in the public interest. The Public Staff points out that while the Commission had no authority to rule on the prudence of FERC-imposed GRI surcharges, voluntary contributions to GRI by an LDC are clearly subject to Commission review as to prudence. It contends that LDC management should take an active role in assessing participation in GRI and that LDC management would be "less vigilant in evaluating the worthwhileness of its contribution if recovery is guaranteed." The Public Staff also points to the "free rider" issue (entities not participating in funding GRI but enjoying the benefits of the research) and the ability of GRI to tailor research and development activities to the specific needs of North Carolina ratepayers.

The Attorney General points out that changing rates through a rulemaking is "an exception to the general rule of ratemaking which favors an examination of all costs and factors affecting rates in a general rate case before rates are changed rather than ad hoc adjustments to rates due to changes in particular costs." A general rate case allows regulators to maintain oversight over the utility's overall expenses and revenues. Various changes between rate cases can be expected, with some increasing costs and decreasing revenues and others having the opposite effect. When only particular costs are considered, customers may face rate increases even though there are other offsetting costs. The Attorney General also points out that the Commission declined to authorize a proposed tracker for manufactured gas plant (MGP) cleanup costs in a recent PSNC rate case. In that case, the Commission described a pass-through or tracking mechanism as "an extraordinary rate mechanism" and concluded that such a mechanism should be allowed only in limited circumstances. The Commission noted various prudency issues and concluded that the proposed MGP tracker would provide a limited opportunity for review of these prudency issues. The Commission also concluded that the pass-through of MGP cleanup costs to current ratepayers would undermine the Company's motivation to minimize costs. The MPG tracker proposal is similar to GRI's proposal in this docket in that it would have removed particular costs from the normal ratemaking process. Finally, the Attorney General states that electric utilities' contributions to the Electric Power Research Institute have been treated as expenses in general rate case proceedings and have not been handled as a surcharge or as part of fuel costs.

The Commission agrees that it has authority to change rates in a rulemaking proceeding in certain limited circumstances. The question is whether such an approach is appropriate here. The Commission is not persuaded that it is appropriate to establish a surcharge or flow-through mechanism for GRI contributions in a rulemaking proceeding. In *Edmisten*, the Commission acted to avert a crisis. Without gas to sell, the LDCs would not have been able to provide adequate and efficient service, and the Court pointed to that in its decision in *Edmisten*. In this docket, while there is much evidence that GRI research has been and will continue to be beneficial to the ratepayers of North Carolina (the Commission notes that the record reflects that not all parties agree on the cost-effectiveness of GRI spending and the Commission does not rule here on its cost-effectiveness), still the Commission cannot conclude that future adequate and efficient service depends on the establishment of a GRI surcharge. The *Nantahala* case cited by GRI is also distinguishable from the present situation. In *Nantahala*, the Court stated that a rulemaking procedure was appropriate because issues relating to the Tax Reform Act of 1986 lent themselves to a generic solution: many utilities were affected, they were affected uniformly, and there were no adjudicative-type facts that required hearings for individual utilities. Such is not the case here. There are a number of differences among the utilities in this docket. Different utilities noted different GRI research programs that they had utilized and different preferences for future research. PSNC and NC Gas expressed a preference for core research projects while Piedmont, NCNG and Frontier expressed a preference for non-core projects. Estimates of the value of GRI research varied widely. NCNG noted the need to exempt its Price Sensitive Volume Adjustment (PSVA) customers from any surcharge; NCNG is the only LDC with a PSVA. CUCA raised numerous issues and contends that an evidentiary hearing would be necessary to examine how benefits are quantified. CUCA argues that ratepayers should not have to bear the full costs since shareholders also benefit from GRI research. CUCA argues that a purely volumetric surcharge would not be equitable to large customers and questions what various customer classes are getting for their money. Given that customer mixes are not uniform and that different LDCs are on record as wanting to invest their GRI research dollars in different ways, the Commission cannot conclude that a generic solution is appropriate herein. Moreover, the Attorney General's argument that all cost and revenue changes should be considered together in the context of a general rate case is well taken. The Commission concludes that it must exercise its authority to change rates in a rulemaking proceeding only in limited circumstances and that such an approach is not appropriate here.

CUCA, the Attorney General and the Public Staff all state that any voluntary GRI contributions should properly be classified as O&M expenses and recovered through general rate case proceedings. However, given the unique circumstances of the situation, the Public Staff proposes that the Commission approve a special accounting treatment as a transitional recovery mechanism to bridge the change from FERC-approved gas costs to normal O&M expenses. The Public Staff proposes to allow each LDC to record voluntary contributions made to GRI through December 31, 2004 or the next rate case, whichever is earlier, in a deferred charges account. At the time of each LDC's next rate case, GRI costs would be recoverable to the extent they are found to be reasonable and prudently incurred. The balance in the deferred charges account would be amortized. As a condition of recovery, each LDC should be required to maintain adequate documentation that supports the prudence of its overall contributions. The documentation should include specifics regarding benefits received as the result of participating in GRI research. The Public Staff contends that, with deferred accounting treatment, the LDCs would be allowed "a reasonable opportunity to collect amounts paid to GRI."

GRI opposes the Public Staff proposal. GRI points out that handling GRI costs as an O&M expense in individual rate cases could result in an LDC being unable to recover some of its GRI contributions even though they are found to be prudent. This is because the level of expenses considered in a general rate case is based on a test year. The FERC-approved interstate pipeline surcharge is being phased down in uneven steps until it is eliminated altogether beginning in 2005. At the same time, the amount of the LDC's voluntary contributions to GRI would increase in uneven steps until 2005, assuming the LDC increases its voluntary contributions to maintain the same level of GRI funding and to make up for the decrease in FERC surcharges. Thus, according to GRI, a test year ending before December 31, 2005 would not necessarily cover all of the LDC's GRI costs on an ongoing basis. With the deferred charges account terminating at the time of the rate case and with the FERC-approved surcharges declining and voluntary contributions increasing, the LDC would fail to recover all its prudently incurred GRI contributions. Several of the LDCs also oppose treatment of GRI costs as O&M expenses in rate cases, raising concerns about possible undercollection.

The Commission recognizes the problem identified by GRI. However, the Commission believes that the problem is addressed by the Public Staff in its latest filing. In its Clarification, the Public Staff explains that it "does not propose that the Commission disallow the recovery of GRI contributions by the LDCs that are found to be reasonable and prudently incurred." To that end, the Public Staff asserts that it is its intention "that the reasonable ongoing level of the full GRI contributions be reclassified in the next general rate case from gas costs to O&M expenses." Furthermore, the Public Staff states that it would not oppose allowing the LDC to accrue carrying charges on the contributions in the deferred charges account "to encourage them to continue to support worthwhile research through GRI."

GRI seems to interpret the proposal in the Public Staff's Clarification differently than the Commission. GRI interprets the proposal as involving recovery procedures drawn out over two rate cases, and GRI argues that the proposal is extremely cumbersome, contrary to sound ratemaking policies and could be deemed retroactive ratemaking. GRI goes on to propose that any payment to GRI found to be prudent but not recovered as a gas cost or an O&M expense should be recovered as a "Transitional Gas Research Surcharge." However, as the Commission interprets the Public Staff's proposal, no such transitional surcharge would be necessary.

The Commission's interpretation of the Public Staff's proposal is as follows: As FERC-approved surcharges decrease, we assume that each LDC will make some level of voluntary contributions to GRI. The LDC will be allowed to record the voluntary contributions made until December 31, 2004 or until the time of the LDC's next rate case in a deferred charges account; such deferrals will end on December 31, 2004 or at the time of the LDC's next rate case, whichever is earlier. In the LDC's next rate case, whenever it occurs, a reasonable ongoing level of GRI funding -- whether through FERC-approved surcharges being recovered as gas costs or voluntary contributions of the LDC -- will be treated as O&M expenses in the rate case and reflected in rates. The deferred charges account balance, if found reasonable and prudent, will be amortized in this rate case. The Commission recognizes that if these procedures require that FERC-approved surcharges collected under the interstate pipelines' tariffs be reclassified as O&M expenses in the rate case, an appropriate adjustment would have to be made in the LDC's gas cost accounts to prevent the double-collection of the surcharges in the gas cost adjustment proceedings. The Commission also recognizes that it has no authority to rule that a surcharge approved by the FERC is unreasonable or imprudently incurred and, therefore, surcharges collected through FERC-approved tariffs but reclassified from gas costs to O&M expenses in the rate case would not be subject to Commission prudency review. The Commission believes that these procedures will allow recovery of an LDC's reasonable and prudent funding of GRI and will protect the LDC from a shortfall in recovery during the transition as FERC-approved surcharges decrease and voluntary contributions increase. Furthermore, allowance of carrying charges on the amount in the deferred charges account will make the LDC whole for the delay in recovery. The Commission concludes that the ratemaking procedures described above should be followed in each LDC's next general rate case in order to effect the transition from FERC-approved funding of GRI to funding by voluntary contributions of the LDCs.

It appears to the Commission that the significant difference between what GRI wants and what the Public Staff proposes is that GRI wants the LDCs to recover their GRI contributions on a collect-as-you-go basis, before the next rate case. The Public Staff proposal requires the LDCs to wait until the next rate case is decided and the Commission scrutinizes the reasonableness and prudency of the voluntary contributions to GRI. The only significant risk faced by the LDCs under the Public Staff's proposal is that the Commission might disallow some of their contributions as unreasonable or imprudent. However, the Commission believes that this risk will have the salutary effect of focusing the LDCs' management on how the money is being spent by GRI.

As to the concern that LDCs might choose not to fund GRI under the procedures approved herein, the Commission can only note that the electric utilities fund the Electric Power Research Institute under general rate case recovery procedures. Other than the transitional procedures which are explained above, the Commission cannot justify different treatment for GRI.

After carefully considering all of the filings in this docket, the Commission concludes that the Public Staff's proposal as described above is reasonable and should be adopted. The Commission further concludes that the facts and arguments in this docket do not warrant either treatment of voluntary contributions to GRI through gas cost adjustment proceedings or the establishment of a surcharge for GRI funding through a rulemaking proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the motion filed by GRI herein should be decided as hereinabove provided;

2. That LDCs desiring to make voluntary contributions to GRI shall establish a deferred charges account in which to record such voluntary contributions to GRI in accordance with the procedures described above;

3. That LDCs making voluntary contributions to GRI shall maintain adequate documentation to support the reasonableness and prudence of overall GRI contributions and to document benefits received as a result of participating in GRI research; and

4. That the ratemaking procedures described above shall be followed in the next general rate case of each LDC making voluntary contributions to GRI.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of August, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg081699.05

Commissioner Ervin did not participate.

DOCKET NO. G-100, SUB 76

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Motion of Gas Research Institute for the Entry of	)	ORDER ON MOTIONS
an Order Authorizing Local Distribution Companies	)	FOR RECONSIDERATION
in North Carolina to Continue to Make Research	)	AND ON EXCEPTIONS
Contributions to Gas Research Institute	)	

BY THE COMMISSION: On August 17, 1999, the Commission issued its Order on Motion of Gas Research Institute in this docket. The Order deals with the Gas Research Institute's (GRI) request that the Commission authorize the North Carolina LDCs to make voluntary contributions to GRI and to recover such contributions through purchased gas adjustment proceedings or through a surcharge. The Commission's Order provided that the LDCs could record voluntary contributions to GRI in deferred accounts and that the reasonableness of the contributions would be considered in each LDC's next general rate case.

On September 15, 1999, two filings were made: Piedmont Natural Gas Company, Inc., filed a Motion for Reconsideration and CUCA filed Notice of Appeal and Exceptions. Other motions for reconsideration were filed by North Carolina Natural Gas Corporation on October 6, 1999, and by Public Service Company of North Carolina, Inc., on October 7, 1999.

The Commission has reviewed and considered the filings. G.S. 62-90(c) provides that when a party files notice of appeal and exceptions as to a Commission order, the Commission may set the exceptions upon which the appeal is based for further hearing. Further, G.S. 62-80 provides that the Commission may reconsider any prior order. While these statutes provide some basis upon which the Commission could consider either the motions for reconsideration or the exceptions filed herein, the Commission concludes that (except as noted hereinafter) the Commission will take no action on CUCA's exceptions and that the Commission will not reconsider the August 17 Order.

Some of the arguments in the motions for reconsideration are difficult to understand. For example, Piedmont argues that it does not have the expertise to determine how GRI should spend its research and development money. However, in its original comments in this docket, Piedmont stated its opinion on this very matter, commenting that it "would prefer for the majority of the funds to be used for non-core R&D programs. If allowed to allocate funds to specific projects, Piedmont would prefer for the funds to be used to research and develop ways to improve the efficiency of residential and commercial gas usage." As another example, both Piedmont and NCNG state in their motions for reconsideration that they should not have to take any risk that GRI contributions will be disallowed in the future since "there are no corresponding rewards." But in their original comments, these LDCs listed specific ways in which they and their ratepayers have benefited from GRI research and, in many instances, they quantified the benefits in substantial dollar amounts.

As to the exceptions filed by CUCA, one exception notes that the August 17 Order uses the phrase "there is much evidence that..." and correctly points out that the Commission did not hold an evidentiary hearing. It is clear from the complete sentence being quoted, in context, that the phrase was inadvertent and should have instead read "there were written comments that ..." The Commission will take no action on CUCA's exceptions and its appeal may proceed. (Note, however, State ex rel. Utilities Comm. v. CUCA, 104 NCApp 216 (1991), cert. denied, 330 NC 618 (1992).)

In summary, the Commission finds no grounds for any further action in this docket and concludes that the August 17 Order is well-reasoned and fair and should stand as issued.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg101399.01

Commissioner Judy Hunt and Commissioner Sam J. Ervin IV did not participate.

DOCKET NO. G-100, SUB 76

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Motion of Gas Research Institute for the Entry of an Order Authorizing Local Distribution Companies in North Carolina to Continue to Make Research Contributions to Gas Research Institute	)	ORDER ON MOTION OF PUBLIC STAFF FOR RECONSIDERATION

BY THE COMMISSION: On August 17, 1999, the Commission issued its Order on Motion of Gas Research Institute in this docket. The Order deals with the Gas Research Institute's (GRI) request that the Commission authorize the North Carolina LDCs to make voluntary contributions to GRI and to recover such contributions through purchased gas adjustment proceedings or through a surcharge. The Commission's Order provided that the LDCs could record voluntary contributions to GRI in deferred accounts and that the reasonableness of the contributions would be considered in each LDC's next general rate case.

On September 15, 1999, Piedmont Natural Gas Company, Inc., filed a Motion for Reconsideration and CUCA filed Notice of Appeal and Exceptions. Other motions for reconsideration were filed by North Carolina Natural Gas Corporation on October 6, 1999, and by Public Service Company of North Carolina, Inc., on October 7, 1999. On October 14, 1999, the Commission issued an order to the effect that it would take no action on CUCA's exceptions and would not reconsider the August 17 Order.

On November 5, 1999, the Public Staff filed a Motion for Reconsideration. Although the Public Staff feels that the deferral provisions authorized by the Commission are "theoretically the most appropriate," the Public Staff fears that they may be unworkable since the LDCs "in general are unwilling to put any material sums at risk for contributions to GRI." Therefore, the Public Staff "believes there is merit to the suggestion of some of the LDCs that the Commission establish a procedure for prior approval of their voluntary contributions to GRI..." and the Public Staff suggests biennial "pre-approval" proceedings in order to guarantee ultimate ratemaking treatment of the approved levels of GRI contributions. The Public Staff asks the Commission to seek further comments on whether such prior approval would satisfy the LDCs. If not, the Public Staff asks the Commission to consider rescinding the August 17 Order and denying GRI's motion outright.

CUCA filed a response on November 16, 1999. CUCA argues that the Commission has already denied the same type of pre-approval relief now suggested by the Public Staff and that there is no basis to change the Commission's decision. NCNG filed a Response to CUCA on December 3, 1999, and CUCA filed a Reply on December 8.

The Commission has carefully considered all of the filings herein. The Commission continues to believe that the August 17 Order is well-reasoned and fair and should stand as issued. Although the Commission finds no grounds for any action on the exceptions or reconsideration in this docket, the Commission will respond to certain concerns expressed by the LDCs by way of clarification, not reconsideration. In its December 3 Response, NCNG characterizes the Commission-approved recovery procedures as "a mechanism where, based on an unreasonable and long-range hindsight analysis, [LDCs] are punished for contributing to individual projects that do not produce." In its earlier motion for reconsideration, Piedmont also objected to "a hindsight review of the manner in which the contributions were used by GRI." Nothing in the Commission's August 17 Order, including the provisions for documentation of overall GRI contributions, should be interpreted as allowing for hindsight analysis of the prudence of GRI contributions. The Commission has stated the prudency standard as follows:

> ...the standard for determining the prudence of the Company's actions should be whether management decisions were made in a reasonable manner and at an appropriate time on the basis of what was reasonably known or reasonably should have been known at that time. The Commission agrees that this is the appropriate standard to be used in judging the various claims of imprudence that have been put forth in this proceeding...and adopts it as the standard to be applied herein. The Commission notes that <u>this standard is one of reasonableness that must be based on a contemporaneous view of the action or decision under question. Perfection is not required. Hindsight analysis--the judging of events based on subsequent developments--is not permitted</u>. 78 North Carolina Utilities Commission Report, 238 at 251-2 (1988) (emphasis added).

The Commission will use such a standard for the prudence of GRI contributions. If, as NCNG says, "the wisdom of making contributions [to GRI] has withstood the test of time," it is difficult to see what risk the LDCs fear. The Commission-approved procedures are based on the ratemaking principles established by the General Statutes. The General Statutes do not provide for "pre-approval" of rate case expenses and the LDCs make expenditures every day without the Commission's "pre-approval." The Commission's procedures are also consistent with the procedures by which electric utilities fund EPRI, and the LDCs have not yet explained why they would be unwilling to fund GRI in the same manner as the electric utilities fund EPRI.

The Commission has provided reasonable ratemaking procedures for recovery of GRI contributions, plus carrying charges. The Commission believes that it is appropriate to establish such procedures, and the Commission will neither reconsider nor rescind the August 17 Order herein.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg122099.05

Commissioner Ervin did not participate.

DOCKET NO. G-100, SUB 78

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition for Rulemaking to Implement Session Law 1998-22 (Senate Bill 1327)	)))	ORDER APPROVING TARIFFS, AMENDING COMMISSION RULES, AND REQUIRING NOTICE

BY THE COMMISSION: North Carolina Session Law 1998-22 was ratified by the General Assembly and signed by the Governor on June 30, 1998. The Session Law imposes a new excise tax on piped natural gas received for consumption in the State, effective July 1, 1999, in lieu of the sales tax, use tax and gross receipts tax (GRT) that are currently applicable. On April 23, 1999, the Public Staff filed a petition asking the Commission to initiate a rulemaking proceeding to implement the tax changes required by North Carolina Session Law 1998-22 by incorporating the tax changes into the rates and tariffs of each natural gas local distribution company (LDC) and into applicable Commission Rules.

In its petition, the Public Staff asserted that the current sales tax is not included in the cost of service of LDCs, but instead is collected by the LDCs as a surcharge to the customer's bill; that the current use tax is the responsibility of each transportation customer; and that the current GRT paid by the LDCs is embedded in the LDCs' rates since it is included in the cost of service as an operating revenue deduction in general rate cases. The Public Staff proposed that, effective July 1, 1999, each LDC rate, including facilities charges, demand charges and service charges, be decreased by an amount sufficient to remove the GRT that is presently embedded in rates and that the new excise tax be shown on customers' bills as a surcharge. In addition, the Public Staff proposed that the gas adjustment procedures set forth in the tariffs of the LDCs and in Commission Rule R1-17(k) be modified to remove the GRT component, and that references to the GRT be deleted from Commission Rule R6-19.2(c)(ii). The Public Staff recommended that each LDC be ordered to file appropriate modifications to its tariffs and service regulations for Commission review and that Commission Rules R1-17(k) and R6-19.2(c) be amended.

The Commission issued an Order on May 13, 1999, initiating a proceeding as proposed by the Public Staff. The order provided for each LDC to file for review proposed modifications to its tariffs and service regulations implementing the tax changes required by North Carolina Session Law 1998-22 and further provided for interested persons to intervene and file comments on the proposed tariff modifications and on the proposed changes to Commission Rules. By subsequent Order, the Commission provided for reply comments.

North Carolina Natural Gas Corporation (NCNG), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (PSNC), NUI North Carolina Gas, and Frontier Energy, L.L.C. filed proposed modifications to their tariffs on June 3 and 4, 1999. NCNG filed a revision on June 14, 1999.

Initial comments were filed on June 16, 1999, by the Public Staff and the Carolina Utility Customers Association, Inc. (CUCA). The Public Staff commented that the LDCs' proposed tariff modifications are correct and in compliance with the new law. The Public Staff recommended that public notice of the rate changes be mailed as a bill insert. CUCA agreed that the Commission has "limited legal authority" to adopt the rate changes without general rate cases, but asked the Commission to make clear in its order the limited basis upon which it acts. Next, CUCA stated that several of the tariffs contain errors, such as an August 1, instead of July 1, effective date and spelling errors. Finally and most importantly, CUCA stated that the rate changes proposed by the LDCs are incomplete. CUCA noted the franchise tax under G.S. 105-122 and stated that "presumably, the LDCs have already included in their rates their preexisting franchise tax obligation." CUCA then noted that the new law provides for an offset to this franchise tax based on 50% of the new excise tax and concludes that ratepayers are entitled to have this offset incorporated into rates.

The Public Staff, Piedmont, PSNC, and NCNG filed reply comments. The Public Staff says that there is no dispute as to the Commission's authority in this proceeding and that there is therefore no need for special language in the order, as suggested by CUCA. The Commission agrees. As to the proper effective date, reply comments point out that the Department of Revenue has interpreted the new excise tax as applying to gas consumption in billing months after July 1. The Commission concludes that the LDCs shall implement the new tax law as interpreted by the Department of Revenue. Finally, as to the franchise tax issue raised by CUCA, all three LDCs, and the Public Staff as well, argue that CUCA has misintrepreted the LDCs' franchise tax obligation. Reply comments point out that, due to the alternative tax provisions of G.S. 105-116, the LDCs have never had to pay the franchise tax under G.S. 105-122 and, therefore, the franchise tax under G. S. 105-122 is not reflected in current rates and no further rate modifications are appropriate. CUCA has filed nothing further with respect to this issue. The Commission rejects CUCA's franchise tax argument. No party commented on the proposed changes to Commission Rules, and the Commission amends Commission Rules accordingly.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed tariff modifications filed by the LDCs in this docket should be, and hereby are, approved;

2. That Commission Rules R1-17(k) and R6-19.2(c) should be, and hereby are, amended to read as shown on Appendix A attached hereto; and

3. That the LDCs shall give public notice by sending the notice attached hereto as Appendix B to each of their customers during the billing cycle in which the tax changes take effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

RG063099.01

GENERAL ORDERS - NATURAL GAS

Appendix A

COMMISSION RULE CHANGES

1. Commission Rule R1-17(k)(3)(a)(i) is amended to read as follows:

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

> [(Total Anticipated Demand Charges and Storage Charges - Prior Demand Charges and Storage Charges) X NC Portion*]/ Sales & Transportation Volumes* = Increase (Decrease) Per Unit
>
> *Established by the Commission in the last general rate case.

2. Commission Rule R1-17(k)(3)(a)(ii) is amended to read as follows:

(ii) Commodity and Other Charges. Whenever the LDC's estimate of its Benchmark Commodity Gas Costs changes, an LDC may (as hereinabove provided) change the rates to its customers purchasing gas under all of its sales rate schedules by an amount computed as follows:

> {[Volumes of gas purchased* (excluding Company Use and Unaccounted For) X (New Benchmark Commodity Gas Costs - Old Benchmark Commodity Gas Costs)] X NC Portion*}/ {Volumes of gas purchased for System Supply* (excluding Company Use and Unaccounted For)* X NC Portion*}= Increase (Decrease) Per Unit
>
> *Established by the Commission in the last general rate case.

3. Commission Rule R1-17(k)(3)(b) is amended to read as follows:

(b) Transportation Rate. Firm and/or interruptible transportation rates shall be computed on a per unit basis by subtracting the per unit Commodity and Other Charges included in the applicable firm or interruptible sales rate schedule from the applicable firm or interruptible rate schedule exclusive of any decrements or increments. Commodity deferred account increments or decrements shall not apply to transportation rates unless the Commission specifically directs otherwise. Demand and storage increments or decrements shall apply to transportation rates.

4. The definition of "margin" in Commission Rule R6-19.2(c)(ii) is amended to read as follows:

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

Appendix B

NOTICE
DOCKET NO. G-100, SUB 78

On June 30, 1998, North Carolina Session Law 1998-22 was ratified by the General Assembly and signed by the Governor. This statute imposes, effective July 1, 1999, an excise tax (hereinafter "gas tax") on piped natural gas received for consumption in the State which replaces the sales and use taxes and gross receipts tax (GRT) that were previously applicable to piped natural gas.

The monthly amount of the gas tax payable by each natural gas local distribution company (LDC) will be based on the number of therms it delivers during the month to each of its customers. The tax will be calculated using a declining block rate structure. The applicable gas tax rates based on the monthly deliveries by the LDC to each customer will be as follows:

First 200 therms	\$0.047 per therm
201 to 15,000 therms	\$0.035 per therm
15,001 to 60,000 therms	\$0.024 per therm
60,001 to 500,000 therms	\$0.015 per therm
Over 500,000 therms	\$0.003 per therm

Under previous law, all revenues associated with the provision of gas service by an LDC (including revenues derived from facilities charges, demand charges, and service charges) were subject to GRT at the rate of 3.22%. The GRT paid by the LDC to the State was included in the cost of service as an operating revenue deduction in a general rate case. The sales tax was not included in the cost of service for an LDC, but instead was collected by the LDC as a surcharge to the utility bill and remitted to the State. The sales tax rate was 3%, except for sales to manufacturers and certain other groups, for which the applicable rate was 2.83%.

Effective July 1, 1999, the GRT and sales tax on piped natural gas terminated and was replaced by the new gas tax. The intent of the gas tax is not to increase or decrease taxes, but to replace the combination of the GRT and sales taxes that are currently in effect.

For individual customers, total natural gas bills with the new gas tax could be higher or lower than under previous law, depending on the amount of gas used at particular times of the year, and the level of the LDC's tariff rates. Please contact your LDC if you want a more detailed explanation and/or analysis of how the change in the law affects your own gas bill.

DOCKET NO. G-100, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Modify, Correct or Rescind Certain Incorrect or Obsolete Gas-Related Commission Rules	))))	ORDER REPEALING RULES, MAKING MINOR CORRECTIONS AND REQUESTING FURTHER COMMENTS

BY THE COMMISSION: On November 2, 1999, the Commission issued an order initiating a proceeding and requesting comments on the need to change gas-related Commission Rules because of obsolescence or error. The Commission noted that it is in the process of publishing a new edition of *North Carolina Public Utilities Laws and Regulations* and would like to delete obsolete Rules. Frontier Energy, LLC, North Carolina Natural Gas Corporation (NCNG), NUI North Carolina Gas, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc. (PSNC), the Public Staff and the Attorney General were deemed parties to the proceeding. No other parties intervened. The Commission identified three Rules, Rule R1-17(h), Rule R6-2.1, and Rule R6-71, that were believed to be obsolete and asked the parties to comment on whether there was any reason that those Rules should not be rescinded. Furthermore, parties were asked to comment on the need to rescind, update, modify or correct these or any other gas Rules based on solely on obsolescence or error. The Commission also noted that the publication deadline is close and only non-controversial deletions can be accommodated. It asked that parties respond within 15 days of the date of the Order and made it clear that, if for any reason, a party felt that a Rule should not be rescinded, the Rule in question would be left as is in the new edition of *North Carolina Public Utilities Laws and Regulations* until further comments establish that it should be modified, corrected or deleted from the publication in a future edition.

On November 17, 1999, three parties, NCNG, PSNC and the Public Staff, responded with comments. All three parties agreed that Commission Rule R1-17(h), Rule R6-2.1, and Rule R6-71 were obsolete and should be rescinded. PSNC and the Public Staff offered further suggestions.

PSNC commented that Commission Rule R6-19.2(f) as published in the 1995 Edition of *North Carolina Public Utilities Laws and Regulations* should be modified to correct an error. It asserted that the last two sentences of the Rule should be deleted. Those sentences stated:

> Each customer reclassified under this rule shall be notified of the change in rate schedule, along with a copy of the tariff sheets applicable to his old and new rate schedule, at least twenty-one days prior to the effective date of the change. If the customer, within fourteen days of being notified that a rate change is pending, files appropriate documentation showing that any decline in usage during the updated period was due to alternate fuel usage, the company shall allow the customer to remain on his original schedule.

PSNC referenced the Commission's February 22, 1991 Order on Reopened Rulemaking Proceeding in Docket No. G-100, Sub 48. PSNC pointed out that those sentences had been included in the original version of Rule R6-19.2(f) but that in Docket No. G-100, Sub 48, the Commission had renumbered the Rule as Rule R6-12(7) and had replaced Rule R6-19.2(f) with new language that did not include the two sentences. In that Docket, PSNC had recommended the deletion of the sentences to prohibit a customer from staying on a rate schedule with a more favorable rate when it has reduced consumption due to the voluntary use of an alternative fuel. The Commission accepted PSNC's recommendation in its February 22, 1991 Order. The Commission has examined that Order and its Appendix A and agrees with PSNC's assertion. The Commission concludes that Rule R6-19.2(f) as published in the 1995 Edition of *North Carolina Public Utilities Laws and Regulations* was in error and the last two sentences should be deleted.

Public Staff also filed Comments on November 17, 1999 and, in paragraph two of its Comments, recommended changes as follows:

(a) Rule R6-2(l) defines "Interruption of service" in terms of pilot light flames being extinguished. Since electronic ignition systems are more prevalent than pilot lights in modern gas appliances, the Public Staff recommends that the definition in the Rule be updated to read:

> "Interruption of service" means any disturbance of the gas supply resulting in the cessation of natural gas service to at least 50 customers.

(b) The Public Staff also recommended that the language used to mark up tariff changes in Rule R6-5.1 should be modernized to include the words "strikeouts" and "redline inserts" rather than "cross-outs" and "italicized inserts."

(c) Rule R6-14 deals with information that must be provided on customers' bills. Subsection (6) now reads, "The date by which the customer must pay the bill in order to benefit from any discount or to avoid any late payment penalty." The Public Staff would revise subsection (6) of the Rule to recognize that discounts are no longer offered by striking the phrase, "to benefit from any discount or" from the Rule.

(d) The Public Staff suggested that the abbreviation "mcf" should be changed to "Mcf" in Rule R6-19.1(a)

(e) The Public Staff suggested that the abbreviation "c.f./hr." should be changed to "cfh" in Rule R6-25(5)(a).

(f) Finally, the Public Staff suggested that the Commission Rule which concerns the adjustment of customers' appliances is obsolete and should be rescinded. The Public Staff listed that Rule as Rule R6-4. The Commission believes that the Public Staff was referring to Rule R6-34 and perhaps just Rule R6-34(c).

The Commission concludes that the changes in abbreviations recommended by Public Staff in subparagraphs (d) and (e) are appropriate and non-controversial and should be accepted.

The Commission appreciates the efforts of the parties to assist in correcting and revising the *North Carolina Public Utilities Laws and Regulations*. It recognizes that the time constraints imposed by the Commission's publishing deadline imposed a burden. The Commission does not wish to make any changes that are not clearly non-controversial unless parties have the opportunity to fully and carefully consider the changes. Therefore, the Commission will err on the side of caution and defer other recommended changes until all parties have had more time to comment and reply. Furthermore, the Commission would like to give the parties more time to consider whether other gas-related Rules should be rescinded, updated, modified or corrected based on solely on obsolescence or error.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rules R1-17(h), R6-2.1, and R6-71 are rescinded.

2. That the abbreviation of "mcf" found in Rule R6-19.1(a) be changed to "Mcf" and the abbreviation of "c.f./hr." found in Rule R6-25(5)(a) be changed to "cfh."

3. That the last two sentences of Rule R6-19.2(f) as published in the 1995 Edition of *North Carolina Public Utilities Laws and Regulations* are deleted.

4. That parties shall file comments on those changes recommended in the November 17, 1999 Comments of the Public Staff and not implemented in this Order and comments on the need to rescind, modify or correct any other gas-related Commission Rule based solely on obsolescence or error on or before February 16, 2000. Reply comments will be due on or before March 17, 2000.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of December, 1999

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

wg120199.01

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider Whether Competitive Intrastate	)	ORDER TO IMPLEMENT
Offerings of Long Distance Telephone Service Should be	)	INTRALATA TOLL
Allowed in North Carolina and What Rules and Regulations	)	DIALING PARITY
Should be Applicable to Such Competition if Authorized	)	

BY THE COMMISSION: On October 1, 1998, AT&T Communications of the Southern States, Inc. (AT&T), made a filing in opposition to the proposed amendment filed by BellSouth Telecommunications, Inc. (BellSouth), with respect to its intraLATA toll dialing parity and implementation plan. AT&T called upon BellSouth to implement intraLATA presubscription in general by February 8, 1999, regardless of whether BellSouth has been granted authority to enter the in-region long distance market.

IntraLATA toll dialing parity refers to the ability of an end-user to designate, or presubscribe to, a preferred telecommunications carrier so that thereafter an intraLATA toll call will route automatically to the preferred carrier without an access code. In practical terms it would allow a customer to make an intraLATA toll call via his preferred carrier by dialing 1 plus the telephone number. Currently, intraLATA competition is permitted in North Carolina, but in BellSouth's territory the customer must dial a 101XXXX access code plus the telephone number in order to utilize a carrier other than BellSouth.

<u>AT&T</u> by way of background, stated that BellSouth had filed revisions to its tariffs on August 10, 1998, proposing <u>interstate</u> intraLATA toll dialing parity in the Wilmington and Charlotte LATAs effective February 8, 1999. AT&T went on to argue that the Telecommunications Act of 1996 (TA96) <u>requires</u> BellSouth to establish intraLATA toll dialing parity by February 8, 1999. AT&T further argued that the Commission has already found intraLATA presubscription to be in the public interest, but that its benefits are unrealized in BellSouth's service territory. It further noted that intraLATA presubscription exists in other local exchange territories in North Carolina, notably those of GTE South, Inc. (GTE) and Carolina Telephone and Telegraph Company (Carolina Telephone) and Central Telephone Company (Central Telephone) and that BellSouth has implemented intraLATA presubscription in other states in the Southeast, including Georgia, Florida, Kentucky, and Mississippi. AT&T maintained that provision of intraLATA presubscription by February 8, 1999, is not burdensome, since BellSouth already has the technical capability in its switches.

In its legal argument AT&T relied on certain provisions of TA96. In Section 251(b)(3), among the obligations of all local exchange carriers, there is the duty "to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays." Section 271(e)(2) specifically addresses Bell operating companies (BOCs). It states in Section 271(e)(2)(A) that a BOC must provide intraLATA toll dialing parity "coincident with its exercise of that [in-region interLATA] authority." But Section 271(e)(2)(B) goes on to say:

> Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after the date of the enactment of the Telecommunications Act of 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

AT&T noted that the Federal Communications Commission (FCC) had required BOCs to implement intraLATA toll dialing parity by February 8, 1999, but that the United States Court of Appeals for the Eighth Circuit had vacated the FCC's dialing parity rules as they apply to intraLATA telecommunications in State of California v. FCC, 124 F.3d 934, 943 (8th Cir. 1997) (California), reasoning that the FCC lacked jurisdiction over intrastate telecommunications matters. This ruling vested in the states the responsibility to enforce the provisions of TA96 relating to intrastate service.

Sprint Communications Company LP (Sprint), on October 8, 1998, filed Comments in Support of AT&T's filing in this matter. Sprint's accompanying Motion to Intervene was unnecessary since Sprint is already a party to Docket No. P-100, Sub 72. Sprint maintained that it was plain that BellSouth has an obligation to provide intraLATA toll dialing parity under TA96 and that, in fact, there is nothing to prevent the Commission from issuing such an Order, so long as it becomes effective on or after February 8, 1999. Furthermore, the California case stands for the proposition that the jurisdiction for imposition of intraLATA dialing parity rests with states. Such dialing parity is clearly in the public interest, especially inasmuch as approximately 98% of all intraLATA calls are intrastate in nature.

WorldCom Technologies, Inc. and MCI Telecommunications Corporation (collectively, MCI) echoed many of the views of AT&T and emphatically denied that there should be any linkage between BellSouth's entry into the interLATA long-distance market and intraLATA presubscription. The issue is no longer "whether" but "when." MCI argued that intraLATA toll dialing parity has benefitted consumers throughout the BellSouth region. MCI also maintained that the Commission should ensure that BellSouth does not discriminate against its competitors when intraLATA toll dialing parity is ordered. For example, customers should be notified of their right to select alternative carriers prior to as well as following the implementation of toll dialing parity.

Telecommunications Reseller's Association (TRA), a national industry organization representing more than 650 telecommunications service providers, supported toll dialing parity by February 8, 1999, as a means of fostering competition and of complying with TA96.

BellSouth, by way of background, stated that its original "IntraLATA Toll Dialing Parity Implementation Plan" (Plan) was filed with the Commission on April 10, 1997, and approved on May 27, 1997. The Plan, which was supported by the Public Staff, stated that BellSouth would provide intraLATA toll dialing parity "when BellSouth is authorized by appropriate State and Federal authorities to provide InterLATA service in North Carolina." The Plan also approved BellSouth's proposed recovery of its costs through a charge on all intrastate originating and terminating access minutes, including intraLATA toll traffic carried over BellSouth's facilities. On August 10, 1998, BellSouth proposed an amendment to the Plan to provide for interstate/intraLATA toll dialing parity in the Wilmington and Charlotte LATAs effective February 8, 1999, in order to comply with relevant FCC rules. In California the Eighth Circuit had stated that its decision to vacate the FCC's dialing parity rules "does not apply to the extent that the Commission's rules govern the very small percentage of intraLATA, toll, interstate telecommunications." (Emphasis in original).

Addressing AT&T's filing, BellSouth maintained that AT&T had misstated the law--contrary to AT&T's view, there is no legal requirement at this time that full intraLATA 1+ presubscription be implemented by February 8, 1999. There is no such requirement in the text of TA96, and the relevant FCC rules that would mandate this result have been vacated. BellSouth argued further that the current dialing requirements do not substantially inhibit competition and that, while companies like Carolina Telephone, Central Telephone, and GTE which have adopted intraLATA toll dialing parity can carry interLATA long distance traffic, BellSouth cannot. Hence, BellSouth would be at a competitive disadvantage. Experience in Georgia and Florida indicates that BellSouth would suffer massive losses in access lines if intraLATA toll dialing parity were approved prior to BellSouth being able to enter into the interLATA market, because AT&T and other interexchange carriers would have a head start in packaging interLATA and intraLATA long distance services. As for other states that have mandated implementation of intraLATA toll dialing parity, BellSouth argued that they were not similarly situated to North Carolina.

Lastly, BellSouth stated that it does not dispute that it can technically implement intraLATA presubscription by February 8, 1999, but it strenuously objected to being required to do so because it would be placed at a grossly unfair competitive disadvantage.

Comments

On October 19, 1998, the Commission issued an Order Seeking Comments on BellSouth Dialing Parity. The Order stated that the sole issue to be addressed is whether this Commission should require BellSouth to provide intrastate intraLATA toll dialing parity by February 8, 1999, and, if not, by what date or under what circumstances. A relevant ancillary issue is how intrastate intraLATA toll dialing parity, if approved, is to be implemented. However, the Commission stated that the issue of cost recovery for intraLATA toll dialing parity is considered to have been settled by the Commission's May 27, 1997 decision, and comments or reply comments would not be received on this issue.

The Commission allowed parties that had not already commented on BellSouth's proposal to do so. Initial and reply comments were filed as follows:

Attorney General argued that while the weight of authority supports the conclusion that Section 271 does not mandate that the Commission require BellSouth to implement intraLATA dialing parity, nevertheless intraLATA dialing parity is in the public interest and should be implemented.

ICG Telecom maintained that the Commission has the authority to order IntraLATA presubscription now and that presubscription will both benefit consumers and promote local exchange competition.

Southeastern Competitive Carriers Association (SECCA) argued that the Commission has the requisite authority to require intraLATA dialing parity and that this would be beneficial to consumers. SECCA denied that mandating dialing parity would be unfair to BellSouth, because BellSouth is already extremely well positioned to compete for local toll customers regardless of its status in the interLATA market. By leveling the intraLATA playing field, intraLATA competition will tend to lead to lower intraLATA toll rates.

Time Warner Telecom of North Carolina, L.P. (Time Warner) argued that the Commission's authority to require intraLATA toll dialing parity is clear and that it should be implemented.

Reply Comments

Sprint stated that it agreed with the Attorney General's comments that intraLATA dialing parity is in the public interest, but disagreed with the Attorney General's view that, legally, Section 271 does not mandate that BellSouth implement dialing parity. Sprint pointed out that Section 251(b)(3) requires all local exchange companies to provide toll dialing parity, while Section 271(e)(2)(B) simply provides a grace period for BOCs for such implementation until February 8, 1999. Read as a whole, these section require BOCs to implement toll dialing parity by February 8, 1999, regardless of whether they can compete in the long distance market.

TRA argued that the Commission clearly has authority to institute intraLATA toll dialing parity by February 8, 1999, although TRA concedes that state commissions are not necessarily mandated to do so by that date. TRA further argued that instituting dialing parity is in the public interest and that BellSouth's argument that it would be competitively disadvantaged is specious. The consumer would be clearly benefited by requiring intraLATA toll dialing parity as soon as practicable.

Public Staff took a somewhat different perspective from the other parties in its recommendations. Legally, the Public Staff said, the Commission has the flexibility to order intraLATA toll dialing parity as of February 8, 1999, or some other date after that. The pertinent question is what the Commission should do. While acknowledging that toll dialing parity is beneficial to consumers, the Public Staff also believed that "[i]t seems unfair to give BellSouth's competitors the ability to package interLATA and intraLATA toll services before BellSouth can compete on the same basis." The Public Staff was also uncertain that there would not be a negative impact on local rates. Accordingly, the Public Staff proposed that the Commission order BellSouth to implement intraLATA toll dialing parity on January 15, 2000, or when BellSouth receives interLATA authority, whichever is earlier, provided that BellSouth amends its Plan, effective February 8, 1999, to provide intraLATA toll and expanded local calling rate reductions to the levels that are approximately equivalent to those presently being enjoyed by BellSouth customers in other states where intraLATA toll dialing parity has been implemented. Furthermore, the Commission should not approve any such rate reductions until its receives complete and unconditional assurances from BellSouth that it will not attempt to recover any resulting revenue losses under its pricing regulation plan, either through rate rebalancing within the various service categories or through the governmental action provision.

If BellSouth has not filed and received approval of such amendments and rate reductions by February 8, 1999, the Commission should order BellSouth to implement intraLATA toll dialing parity forthwith.

As for BellSouth's proposal regarding interstate, intraLATA dialing parity, the Public Staff recommended that this be implemented concurrently with intraLATA toll dialing parity to avoid customer confusion.

BellSouth reiterated its arguments that the Commission has the flexibility to delay implementation of toll dialing parity beyond February 8, 1999, and that it would be grossly unfair to require BellSouth to do so when its competitors enjoy substantial advantages in the packaging of services, while BellSouth lacks interLATA authority.

AT&T repeated its view that federal law requires BellSouth to implement intraLATA presubscription by February 8, 1999, and that such an action would be beneficial to the using and consuming public. AT&T also made a number of recommendations concerning the ancillary issue as to how intraLATA dialing parity should be implemented.

MCI and SECCA, filing jointly, argued that public policy, public interest, and TA96 all require that intraLATA toll dialing parity be implemented by February 8, 1999. Furthermore, as of February 8, 1999, any "linkage" between in-region interLATA authority and implementation of intraLATA toll dialing parity ceases to exist. MCI and SECCA noted that a number of states have ordered BOCs to implement intraLATA toll dialing parity, including Georgia, Florida, Kentucky, Louisiana, Mississippi, Washington, and Oregon.

Comments on Public Staff Proposal

On December 1, 1998, the Commission issued an Order seeking comments on the Public Staff's proposal set forth in its Reply Comments.

AT&T emphasized its belief that BellSouth has a legally binding obligation to provide intraLATA toll dialing parity by February 8, 1999, and that swift implementation of toll dialing parity will benefit end-users significantly. AT&T also argued that the Commission lacks legal authority to delay implementation of interstate intraLATA presubscription, since the FCC rules on this subject remain legally valid.

BellSouth stated that it disagreed with the Public Staff's proposal and urged the Commission to implement intrastate toll dialing parity on the date BellSouth enters the interLATA market. While gratified with the Public Staff position that intraLATA toll dialing parity is not legally required as of February 8, 1999, as well as the Public Staff's view that implementing dialing parity prior to BellSouth's entrance into the interLATA long distance market would work unfairness, BellSouth nevertheless emphasized its view that interLATA long distance authority should come before toll dialing parity. Moreover, BellSouth observed that North Carolina end-users enjoy the benefits of the defined-radius and defined-area plans and can utilize alternative carriers through dialing around--a practice which interexchange carriers vigorously promote in other contexts.

Sprint insisted that BellSouth is legally bound to implement intraLATA toll dialing parity on February 8, 1999 and that the rate reduction proposal of the Public Staff is no substitute for competition. IntraLATA toll dialing competition has brought down rates in other states, such as Florida.

TRA argued that the Public Staff's proposal would lengthen BellSouth's dominance over the intraLATA toll market and would not be beneficial to end-users.

SECCA and MCI, commenting jointly, maintained that the Public Staff's proposed implementation date of January 15, 2000, is arbitrary and without the support of law or policy and that competition, not continued regulation, will most benefit end-users. The Commission should also proceed with implementation of the interstate aspect of intraLATA toll dialing parity.

Concord Telephone Company (Concord), while taking no position on the substantive matter in this docket, expressed concern regarding the Public Staff's proposal. Concord argued that the Public Staff's proposal was neither logically nor legally related to the issue in this docket and was seeking to "retrade complex revenue and pricing issues" already approved in Docket No. P-55, Sub 1013, thereby reducing BellSouth's pricing flexibility. Moreover, the current status of this proceeding does not provide an adequate basis upon which to approve the Public Staff proposal.

Public Staff replied that it was its proposal that, if BellSouth did not accept the conditions that the Public Staff set out, BellSouth should implement intraLATA toll dialing parity immediately. The Public Staff stated that it did not believe that the Commission could impose those conditions under the Price Plan without BellSouth's consent but that it could order BellSouth to implement intraLATA toll dialing parity effectively February 8, 1999, or as soon thereafter as possible. The Public Staff argued that public policy considerations, on balance, favor such action.

WHEREUPON the Commission reaches the following

CONCLUSIONS

There are two main questions in this matter. The first is whether BellSouth is required by law to provide intraLATA toll dialing parity by February 8, 1999. The second is, assuming the February 8th date is not required, when the appropriate date is. An ancillary issue is the date on which implementation of interstate intraLATA toll dialing parity should be required.

There are several distinct views on the above matters. Those aligned with AT&T insist that BellSouth is legally required to provide intraLATA toll dialing parity by February 8, 1999. BellSouth and the Public Staff take the view that the implementation of intraLATA toll dialing parity by February 8, 1999, is not legally required. BellSouth argues that the date of toll dialing parity should be connected with its receiving authority to provide interLATA long distance service. The Public Staff has initially suggested approximately a year's delay, coupled with BellSouth's agreeing to reduce intraLATA toll rates.

It is the Commission's view that it possesses flexibility in setting the date by which BellSouth must provide intraLATA toll dialing parity. Section 251(b)(3) of TA96 imposes a duty on all local exchange companies to provide dialing parity to competing providers, but does not specify a timetable for doing so. Section 271(e)(2) specifically addresses intraLATA toll dialing parity by BOCs, but it is the Commission's judgment that the plain language of this section only acts to preclude a state commission, with certain exceptions, from requiring a BOC to implement intraLATA toll dialing parity before February 8, 1999. After that date there is no connection between whether a BOC has received authority to provide in-region interLATA long distance service and whether intraLATA toll dialing parity can be imposed. The FCC sought to impose rules that would have required BOCs to implement such dialing parity by February 8, 1999, but these rules were struck down in California. This ruling simply had the effect of vesting in the states the sound discretion as to when, on or after February 8, 1999, a BOC should be required to implement intraLATA toll dialing parity.

Assuming, then, that the Commission possesses discretion as to the date on which it can require intraLATA toll dialing parity, the next question is: when?

At this point, the Public Staff recommendation that intraLATA toll dialing parity be delayed until January 15, 2000, if BellSouth agrees to reduce intraLATA toll rates, does not appear any longer to be an option. BellSouth is not agreeable to reducing its intraLATA toll rates, and the Public Staff accurately observes that the Commission cannot unilaterally force BellSouth to do so. Therefore, this proposal is "off the table."

Accordingly, it is the Commission's conclusion that BellSouth be required to provide intraLATA toll dialing parity (including the interstate component) by February 8, 1999, in accordance with the provisions of its Plan.

The argument in favor of requiring BellSouth to implement intraLATA toll dialing parity by February 8, 1999, is that doing so is clearly in the public interest in that it would foster competition and level the playing field with respect to the provision of intraLATA toll traffic. The present system in which BellSouth can carry intraLATA toll traffic when its customers simply dial 1+, while competitors are relegated to offering the same service through 101XXXX, clearly puts the competitors at a relative disadvantage and inconveniences their customers. Abolition of this anomaly is certainly in the public interest and is in accordance with the pro-competitive policies enunciated in TA96 and House Bill 161.

While conceding that it can technically provide toll dialing parity by February 8, 1999, BellSouth wants to tie the imposition of dialing parity to its receiving authority to provide in-region interLATA long distance authority and complains that it would be otherwise competitively disadvantaged and would lose customers. As noted above, there is no necessary legal connection between the two after February 8, 1999. To do so would amount to postponing intraLATA toll dialing parity by BellSouth indefinitely. This would be unacceptable. The Commission and all the parties to this docket are abundantly acquainted with the Section 271 process and how it "grinds slow and exceeding fine"--so slowly and so finely that no BOC has yet been granted authority to provide interLATA long distance service by the FCC. Mandating intraLATA toll dialing parity by BellSouth will put BellSouth and its competitors on an even footing regarding dialing arrangements. The fact that BellSouth lacks the authority to package its services with the degree of flexibility that its competitors have is an artifact of telecommunications history over which this Commission has no dispositive control. It is unfair to deprive North Carolina customers of the benefits of intraLATA dialing parity contingent upon an event which may or may not happen in the foreseeable future.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth implement intraLATA toll dialing parity by no later than February 8, 1999, in accordance with the provision of its Plan.

2. That the tariff revisions regarding interstate intraLATA toll dialing parity, filed August 10, 1998, be approved, with implementation by no later than February 8, 1999.

3. That all certified interexchange carriers be hereby authorized to offer intraLATA presubscription (1+, 0+, and 1+NXX+555-1212 calling) to BellSouth customers in North Carolina effective February 8, 1999.

4. That BellSouth shall provide a Public Notice to be mailed to all its customers informing them of their ability to choose intraLATA carriers and of the process for such selection. BellSouth shall consult with the Public Staff on both the Public Notice and the script for informing customers subscribing to local exchange service.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of January, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz010499.04

Commissioners William Pittman and Richard Conder dissented.

DOCKET NO. P-100, SUB 72
DOCKET NO. P-55, SUB 1013
DOCKET NO. P-7, SUB 825
DOCKET NO. P-10, SUB 479
DOCKET NO. P-19, SUB 277

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 72 In the Matter of Investigation to Consider Whether Competitive Intrastate Offerings of Long Distance Telephone Service Should Be Allowed in North Carolina and What Rules and Regulations Should be Applicable to Such Competition if Authorized DOCKET NO. P-55, SUB 1013 In the Matter of Application of BellSouth Telecommunications, Inc., for and Election of, Price Regulation DOCKET NO. P-7, SUB 825 DOCKET NO. P-10, SUB 479 In the Matter of Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plan Pursuant to G.S. 62-133.5 DOCKET NO. P-19, SUB 277 In the Matter of Application of GTE South Incorporated, for, and Election of, Price Regulation	ORDER INFORMING FACILITIES-BASED INTEREXCHANGE CARRIERS OF TARIFF FILING REQUIREMENTS

BY THE COMMISSION: On June 25, 1996, the Commission issued an Order requiring all long distance carriers which are required to file tariffs with the Commission to file tariff revisions to flow through the access charge reductions approved by the Commission for BellSouth, Carolina Telephone, and Central Telephone. Companies not receiving access charge reductions were to inform the Commission of such. The Commission's Order also provided that any company wishing to file an alternative flow through proposal for the 1997 access charge reductions should do so 60 days prior to the date the future access charge reductions are scheduled to become effective. AT&T, MCI, and Sprint filed alternative flow through proposals.

GENERAL ORDERS - TELECOMMUNICATIONS

On June 18, 1997, the Commission issued an Order ruling on the three proposals finding that the flow through of the 1997 access charge reductions by AT&T, MCI, and Sprint should be accomplished by reducing all services that utilize switched access on a pro rata basis based on minutes of use. Other companies were permitted to flow through the access charge reductions to basic residential and business MTS rates or to implement the flow through on all services utilizing switched access service. Companies were allowed to exempt services for which the results would be de minimis and it would be administratively burdensome to accomplish the rate reduction.

On June 24, 1998, further reductions to the access charges imposed by BellSouth, Carolina Telephone and Central Telephone became effective. On June 24, 1999, BellSouth will implement a further switched access reduction of approximately $15 million. The filing by BellSouth will be the fourth annual filing made to reduce switched access charges by one or more of the incumbent local exchange companies.

The Public Staff presented an item at the Commission's May 15, 1999, Agenda Conference requesting that an order be issued informing the facilities-based long distance carriers, that is, those long distance carriers that are still required to file and maintain tariffs with the Commission, of BellSouth's pending switched access reduction. The Public Staff noted that not all long distance companies have made timely filings to flow through prior access charge reductions as ordered by the Commission.

It was the Public Staff's recommendation that the Commission issue an order informing the facilities-based long distance carriers of BellSouth's access charge reduction which becomes effective on June 24, 1999, and stating that those carriers should submit tariff filings, along with any required supporting workpapers, by June 24, 1999, to pass through the access charge reductions to end users.

IT IS, THEREFORE, ORDERED that the facilities-based long distance carriers be informed that BellSouth will be reducing one or more rates of its switched access service effective on June 24, 1999, and that the facilities-based long distance carriers should submit proposed tariffs, and supporting workpapers if previously required, by June 24, 1999, in order to pass through the access charge reductions to end users.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of May, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz051799.03

DOCKET NO. P-100, SUB 72
DOCKET NO. P-55, SUB 1013
DOCKET NO. P-7, SUB 825
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DOCKET NO. P-19, SUB 277

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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In the Matter of
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DOCKET NO. P-55, SUB 1013

In the Matter of
Application of BellSouth Telecommunications, Inc., for, and Election of, Price Regulation

DOCKET NO. P-7, SUB 825
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Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plan Pursuant to G.S. 62-133.5

DOCKET NO. P-19, SUB 277

In the Matter of
Application of GTE South, Inc., for, and Election of, Price Regulation</td><td>)</td><td>ORDER GRANTING PETITION FOR SIMPLIFIED REVIEW AND APPROVAL OF FLOW-THROUGH OF ACCESS CHARGE REDUCTIONS</td></tr>
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BY THE COMMISSION: On June 2, 1999, AT&T Communications of the Southern States, Inc. (AT&T), Sprint Communications Company L.P. (Sprint), and MCI Telecommunications Corporation (MCI WorldCom), collectively referred to as the Joint Petitioners, filed a Petition with the Commission requesting that the Commission adopt a simplified and streamlined process for review and approval of the flow-through of reductions in intrastate switched access charges pursuant to the Commission's May 2, 1996 Price Regulation Orders. The next and final reduction in access charges under the Price Regulation Plans will occur on June 24, 1999.

The Joint Petitioners state that their proposed simplified methodology does not represent a major departure from the principles and underlying assumptions of the current flow-through process under the Price Regulation Orders. The Joint Petitioners state that they agree that any flow-through mechanism should reflect the following guiding principles:

(1) Interexchange carriers (IXCs) should flow-through access charge reductions to their customers;
(2) IXCs should flow-through access charge reductions on an aggregate dollar-for-dollar basis;
(3) Residential customers should receive their fair share of access charge reductions; and
(4) IXCs should provide support to verify that the reductions are flowed-through.

The Joint Petitioners further maintain that the proposed methodology will simplify the process for more prompt Commission approval of flow-throughs, permit IXCs the flexibility to respond to market forces, and result in consumers seeing the benefits of access charge reductions sooner, while ensuring that residential customers receive the benefits of the access charge reductions.

By Orders dated June 2 and June 25, 1996, the Commission found that IXCs should flow-through the access charge reductions resulting from BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina), and Central Telephone Company's (Central) Price Regulation Plans by reducing basic residential and business Message Toll Service (MTS) rates on a dollar-for-dollar basis. By Order dated June 18, 1997, the Commission ruled on alternative flow-through proposals filed by AT&T, MCI and Sprint. The Commission ruled that AT&T, MCI and Sprint should flow through the access charge reductions to all services that utilize switched access on a pro rata basis based on minutes-of-use with the exception of those services for which the flow through would produce a de minimis result and would be administratively burdensome. The Commission's Order was generally consistent with the recommendations of the Public Staff and the Attorney General. The Joint Petitioners state in their Petition that the current regime of "pro rata" flow-through strains the Public Staff's and the parties' administrative resources, without a corresponding benefit to the using and consuming public. The Joint Petitioners also state that they have consulted with the Public Staff on this matter, and the Public Staff has authorized the Joint Petitioners to advise the Commission that it will not oppose the proposal.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission believes that it is appropriate to grant the Joint Petitioners' Petition in this regard. The Commission notes that the scheduled June 24, 1999 access charge reductions in these dockets are the final round of such reductions under the Price Regulation Plans.

IT IS, THEREFORE, ORDERED as follows:

1. That the Joint Petitioners' Petition for Simplified Review and Approval of Flow-Through of Access Charge Reductions is hereby granted.

2. That the Companies shall file supporting workpapers of the flow-through to the Public Staff for its review.

3. That other companies are allowed to flow-through the access charge reductions to basic residential and business MTS rates or to implement the flow-through based on the Joint Petitioners' simplified methodology.

ISSUED BY ORDER OF THE COMMISSION.
This the __15th__ day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

bc061499.01

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider Whether	)	
Competitive Intrastate Offering of Long	)	
Distance Telephone Service Should Be	)	ORDER REQUIRING FILING
Allowed in North Carolina and What	)	OF INTRALATA TOLL
Rules and Regulations Should Be	)	DIALING PARITY PLANS
Applicable to Such Competition if	)	
Authorized	)	

BY THE COMMISSION: Subsequent to its Local Competition Second Report and Order, the FCC issued Order FCC 99-54 in CC Docket No. 96-98 (the Order), on August 8, 1998, which orders all Local Exchange Carriers (LECs) to submit a plan for the implementation of IntraLATA Toll Dialing Parity to the state regulatory commission for each state in which it provides telephone exchange service. The FCC defines LEC as "...any person that is engaged in the provision of telephone exchange service or exchange access..." which includes Competing Local Providers (CLPs). Any LEC who fails to file a plan with this Commission or the FCC as required by the Order is in violation of FCC rules.

The Plans are ordered to be filed pursuant to Section 251(b)(3) of the Telecommunications Act of 1996 (the Act). The Order provides for the filing of such plans with the state commission by

April 22, 1999, and approval or rejection by the state commission by June 22, 1999, after which the company may file the plan with the FCC for approval.

At the Regular Commission Conference of June 14, 1999, the Public Staff recommended that the Commission order any CLP who currently has end users in this State to which it provides basic local exchange service, or who plans to offer such service to end users within 60 days, to file an IntraLATA Toll Dialing Parity Plan and associated notices with this Commission no later than June 30, 1999, and for any CLP who does not have any local end users to file a Plan no later than 60 days prior to provisioning local telephone service. Those carriers reselling prepaid local exchange service who have been granted a waiver of the portion of Commission Rule R17-2(f) which requires access to all standard dialing patterns and do not offer 1+ or 0+ access to toll services, would not be required to file such a Plan.

IT IS, THEREFORE, ORDERED that any CLP, who does not hold a waiver of portions of Rule R17-2(f), who currently has end users in this State to which it provides basic local exchange services or who plans to offer such service to end users within 60 days, shall file an IntraLATA Toll Dialing Parity Plan and associated notices with this Commission no later than June 30, 1999, and any CLP who does not now have any basic local exchange services end users in this State shall file a Plan no later than 60 days prior to provisioning basic local exchange service with 1+ or 0+ access to toll services.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

mz061499.03

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Investigation to Consider Whether Competitive Long Distance Telephone Service Should be Allowed in North Carolina and What Rules and Regulations Should be Applies to Such Competition if Authorized	))))	ORDER OF CLARIFICATION REGARDING RESELLER EXEMPTIONS

BY THE CHAIR: On December 23, 1998, the Commission issued an Order Relaxing Regulation of Resellers, one of the major purposes of which was to place switchless and switched resellers under the same regulatory and certification regime. Our previous Order Concerning Reduced Regulation for Switchless Resellers issued on January 10, 1996, in this docket provided in Ordering Paragraph No. 1 (a)-(o) exemption for switchless resellerS exemption from various statutes and rules, including subsection (m) that switchless resellers would be exempt from the provisions of G.S. 62-160 through 62-179 (i.e., Article 8, Securities Regulation). The Chair wishes to clarify that it was the intent of our December 23, 1998, Order Relaxing Regulations of Resellers that switched resellers should be likewise exempt from the various statutes and rules set out in Ordering Paragraph No. 1 (a)-(o) of January 10, 1996, Order Concerning Reduced Regulation for Switchless Resellers.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz061799.05

DOCKET NO. P-100, SUB 84b

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of North Carolina Payphone Association	)	ORDER
for Review of Local Exchange Company Tariffs	)	RULING ON
for Basic Payphone Service	)	PETITION

BY THE COMMISSION: On March 20, 1997, the North Carolina Payphone Association (NCPA) filed a petition requesting the Commission to review the various local exchange company (LEC) tariffs for basic payphone service to determine whether those tariffs are in compliance with the Telecommunications Act of 1996 (TA96 or the Act).

FEDERAL REQUIREMENTS

Section 276 of TA96 prohibits Bell Operating Companies from subsidizing their payphone service directly or indirectly from their telephone exchange service operations or exchange access operations and from discriminating in favor of their payphone services. This section also requires the Federal Communications Commission (FCC) to adopt regulations which:

> (a) establish per-call compensation to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphones;
>
> (b) discontinue the intrastate and interstate carrier access charge payphone service elements and all intrastate and interstate payphone subsidies;

(c) prescribe a set of nonstructural safeguards for Bell Operating Company payphone service;

(d) determine whether public interest payphones should be maintained and, if so, provide that such payphones are supported fairly and equitably.

The FCC implemented the payphone provisions of TA96 in CC Docket No. 96-128, through its *Report and Order* and its *Order on Reconsideration* requiring LECs to file intrastate tariffs for payphone services which are: (1) cost based, (2) consistent with the requirements of Section 276 with regard to the removal of subsidies from exchange and exchange access services, and (3) nondiscriminatory. In reviewing such tariffs, the FCC mandated the use of the new services test prescribed at 47 C.F.R. Section 61.49(g)(2):

(g) Each tariff filing by a local exchange carrier subject to price cap regulation that introduces a new service or a restructured unbundled basic service element (BSE), as defined in Sec. 69.2(mm) of this chapter, that is or will later be included in a basket, or that introduces or changes the rates for connection charge subelements for expanded interconnection, as defined in Sec. 69.121 of this chapter, must also be accompanied by:

(1) The following, including complete explanations of the bases for the estimates.

(i) A study containing a projection of costs for a representative 12 month period; and

(ii) Estimates of the effect of the new tariff on the traffic and revenues from the service to which the new tariff applies, the carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in paragraph (h)(1)(a) of this section.

(2) Working papers and statistical data.

(i) Concurrently with the filing of any tariff change or tariff filing for a service not previously offered, the Chief, Tariff Review Branch must be provided two sets of working papers containing the information underlying the data supplied in response to paragraph (h)(1) of this section, and a clear explanation of how the working papers relate to that information.

(ii) All statistical studies must be submitted and supported in the form prescribed in Sec. 1.363 of the Commission's rules.

COMMISSION PROCEEDINGS

The NCPA's petition asked that the Commission order the various LECs to file information on investment, expenses, and revenues related to payphone services so as to allow the evaluation of the tariffs filed by these companies and determination of any subsidies in those tariffs, and to require them to submit the cost information required by the new services test. The Commission issued an Order on March 31, 1997, requesting comments addressing the procedure to be followed in dealing with the NCPA's petition. Comments were filed by The Alliance of North Carolina Independent Telephone Companies (The ALLIANCE); ALLTEL Carolina, Inc.; BellSouth Telecommunications, Inc. (BellSouth); Carolina Telephone and Telegraph Company and Central Telephone Company (Carolina/Central); GTE South, Incorporated (GTE South); the NCPA; and MCI Telecommunications Corporation. On April 21, 1997, the Commission issued an Order requesting reply comments. Reply comments were filed by The ALLIANCE, BellSouth, Carolina/ Central, GTE South, the NCPA, AT&T Communications of the Southern States, Inc., and the Public Staff.

On May 15, 1997, the Commission issued an Order (1) requiring any LEC finding that its existing payphone rates do not meet the requirements of the new services test to file revised rates and supporting data with the FCC, and (2) requiring all LECs except BellSouth to file a statement with the Commission of their conclusions regarding the existence of any subsidy to LEC payphone operations in their intrastate rates.

By letter to the Commission dated September 12, 1997, the FCC stated that the Commission had not "affirmatively concluded" on the basis of a review of all payphone filings for existing service rates that the rates satisfied the requirements of TA96, but rather the Commission had relied on the recommendation of the Public Staff and the certifications of the LECs in reaching that conclusion. The FCC stated its intention to require the federal tariffing and federal review of any incumbent LEC payphone services offered in North Carolina. On March 20, 1998, the FCC's Common Carrier Bureau ordered all North Carolina LECs to file payphone tariffs with the FCC.

On April 29, 1998, BellSouth, on behalf of itself and fourteen other telephone companies (the NC Telcos), filed a motion asking the Commission to reconsider its May 15, 1997, Order. The NC Telcos stated their opinion that the Commission had not intended to cede jurisdiction over intrastate payphone rates, but rather had intended that the FCC review LEC costs and revenues to ensure compliance with the new services test. The NC Telcos asked the Commission to agree to review the new services test information for intrastate payphone services so as to maintain jurisdiction over these rates and services.

By Order of April 30, 1998, the Commission requested comments and reply comments on the motion for reconsideration. Comments were filed by the NCPA; Peoples Telephone Company, Inc., d/b/a PTC; Communications Central, Inc.; Pay Tel Communications, Inc.; Phone Tel Technologies, Inc.; and the Public Staff.

On May 27, 1998, the NCPA filed a motion asking the Commission to review the newly filed payphone rates of the LECs if it granted the NC Telcos' motion and elected to review existing payphone tariffs for compliance with the FCC's new services test.

By letter dated June 17, 1998, the Commission notified the FCC of its intent to review the rates for existing payphone service offerings in North Carolina.

On July 1, 1998, the NCPA filed a request for oral argument on the NC Telcos' motion for reconsideration of the May 15, 1997, Order.

On July 10, 1998, the Commission issued an Order granting the NC Telco's motion for reconsideration and denying the NCPA's motion for reconsideration and its request for oral argument. Adopting the "streamlined surrogate cost approach" proposed by the Public Staff, the Commission stated that it would:

1. Require the four major LECs to select studies already done with respect to existing business services in the context of Docket No. P-100, Sub 133b, and Sub 133d, to adjust those costs to capture the unique characteristics of payphone service provider (PSP) offerings, and to file those studies with the Commission within 45 days from the receipt of the FCC rescission of its March 20, 1998, order and related orders;

2. Require the Public Staff to make its recommendations based on the filings of the LECs, including whether the studies comply with the new services test and whether they are applicable to other LECs, in the form of a filing no later than two months from the submissions of the LECs;

3. Allow interested parties to make comments and reply comments on the studies and the Public Staff's recommendation no later than two months thereafter; and

4. Render a decision as soon as practicable thereafter.

On September 14, 1998, the LECs filed their studies as required. The Public Staff filed its comments and recommendations on December 4, 1998, and the NCPA filed its comments on February 15, 1999. Reply comments were filed by BellSouth, Carolina/Central, GTE South, and the Public Staff. On March 18, 1999, the NCPA filed further comments and a statement of supplemental authority. Proposed Orders were filed on April 12, 1999, by the NCPA, Carolina/Central, GTE South, BellSouth, and the Public Staff.

SUMMARY OF COMMENTS

Public Staff: The question before the Commission is twofold: whether there is a federal requirement that the current PSP rates be lowered and whether a reduction to a level closer to the LECs' costs of providing PSP services would have a net positive effect on end users of telecommunications services in North Carolina. The FCC's pricing standard for PSP services is the new services test. The FCC has given the states no further direction on what constitutes a reasonable allocation of overhead costs. The FCC has made it clear, however, that the pricing standard under Section 276 of the Act is not the standard under Section 252, which is the source of the FCC's TELRIC methodology.

Application of the new services test involves the analysis of cost/price ratios. The Public Staff calculated cost/price ratios for the various PSP rates using cost studies from the UNE pricing docket, appropriately adjusted for this purpose, and analyzed those ratios by comparing them with cost/price ratios of rates allowed to become effective by the FCC under the same test. The cost to price ratio of the existing PSP services reflects a reasonable allocation of overhead cost to these services and therefore the existing tariffs for payphone services offered by the four LECs comply with the new services test as required by the FCC. The Public Staff also extended its study to PSP services of the other 12 LECs and concluded that the other LECs' existing tariffs for payphone services also comply with the new services test.

There are other rates besides PSP rates which contain significant contribution to basic local rates. There is no more justification for reducing PSP rates than there is for reducing rates for large businesses and other end users who contribute to universal service. The Commission is moving toward reducing implicit subsidies in all telephone rates in the universal service proceeding. Each dollar that is removed from PSP rates will ultimately have to be added to rates for services offered to other rate payers. Reductions in PSP rates may lead to additional payphones or higher commissions to property owners but will not lead to reduced rates for end users because of the nature of the market itself.

NCPA: The LECs continue to have effective monopolies with respect to the provision of payphone lines. Local competition has not yet brought a competitive choice to PSPs, who have only one option -- buying access lines from their principal competitor, the incumbent LEC. The LECs have every incentive to charge what the market will bear. While PSPs are paying excessive rates to their principal competitor, the LECs are in effect paying the rates to themselves -- a win-win situation for the LECs and a lose-lose situation for the independent PSPs.

The payphone market today is less competitive now than it was a few years ago, in large part due to the excessive payphone access rates paid by PSPs. The payphone market is in a crisis. PSP margins have eroded due to high access line prices and competition from cellular providers and dial-around traffic. At the same time, BellSouth is bringing in "gangbuster" earnings.

Existing rates for payphone services were set on the basis of traditional rate-of-return rate setting mechanisms. The access line rate formula utilized by the Commission in its original payphone access proceedings is still in effect today. As a result, payphone access rates reflect an outdated and now disapproved rate setting methodology. This traditional rate analysis is inconsistent with the new services test, which is cost based rather than rate-of-return based and is designed to reduce rates to levels which are at economic cost.

The new services test is a bottoms-up test that established a price ceiling. It was adopted because the FCC recognized that LECs have the incentive and the ability to charge their payphone competitors excessive rates. The FCC initially established the new services test in an effort to set the proper rates for BSEs in the context of the Open Network Architecture proceeding. The FCC adopted this methodology as a condition to allow LECs to offer enhanced retail services in competition with competitive enhanced service providers in the Computer III proceedings.

Taken as a whole, the new services test is functionally equivalent to the TELRIC pricing standard recommended by the Public Staff and adopted by the Commission in the UNE proceeding. The standard set out by the FCC for review of payphone line access tariffs is nearly identical to the UNE standard set forth in Section 252(d) of the Act. The principles at issue in this proceeding are no different from the principles underlying the UNE proceeding. Just as the Commission rejected the LECs' request for historical and embedded cost recovery in that proceeding, the Commission must reject the same request in this proceeding.

The following adjustments must be made to the LECs' filings in order to conform to the pricing standard established by the FCC:

1. Loop costs must be adjusted to recognize the business nature of payphone access lines by eliminating residential loops from the cost studies. Any unbundling cost associated with the loops must also be removed.

2. The usage component of payphone access line rates must be separately justified and reduced to cost-based levels.

3. The costs from the UNE proceeding, which already include overhead and return, constitute the maximum permissible rate under the new services test. Neither the LECs nor the Public Staff have shown any basis for departing from the overhead loading and return factors approved by the Commission in that proceeding.

4. Because the LECs base the price of payphone access lines on unseparated costs which recover the full cost of the local loop, the total allowable rate for payphone access line access must include the access charges which are intended to compensate the LECs for a portion of the cost of the loop. Otherwise, the LECs will double recover the cost of the loop.

5. Other additional charges, such as touchtone, which duplicate costs already built into the payphone access line rate must be prohibited or else the payphone access line rate must be reduced by the amount of the additional charge.

The cost/price ratio analysis of the LECs and the Public Staff is inaccurate and misleading. Ratios are not a substitute for bottoms-up analysis. The ratio is one means the FCC uses to evaluate the reasonableness of the overhead loading. There is no need to engage in a ratio analysis here. The Commission has already approved overhead loadings for BellSouth, GTE South, and Sprint in the UNE proceeding, and the LECs have submitted those same loadings in this proceeding and not attempted to justify any greater loadings.

The tariffs cited by BellSouth and the Public Staff were not approved by the FCC. When BellSouth filed the various tariff revisions, the FCC made no affirmative finding that the filings were in compliance with the new services test. Since BellSouth concedes that none of these services truly captures the unique characteristics of PSP offerings, all of the cost/revenue ratios for these other services are irrelevant to support the cost/revenue ratio for PSP service.

Neither the LECs nor the Public Staff cites any of the cases in which the FCC has performed a new services test analysis. These cases show that the context of the particular rate is critical to the new services test determination. Where the Commission approved an overhead markup of 50% or greater, the rate was much smaller than the rate at issue here and had a smaller impact on the overall price of the element. Loadings proposed by the LECs in this proceeding exceed the majority of the loadings previously approved by the FCC. In the end, however, an examination of particular overhead loading ratios is irrelevant, since the Commission has already approved overhead loadings for these LECs in the UNE proceeding.

The LECs are asking the Commission to approve an enormous "gouge" factor, since their existing PSP access line and usage rates exceed the maximum legal rate under the bottoms-up approach required by the FCC by amounts ranging from 23% to 619%.

None of the LECs submitting cost information has conducted a new services test analysis specific to access lines in confinement facilities. All payphone access lines are subject to the pricing methodology set forth in the FCC's Payphone Orders. The Public Staff concedes that confinement facility rates were established to provide contribution to other services. Those rates must also be reduced to cost-based levels.

It is premature to apply an analysis of the four largest LECs to the payphone access lines of other LECs. The FCC's Payphone Orders require that all LEC payphone access line tariffs be reviewed for compliance with the new services test. This proceeding will provide guidance to the review that will apply to the other LECs.

The LECs' filings fail the test set out by the FCC in the Payphone Orders. The Commission should order each LEC to reduce its payphone access line and usage rates to the legal rates and to provide refunds to NCPA members from April 15, 1997, when the LECs were to have implemented tariffs complying with the FCC's pricing standard.

BellSouth: The Payphone Orders require that BellSouth's intrastate tariff rates for its payphone lines be (1) cost based, (2) consistent with the requirements of Section 276, (3) nondiscriminatory, and (4) in compliance with the new services test. The costing standards of Sections 251 and 252 of the Act are inapplicable.

The FCC established the new services test around 1991 as a result of its adoption of price cap rules. The FCC concluded that a flexible, cost-based approach was the best way of controlling both excessive pricing and discrimination. Recognizing the LECs' need to break even on new services, the FCC has allowed prices based on non-uniform overhead loadings.

In deciding whether prices meet the new services test, the FCC considers cost/price ratios. The cost/price ratios of the PSP services in question are within the cost/price ratios previously accepted by the FCC. It is within the Commission's discretion to determine what is an appropriate level of overhead loading for existing PSP services. Based on the FCC's application of the new services test and the costs submitted in this docket, the Commission can easily find that BellSouth's and other LECs' rates comply with the new services test.

If all service prices were set at incremental cost, firms like BellSouth with relatively high fixed shared and common costs and relatively low service specific incremental costs would fail to recover all of their costs. In light of BellSouth's cost structure and the FCC's interpretation of what constitutes reasonable loadings, the markups on current payphone rates are reasonable.

Business rates have traditionally been priced to recover direct and overhead costs and to provide support for universal service. Until the transition from implicit to explicit subsidies envisioned in Section 254 of the Act is complete, it would be premature and unwise to eliminate the implicit subsidies in BellSouth's PSP rates.

BellSouth's PSP rates are nondiscriminatory. BellSouth set up BellSouth Public Communications, Inc. (BSPC) and removed all subsidies of its payphone service from its telephone exchange service operations as required by Section 276 of TA96. Removal of these subsidies has been approved by the Commission. Monies paid by PSPs for tariffed services provided by BellSouth do not fund BSPC. BellSouth's Comparably Efficient Interconnection Plan describing how it will not discriminate in providing payphone service has been approved by the FCC. BellSouth offers the same tariffed services at the same terms and conditions to its own payphone affiliate that it offers to other PSPs.

Carolina/Central: The rates in question are not new rates. Carolina/Central's Public Telephone Access Service (PTAS) rates were originally established in 1986 and have been in effect since 1987. These rates were established pursuant to evidentiary hearing and are prima facie just and reasonable. This was confirmed by the Commission in 1996 in connection with Carolina/Central's price regulation plan. The burden of proof is on the NCPA.

The FCC's new services test as interpreted and applied by Carolina/Central has been consistently and repeatedly upheld by the FCC with respect to other rates. There is every reason to believe that Carolina/Central's interpretation and application of the new services test with respect to PTAS rates is consistent with FCC policy. Payphone services and UNEs are addressed under separate sections of TA96. It is entirely appropriate under the Act to have different pricing standards for PTAS lines and UNEs.

The NCPA cites the public interest, but nowhere in its filing does the NCPA commit to pass on PTAS rate reductions to end users. The NCPA's appeal to the public interest is a disguise for its real purpose of increasing profitability to NCPA members.

In citing the BellSouth PTAS proceeding in South Carolina, the NCPA avoids mentioning (1) that the South Carolina Commission, over objection of the independent PSP industry, approved the proposed payphone access tariffs of 22 rural LECs in the absence of formal cost studies in the record to support the tariffs, and (2) that on January 27, 1999, the Ridgeland County Circuit Court upheld the South Carolina Commission on all 22 orders. Carolina/Central have submitted formal cost studies in this docket to support their tariffed rates and thus are in a materially stronger position than the 22 rural LECs in South Carolina.

GTE South: The existing payphone line access rates meet the new services test, and no reduction in rates is warranted. The NCPA's argument that current rates reflect an outdated rate setting methodology is irrelevant. The costs submitted by GTE in support of its rates were in accordance with the UNE proceeding and were not historical costs.

There is no legitimate basis for using other than an average business/residential weighting of the loop cost. Neither the new services test nor the FCC's Payphone Orders require a cost-based unbundling of the elements that comprise payphone service. The NCPA's insistence on a uniform loading of overhead and therefore a maximum permissible rate is clearly at odds with the flexibility built into the new services test.

The NCPA's request to be exempt from access charges is contrary to decisions of the FCC and other state commissions with respect to such charges. Since access charges are an implicit source of funding for universal service, the NCPA is inappropriately asking to be exempt from contributing to universal service support. The NCPA's request to have access line rates reduced by the amount of any separate charge for touchtone service is unwarranted. The NCPA's analysis of the new services test is filled with inconsistencies in logic and use of data, and application of its version of the test leads to totally unreasonable results.

FINDINGS AND CONCLUSIONS

1. The rates under review are those for existing services offered by the LECs to providers of payphone services to the public. As such, they are not proposed rates. The rates for new services intended for use with payphones which require central office functions beyond the normal PSP blocking and screening, such as coin control and answer supervision, were filed and reviewed in early 1997 and are not at issue here.

2. By Order dated March 28, 1986, in Docket No. P-100, Sub 84, the Commission promulgated its initial rules in Chapter 13 and set statewide rates for lines furnished for the purpose of providing access for customer-provided payphones. On November 17, 1987, after a hearing, the Commission revised the LECs' PSP rates and regulations. With minor exceptions, the current PSP rates are identical to those established by the Commission in the 1987 Order. The Commission established the basic monthly line rate as 60% of the business individual line rate and peak period usage rates of $.03 for the first minute and $.02 for each additional minute of outgoing local usage. Off-peak rates are $.02 for the first minute and $.01 for each additional minute. Incoming calls are not measured. The LECs also offer PSP providers a choice of various blocking and screening options at monthly rates ranging from $1.00 to $4.00. The most popular screening options are offered at $2.00 or $3.00. All but two of the LECs also charge a monthly rate for touchtone service. All companies except GTE South continue to provide up to twenty-five local directory assistance requests per month per line before charging for local directory assistance at $.19 to $.50 per request.

3. On June 9, 1993, the Commission modified its rules to allow payphone providers to attach more than one payphone in a confinement facility to a payphone line through use of a concentrator. This arrangement allows the payphone provider to provide a variety of services to the administrator of the confinement facility and to use the payphone lines in a manner similar to the way in which PBX trunks are used by large businesses. The Commission established rates for the trunks

used to provide service to the concentrators. These measured rates are identical to the rates applicable to certificated Shared Tenant Service providers. The monthly rates for these trunks are set at 80% of the applicable PBX trunk rates, and the usage rates are set at $.05 for the first minute of each outgoing local call and $.02 for each additional minute, with discounts for off-peak usage.

4. The rates adopted for the trunks and the usage rates for individual PSP lines reflect the additional value traditionally assigned to business services consistent with the Commission's goal of keeping basic residence rates affordable and with the methodology the Commission has historically employed when setting rates for most business and premium features.

5. The FCC's new services test predates TA96 by several years. In applying this test to services which are to be federally tariffed, the FCC requires the companies to calculate the cost-to-price relationship based on studies filed with the tariffs and the proposed monthly rates. The new services test, as applied by the FCC, is a flexible standard. The FCC has allowed rates having a wide range of cost/price ratios and overhead loadings to become and remain effective.

6. The FCC's Payphone Orders requiring review of existing PSP rates for compliance with the new services test leave the determination of the reasonableness of overhead loadings to the judgment of state commissions. It is clear, however, that the FCC does not equate the pricing standards set out in Sections 251 and 252 of TA96 with the new services test. Thus, the cost studies approved by this Commission in the UNE pricing docket do not establish the overhead loadings and maximum allowable prices for PSP services or render cost/price analysis irrelevant.

7. Under the surrogate cost approach, the four largest LECs selected studies done for business use in Docket Nos. P-100, Subs 133b and 133d (the FLEC study docket and the UNE pricing docket, respectively), adjusted those costs to reflect the unique characteristics of PSP lines, and compared the results to the average revenue received from a PSP line.

8. The studies filed by the LECs on September 14, 1998, reflect company- specific costs consistent with the Commission's findings in the UNE pricing docket. The studies also reflect company specific usage inputs and views on the revenues that should be included.

9. There is no evidence that the cost of payphone loops is closer to the cost of business loops than residence loops. If residence loop costs are removed from the cost studies in this proceeding, the resulting TELRIC cost of a payphone loop for PSPs would be less than the TELRIC cost of a payphone loop for CLPs; and if equal amounts of overhead were added to each, the wholesale CLP rate would be greater than the retail PSP rate. Thus, the NCPA's suggestion that the studies be adjusted to remove residence loop costs is rejected.

10. The cost/price ratios of the existing PSP services of the four largest LECs are within the range of cost/price ratios of interstate offerings which the FCC has allowed to become effective and reflect a reasonable allocation of overhead costs to these services. Thus, the existing tariffs for payphone services offered by these LECs comply with the new services test as required by the FCC.

11. The surrogate cost approach is extended to existing PSP services provided by the 12 smaller LECs instead of requiring company-specific cost studies. Average PSP revenues and costs

of these companies can be approximated based on factual information and reasonable assumptions about costs and usage characteristics of the lines served.

12. The Public Staff's study of the other LECs indicates that the cost/revenue relationships for these companies are in the range previously found reasonable for the four largest LECs. Thus, the existing tariffs of these LECs also comply with the new services test.

13. Approximately 435 independent providers of payphone services are certificated to provide service in North Carolina. These include the 16 local exchange companies or their affiliates whose payphone operations were separated from their other regulated operations effective April 15, 1997. Some of the current non-LEC providers have been serving as payphone providers in North Carolina for more than 10 years. There are approximately 46,300 PSP access lines in North Carolina.

14. BellSouth, the largest local exchange company in North Carolina, currently provides 23,127 of these PSP access lines, with 13,461 lines subscribed to by BellSouth Public Communications, Inc. (BellSouth Public), the largest single payphone provider in the state. The remainder of the lines, representing 41.8% of the total, are subscribed to by other providers.

15. As of October 1998, there were 224 other providers serving 9,303 payphones in BellSouth's service area. Two of these providers are LECs: Carolina Telephone and Telegraph Company (Carolina Telephone) with 108 payphones, and GTE South with four. Three of the other providers; Teleleasing Enterprises, Inc., Communications Central, Inc., and Peoples Telephone Company, Inc.; are wholly-owned subsidiaries of Davel Communications Group, Inc. Together, these three companies serve 2,295 payphones in BellSouth's area and 5,428 throughout the State. Teleleasing Enterprises, Inc., with 3,395 payphones, is the largest non-LEC provider and the third largest provider in the State, after BellSouth Public and Carolina Telephone. BellSouth Public provides only 363 payphones outside of the BellSouth service area.

16. Independent PSPs have been able to offer payphone service in North Carolina for more than twelve years. The number of providers in the current market and the longevity of a few of the major providers indicate that the current rates have not had a negative effect on entry or viability. There has been no indication, however, that the presence of other providers has reduced the prices paid by the payphone end users for local calls. Since the FCC preempted state regulation of the sent-paid local coin rate and the directory assistance rates, the typical local coin rate has risen from $.25 to $.35 and the charges for directory assistance have typically risen from zero to $.50. Reductions in PSP rates may lead to additional payphones or higher commissions to property owners but are not likely to result in reduced rates for end users because of the nature of the market itself.

17. Reductions for the payphone providers would also come at a cost to other ratepayers, since offsets would fall on rates for other services, most likely the least competitive. Reductions should be considered only in conjunction with changes in other rates which have contributed to the Commission's goal of universal service. Even if reductions in the PSP rates were deemed appropriate, the need for such reductions would have to carefully be weighed against reductions in rates for other services, for example, access charges for interexchange carriers and rates for business end users.

18. Reducing the contribution toward coverage of common overhead costs from PSP rates would not have a sustainable positive effect on payphone users and would have a negative effect on other telephone ratepayers in North Carolina.

19. Reducing current PSP rates to a level closer to the LECs' costs of providing PSP services is not required by federal law, would not result in a sustainable reduction in rates paid by end users of payphone service in North Carolina, would have negative impacts on other ratepayers whose rates would ultimately be increased, and would have a net negative effect on end users of telecommunications services in North Carolina.

IT IS, THEREFORE, ORDERED:

That the Commission finds that the local exchange companies' existing intrastate tariffs for payphone services are cost based, consistent with the requirements of Section 276 of the Act with regard to the removal of subsidies from exchange and exchange access services, are nondiscriminatory, and meet the new services test.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bs061599.01

Chair Sanford did not participate in this decision.

DOCKET NO. P-100, SUB 133d

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
General Proceeding to Determine Permanent Pricing for Unbundled Network Elements	)	ORDER RULING ON
	)	MOTIONS FOR
	)	RECONSIDERATION AND
	)	CLARIFICATION AND
	)	COMMENTS

BEFORE: Commissioner William R. Pittman, Presiding; and Commissioners J. Richard Conder and Robert V. Owens, Jr.

BY THE COMMISSION: On December 10, 1998, the Commission entered an Order in this docket adopting permanent prices for unbundled network elements (UNEs). As part of that Order, the Commission made the following

FINDINGS OF FACT

1. The appropriate basis for establishing permanent prices for unbundled network elements and interconnection is total element long-run incremental cost (TELRIC) plus a reasonable allocation of joint and common costs, which include a reasonable profit or return.

2. The proposed rate additives to recover historical and/or stranded costs are inconsistent with both the Telecommunications Act of 1996 and current state regulatory policy which is premised on price plan regulation.

3. The proposed interim universal service surcharges are outside the scope of this proceeding.

4. The cost studies presented by the ILECs, with certain modifications and adjustments, are reasonable and appropriate for determining their respective costs of providing unbundled network elements and local interconnection.

5. Bias was introduced into BellSouth's loop sample by virtue of BellSouth's having excluded certain business loops from its study. An adjustment should be made to correct such bias, and said adjustment should be made in the manner advocated by the Public Staff in its Proposed Order.

6. Carolina/Central should be required to modify their cost studies to reflect their actual loop investment for purposes of developing their unbundled loop costs.

7. The reasonable and appropriate overall costs of capital for use in the cost studies to determine the forward-looking economic costs associated with the provision of unbundled network elements and interconnection equal 9.96% for BellSouth, 10.01% for GTE, and 10.10% for Carolina/Central.

8. The reasonable and appropriate economic lives and future net salvage values for calculating depreciation rates for use in the cost studies are those which were adopted and approved by the Commission in the context of Docket No. P-100, Sub 133b, as shown on Appendix B to this Order.

9. The reasonable and appropriate tax rates and regulatory fee for use in the cost studies are: federal income tax rate, 35%; state income tax rate, 6.9%; and regulatory fee, 0.09%.

10. The recurring and nonrecurring charges proposed by the ILECs should be modified to reflect the changes in the annual cost factors which the Commission has found to be reasonable and appropriate herein.

11. GTE and Carolina/Central should be required to file proposed rates and cost studies for each of the various types of loops and local switching elements identified herein and for access to poles, ducts, and conduits.

12. The drop wire lengths utilized by the ILECs in their cost studies are reasonable and appropriate for purposes of this proceeding.

13. The reasonable and appropriate structure sharing percentages to be used by the ILECs are those that were adopted and approved by the Commission in the context of Docket No. P-100, Sub 133b.

14. The reasonable and appropriate loading factors to be used by the ILECs are those that were adopted and approved by the Commission in the context of Docket No. P-100, Sub 133b.

15. The switching costs proposed by the ILECs, subject to certain modifications and adjustments, are reasonable and appropriate for recovering their respective switching costs associated with providing UNEs and interconnection.

16. The ILECs' proposed shared and common cost factors are reasonable and appropriate and should be adopted.

17. The ILECs' fill factor/utilization ratios including distribution pairs per residential housing unit for use in calculating cable and wire facilities as filed should be adopted with the exception of necessary adjustments to comply with the Commission Orders issued in the FLEC Docket.

18. BellSouth's assumptions regarding bridge tap, cable size, and tapering should be adopted for use in setting its permanent UNE rates.

19. Vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies, as modified by this Order.

20. BellSouth's recommended copper/fiber crossover of 12,000 feet is reasonable and appropriate.

21. The nonrecurring charges proposed by the ILECs, subject to certain modifications and adjustments, are reasonable and appropriate for recovering their respective nonrecurring costs associated with providing UNEs and interconnection.

22. The reasonable and appropriate fallout rate for use by the ILECs in their calculations of nonrecurring costs is 10%.

23. Nonrecurring costs, as approved herein, associated with the disconnection of the various loops and ports should be recovered through the recurring rates associated with those loops and ports. Such recovery should be accomplished by spreading the discounted costs over the expected life of the installation, which the Commission has determined to be four years. The reasonable and appropriate discount rates are the overall costs of capital adopted for the various ILECs for purposes of this proceeding.

24. GTE's proposal to establish new nonrecurring costs for resale services is outside the scope of this proceeding.

25. The one-time development costs for new operations support systems (OSS) and improvements to existing systems that the ILECs propose to recover through nonrecurring charges should be recovered through recurring rates applicable to users of the OSS.

26. Travel times included by BellSouth in developing nonrecurring costs are not overestimated and should be approved.

27. The collocation charges proposed by the ILECs, as modified, are cost-based, reasonable, and appropriate.

28. BellSouth's proposed application fee for physical collocation is excessive and should be reduced to its current tariffed rate of $3,850.

29. BellSouth should allow CLPs to use wire cages for physical collocation.

30. GTE's revised collocation rates should be adopted, and GTE is required to refile its intrastate tariff and include the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered.

31. While collocation is a legally permissible way for an ILEC to provide access to UNEs, the Commission declines to rule at this point whether there are any other legally permissible or practical ways for the ILECs to provide such access.

32. Proposals for geographical deaveraging of UNE prices are premature and should be rejected for purposes of this proceeding.

33. The ILECs should not be required to combine unbundled network elements for CLPs. The ILECs have adequately answered the CLPs' complaints related to recombination requirements, discrimination, inefficiencies, and Integrated Digital Loop Carrier (IDLC)/Universal Digital Loop Carrier (UDLC) technology, including associated Digital Loop Carrier (DLC) related cost study inputs.

34. The proposals of BellSouth and GTE to apply the unbundled network elements rates for local switching and transport to interconnection are reasonable and appropriate.

35(a). The cost recovery mechanism for service provider number portability (SPNP) or interim number portability (INP) costs advocated by BellSouth, GTE, and Carolina/Central is reasonable and appropriate.

35(b). GTE's proposed rates for INP (specifically remote call forwarding - RCF) are excessive and should be reduced.

36. The rates for UNEs should be excluded from the price plans of the ILECs.

37. The matter of reciprocal and symmetrical compensation is outside the scope of this proceeding.

38. GTE's unspecified recovery mechanism for one-time implementation costs, which may not be appropriately recovered through UNE rates, is outside the scope of this proceeding.

39. Rates to be filed and approved pursuant to this Order will be just, reasonable, nondiscriminatory, and cost-based in accordance with federal and state law.

On January 11, 1999, certain parties to this proceeding filed motions as follows:

1. The New Entrants filed a Motion for Reconsideration and Clarification regarding geographic deaveraging (Finding of Fact No. 32 (FF32)), shared and common costs (FF16), drop wire lengths (FF12), recovery of costs for interim number portability (FF35(a)), GTE fill factor (FF17), and OSS cost recovery (FF25).

2. AT&T Communications of the Southern States, Inc. (AT&T) filed a Motion to Rescind, Alter, or Amend Order regarding drop wire lengths (FF12), switching costs (FF15), shared and common costs (FF16), vertical features (FF19), purchase of collocated space (FF31), geographic deaveraging (FF32), and UNE combination (FF33).

3. Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Carolina/Central) filed a Motion for Clarification regarding proposed loop rates (FF11), copper/fiber crossover (FF20), geographic deaveraging (FF32), and proposed UNE rates for local switching and transport approved for interconnection (FF34).

4. GTE South Incorporated (GTE) filed a Motion for Reconsideration and Support regarding the Commission's finding that GTE's UNEs need not reflect GTE's actual costs and should not include an interim universal service surcharge or competitive transition charge (FF2, FF3), the Commission's ruling regarding cost of capital and depreciation levels (FF7, FF8), ADSL tariffs and for access to poles, ducts, and conduits (FF11), resale nonrecurring charges (FF24), and one-time development costs (FF25).

On January 13, 1999, the Commission entered an Order in this docket whereby the parties were required to file comments regarding the above-referenced motions for reconsideration and/or clarification.

On January 25, 1999, the United States Supreme Court entered its Opinion in AT&T Corp. et al. v. Iowa Utilities Board et al., 119 S.Ct. 721 (1999). The Supreme Court held, in pertinent part, that (1) the FCC has jurisdiction under Sections 251 and 252 of the Act to design a pricing methodology and adopt pricing rules; (2) the FCC's rules governing unbundled access are, with the exception of Rule 319, consistent with the Act; (3) it was proper for the FCC in Rule 319 to include operator services and directory assistance, operational support systems, and vertical switching functions such as caller I.D., call forwarding, and call waiting within the features and services that must be provided by competitors; (4) the FCC did not adequately consider the Section 251(d)(2) "necessary and impair" standards when it gave requesting carriers blanket access to network elements

in Rule 319; (5) the FCC reasonably omitted a facilities-ownership requirement on requesting carriers; (6) FCC Rule 315(b), which forbids ILECs to separate already-combined network elements before leasing them to competitors, reasonably interprets Section 251(c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements; and (7) FCC Rule 809 (the "pick and choose" rule), which tracks the pertinent language in Section 252(i) of the Act almost exactly, is not only a reasonable interpretation of the Act, it is the most readily apparent.
The Supreme Court remanded the cases back to the Eighth Circuit Court of Appeals for proceedings consistent with its opinion.

On January 29, 1999, the Commission entered an Order which requested the parties to make recommendations on procedures the Commission should follow in addressing issues in this docket they believe to be affected by the Supreme Court decision.

On February 24, 1999, the Public Staff filed comments regarding the revised UNE cost studies filed by BellSouth, Carolina/Central, and GTE in response to the Commission's Order of December 10, 1998.

The following parties filed initial comments on March 18, 1999: ACI Corp. d/b/a Accelerated Connections, Inc. (ACI); AT&T; BellSouth Telecommunications, Inc. (BellSouth); Carolina/Central; GTE; MCI WorldCom, Inc. (MCI WorldCom); North Carolina Cable Telecommunications Association (The NCCTA); Time Warner Telecom of North Carolina, L.P. (Time Warner); New East Telephony, Inc. (New East Telephony); ICG Telecom Group, Inc., Intermedia Communications, Inc., Interpath Communications, Inc., KMC Telecom, Inc., and Business Telecom, Inc. (collectively, New Entrants); the Public Staff; and Sprint Communications Company L.P. (Sprint).

Reply comments were filed by the following parties on April 15, 1999: ACI; AT&T; Attorney General; BellSouth; Carolina/Central; GTE; MCI WorldCom; the NCCTA and Time Warner; New East Telephony; New Entrants; and the Public Staff.

On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules), Rule 809 (the "pick and choose" rule), and Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Eighth Circuit also vacated FCC Rule 319 (specific unbundling requirements). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements. Iowa Utilities Board v. FCC, ____ F.3d ____ (Order Filed June 10, 1999).

Discussions and Commission conclusions regarding the issues raised by the parties in their motions for reconsideration and/or clarification and comments follow. These matters are addressed below by reference to the specific Findings of Fact which coincide with those findings set forth in the Commission Order entered in this docket on December 10, 1998, which are the subject of said motions and comments.

GENERAL ORDERS - TELECOMMUNICATIONS

FINDINGS OF FACT NOS. 1 AND 4 - IMPACT OF SUPREME COURT DECISION ON TELRIC AND COST STUDIES

Commission Order: The Commission found and concluded that, based on the status of the law as it then existed [which was prior to the decision rendered by the United States Supreme Court on January 25, 1999, in AT&T Corp. et al. v. Iowa Utilities Board et al., 119 S.Ct. 721 (1999)], (1) the appropriate basis for establishing permanent rates for UNEs and interconnection was total element long-run incremental cost (TELRIC) plus a reasonable allocation of joint and common costs, which include a reasonable profit or return and (2) the cost studies presented by the ILECs, with certain modifications and adjustments, were reasonable and appropriate for determining their respective costs of providing UNEs and local interconnection.

Supreme Court Decision: The Supreme Court held, in pertinent part, that (1) the FCC has jurisdiction under Sections 251 and 252 of the Act to design a pricing methodology and adopt pricing rules; (2) the FCC's rules governing unbundled access are, with the exception of Rule 319, consistent with the Act; (3) it was proper for the FCC in Rule 319 to include operator services and directory assistance, operational support systems, and vertical switching functions such as caller I.D., call forwarding, and call waiting within the features and services that must be provided by competitors; (4) the FCC did not adequately consider the Section 251(d)(2) "necessary and impair" standards when it gave requesting carriers blanket access to network elements in Rule 319; (5) the FCC reasonably omitted a facilities-ownership requirement on requesting carriers; (6) FCC Rule 315(b), which forbids ILECs to separate already-combined network elements before leasing them to competitors, reasonably interprets Section 251(c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements; and (7) FCC Rule 809 (the "pick and choose" rule), which tracks the pertinent language in Section 252(i) of the Act almost exactly, is not only a reasonable interpretation of the Act, it is the most readily apparent. The Supreme Court remanded the cases back to the Eighth Circuit Court of Appeals for proceedings consistent with its opinion.

Eighth Circuit Decision on Remand from Supreme Court: On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules), Rule 809 (the "pick and choose" rule), and Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Eighth Circuit also vacated FCC Rule 319 (specific unbundling requirements). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements. Iowa Utilities Board v. FCC, _____ F.3d ____ (Order Filed June 10, 1999).

Motions for Reconsideration/Clarification:

No formal Motion for Reconsideration/Clarification was filed on this issue. However, the issue was raised in comments and reply comments filed by the parties which are addressed below.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T stated that the effect of the Supreme Court's decision on this proceeding is clear and unambiguous. The Supreme Court reinstated most of the FCC rules that the Eighth Circuit had vacated and those rules have the force and effect of law and are immediately binding on the Commission in this proceeding. It is irrelevant that the reinstated rules may have been stayed or vacated by the Eighth Circuit during the pendency of this proceeding. The FCC's rules substantially impact the Commission's determination as to the appropriate cost model methodology for establishing UNE prices in North Carolina. More specifically, the FCC's rules prohibit the Commission's adoption of BellSouth's cost model methodology because (1) BellSouth's UNE prices are not based on the costs of a forward-looking reconstructed network in North Carolina, (2) BellSouth's failure to incorporate the "most efficient telecommunications technology currently available" (i.e., integrated digital loop carrier or IDLC) in its cost model violates the FCC's rules, and (3) the assumption inherent in BellSouth's cost model that elements must be physically separated, and BellSouth's unnecessary collocation requirement for combining UNEs, cannot stand in light of the reinstatement of FCC Rule 315(b). The overall effect of the FCC's rules and the Supreme Court's decision is to render BellSouth's cost model methodology, and the UNE prices derived from that model, legally invalid. If the Commission desires to adopt BellSouth's cost model, it will have to require BellSouth to fundamentally redesign the methodology of the model to comply with the FCC's rules, or to develop a new model which does not reflect the historic configuration of BellSouth's network and which reflects the use of the most efficient technology available and allows for UNE combinations.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth stated that the Supreme Court's decision should have no significant impact on these proceedings. The TELRIC methodology adopted and employed by the Commission in the December 10, 1998 Order is consistent with the FCC's approach. Although the Commission did not follow all of the FCC's pricing rules (such as Rule 507(f), which purports to require that rates be geographically deaveraged), the Supreme Court's decision does not require the Commission to do so, because (1) the FCC's pricing rules are not currently in effect since the Eighth Circuit has yet to issue a mandate reinstating those rules, and (2) the FCC has indicated that it intends to revisit its rules.

CAROLINA/CENTRAL: Carolina/Central stated that, with the exception of Rule 319, the Supreme Court has reinstated the FCC's network element and interconnection pricing rules and methodologies. The FCC's list of network elements, as it now exists and as it may be modified in the future, is a minimum list. The Commission may impose other unbundling requirements so long as such requirements are consistent with the Act and the FCC's regulations. The FCC's newly reinstated pricing rules require network elements to be priced according to forward-looking economic cost, defined to be the sum of an element's total element long-run incremental cost and a reasonable allocation of forward-looking common costs. Because Carolina/Central based their network element cost studies on the FCC's TELRIC standards, the Commission should reaffirm its finding that Carolina/Central's proposed UNE prices and cost studies "are reasonable and appropriate and should be adopted." The FCC's rules also require nonrecurring, as well as recurring, costs to be based on the TELRIC standard. With the FCC's rules vacated by the Eighth Circuit, Carolina/Central believe that some ILECs may have varied their interpretations on this point, setting their recurring charges based on the forward-looking economic costs and their nonrecurring charges based on costs produced by the embedded network. Carolina/Central have been consistent on this point, and the Commission should ensure that other ILECs also observe the full import of the FCC's requirements.

GTE: GTE stated that the Supreme Court's decision creates major uncertainty as to (1) which UNEs are to be made available by ILECs to CLPs and (2) which pricing methodology must be employed to set prices for those UNEs. Until these issues are resolved, all related decisions by this Commission, including its most recent one setting "permanent" UNE rates, must necessarily be tentative. These issues will not be fully and finally resolved until the FCC promulgates a new "network element" rule, the Eighth Circuit rules on the substantive validity of the FCC's TELRIC pricing rule, and all appeals from those two decisions are exhausted. GTE reiterated the terms set forth in the letter to the Chair of the Commission dated February 10, 1999, as the appropriate course to follow at the current stage of this proceeding. The prices set by the Commission should replace the interim prices set during the arbitration process until the FCC issues new and final rules with regard to vacated Rule 319 that comply with the Act. In no event should the Commission expand UNE requirements pending resolution of the remand of the Rule 319 issue to the FCC. Until the FCC completes its remand proceeding, state commissions will have no basis for imposing UNE obligations.

MCI WORLDCOM: MCI WorldCom stated that the Supreme Court resolved that the FCC has jurisdiction under Sections 251 and 252 of the Act regarding pricing and other local competition provisions. All of the FCC's pricing rules vacated by the Eighth Circuit have been reinstated and are in effect. The Supreme Court held that the FCC has jurisdiction to promulgate rules to guide states regarding UNE pricing using the FCC's forward-looking TELRIC methodology. The Supreme Court vacated FCC Rule 319 and remanded the matter to the FCC for further rulemaking, but in so doing, did not suggest that any of the network elements identified by the FCC could not meet the statutory standard. The FCC remand does not affect the ILECs' obligations to provide UNEs, including combinations of UNEs, at cost-based rates, or this Commission's obligation to determine the pricing for UNEs pursuant to the FCC's pricing rules. A review of the elements listed in Rule 319, in light of the provisions of the Act, indicates that ILECs should be required to provide all of the elements previously identified by the FCC, without regard to geographic areas. The FCC remand should not impact the obligation to provide UNEs, individually or combined. Consequently, the Commission should determine the recurring and nonrecurring prices for UNEs in accordance with the FCC pricing rules. Prices of UNEs cannot be based on existing network configurations, because an ILEC's network is not efficiently configured. Pricing methodology that is based on costs derived from existing network configuration, instead of complying with the FCC's requirement that costs be determined using a "scorched node," forward-looking, efficient, reconstructed network, cannot stand in the wake of the Supreme Court's ruling. BellSouth's TELRIC Calculator is not a "scorched node" cost model and, therefore, fails to comply with the reinstated FCC rules.

NCCTA AND TIME WARNER: The NCCTA and Time Warner stated that the Commission should adopt a uniform costing approach and/or cost proxy model for the purpose of estimating the costs of providing UNEs. The NCCTA and Time Warner believe that the operations of the nonrural ILECs do not vary so remarkably across North Carolina service territories as to justify different costing approaches for the purpose of developing UNE rates. The Commission should examine the wide range of proposed rates for UNEs among the carriers. Such a review should lead the Commission to once more recognize the value of selecting a single costing methodology and/or model for use by all ILECs. The Commission may want to proceed with its permanent pricing order but make the list of available UNEs interim, or subject to true-up, until the federal proceedings before the Eighth Circuit and the FCC are complete and appeals from those proceedings are resolved.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated that the ILECs' cost studies were based on their existing network configurations, and the Commission declined to require the ILECs to employ the "scorched node" method of costing. Scorched node is the term often used to describe the methodology prescribed in Section 51.505 of the FCC pricing rules. Costing the network based on existing network design and technology is an embedded cost methodology which is expressly prohibited by Section 51.505(d)(1) of the FCC pricing rules. The most serious consequence of using the existing network configuration is that the length of loops, and thus the cost, is significantly overstated. The Supreme Court reinstated the FCC pricing rules. Thus, UNE prices must now be based on the FCC pricing rules as well as the principles inherent in those rules. To the extent the methodology used by the ILECs and adopted by the Commission does not comply with the FCC pricing rules, the resulting prices are overstated and must be recomputed. None of the cost studies submitted by the ILECs conform to the FCC pricing rules, thus, the cost studies must be modified to bring them in compliance. However, in the interest of economy of time and resources, the Commission should fashion a procedure which would ensure that appropriate modifications are made to the cost studies without duplicating the lengthy proceeding conducted last year. Toward this end, the Commission should order the ILECs to submit an analysis of their respective cost studies describing in detail the areas of each study which do not comply with the FCC pricing rules and proposing modifications to the cost studies to remedy the noncompliance. A comment period and hearing should follow.

PUBLIC STAFF: The Public Staff did not address this issue in its initial comments.

SPRINT: Sprint stated that it concurs in and supports the position of Carolina/Central with respect to these findings of fact.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T stated that the evidence in this proceeding conclusively demonstrates that BellSouth's methodology is not, in fact, consistent with the FCC's UNE pricing rules. To the contrary, the methodology underlying BellSouth's cost studies violates the fundamental precepts of the FCC's pricing rules. BellSouth asserts, without any legal support whatsoever, that the FCC's UNE pricing rules are "not currently in effect because the Eighth Circuit has yet to issue a mandate reinstating those rules." No mandate is required from the Eighth Circuit in order to reinstate the FCC's UNE pricing rules, which are now legally binding on the Commission. In this case, when the

Supreme Court's decision was issued, the Eighth Circuit's decision vacating the FCC's UNE pricing rules was nullified, the only barrier to the validity of the FCC's rules was removed, and the rules were reinstated. Supreme Court case law makes it clear that the lower federal courts lack discretion to ignore, alter, or delay implementation of a judgment of the Supreme Court. Notwithstanding BellSouth's unsupported suggestion to the contrary, the law is that the Commission is required to apply the FCC's UNE pricing rules in this proceeding. No mandate is required from the Eighth Circuit in order to reinstate the FCC's rules. The FCC has not revisited its rules and has issued no definitive statement that it has any intention of changing any of its UNE pricing rules. Statements made by the FCC in filings before the United States Courts of Appeals in the Eighth and Ninth Circuits clearly indicate that the FCC considers its rules in effect and binding.

ATTORNEY GENERAL: The Attorney General stated that the Supreme Court upheld the FCC's jurisdiction to promulgate rules implementing the local competition provisions of the Act, most notably the rules governing prices for interconnection and unbundled access. The holding of the Supreme Court contemplates that, as a jurisdictional matter, the States, in establishing the prices of UNEs, must implement the FCC's requisite pricing methodology and not a different methodology. The Attorney General takes no position as to whether the Commission, in its December 10, 1998 Order, implemented a methodology that is or is not consistent with the FCC's TELRIC methodology. The Commission must at this point consider the pricing rules previously issued by the FCC to be the methodology that it must implement unless and until the Eighth Circuit, or another Court, rules otherwise (or unless and until the FCC amends those rules). As a result of the Supreme Court's decision to vacate FCC Rule 319, the FCC will have to institute a rulemaking to compile a new list of UNEs and provide proper justification for inclusion of those elements on the list. In the meantime, the Attorney General does not see any reason why such rulemaking should immediately impact the Commission's decision with respect to setting prices for UNEs. Any changes required by the FCC or the federal courts with respect to this issue could be made at a later date.

BELLSOUTH: BellSouth stated that the fundamental premise of the Intervenors' comments - that BellSouth's cost studies as modified by the Commission cannot be used to establish rates after the Supreme Court's decision - is seriously flawed. The Intervenors consistently overlook a recent federal court decision affirming the Kentucky Public Service Commission's decision to establish rates based upon BellSouth's cost studies even in light of the Supreme Court's decision. According to BellSouth, the federal court rejected the argument that BellSouth's cost studies "are based on BellSouth's existing network configuration and embedded technology" and therefore are inconsistent with the FCC's TELRIC methodology. The same reasoning applies to the UNE rates established by this Commission in the December 10, 1998 Order. Although the Intervenors continue to take issue with the forward-looking nature of BellSouth's cost studies, they conveniently ignore the evidence of record. For example, AT&T's claim that BellSouth's cost studies include "embedded" engineering and installation costs cannot be squared with the facts, since the Company's cost modeling was "based on the latest prices available to BellSouth" and not upon "embedded costs" as AT&T claims. The repeated criticisms of BellSouth's cost studies by AT&T and MCI WorldCom are nothing more than a last-ditch attempt to try to persuade the Commission to adopt the Hatfield Model. While suggesting that the Hatfield Model is the only cost model consistent with the FCC's pricing rules, neither AT&T nor MCI WorldCom is apparently able to come to grips with the fact that the FCC has declined to embrace the Hatfield methodology. Reinstatement of the FCC's pricing rules does not compel the Commission to establish rates based upon a cost model that even the FCC has rejected.

Nothing the Supreme Court held or the Intervenors have said should cause the Commission to reconsider its conclusion in the December 10, 1998 Order that modifying BellSouth's cost studies rather than the models presented by AT&T and MCI WorldCom was the "more reasonable" approach.

CAROLINA/CENTRAL: Carolina/Central reiterated their initial comments regarding the impact of the Supreme Court decision on this proceeding. Carolina/Central submitted UNE cost studies based upon the FCC's pricing rules. Their Benchmark Cost Proxy Model (BCPM) cost study fully incorporates the pricing rules' "scorched node" and "most efficient telecommunications technology available" network configuration requirements. While AT&T and MCI WorldCom criticize the failure of other parties to comply with the FCC requirements, they do not challenge Carolina/Central on this point with noncompliance with the FCC pricing rules. Carolina/Central reject and oppose the claim by some parties that the FCC pricing rules drive a need for adoption of a single cost proxy model for use by all ILECs. No party has opposed use of the BCPM by Carolina/Central on reconsideration or in comments. The Supreme Court's decision does not call into question or require reconsideration of this important and final Commission decision.

GTE: GTE reiterated its initial comments on this issue, stating that the Supreme Court's actions regarding the pricing rules resolved only the preliminary challenges that had been made to them: whether the FCC had the jurisdiction to issue such rules in the first place. There is a second challenge to those rules that has not been resolved and that is whether they are consistent with the terms of the Act itself. That issue is now pending before the Eighth Circuit Court of Appeals. Moreover, the Supreme Court's decision has not reinstated even temporarily the FCC's pricing rules even pending resolution of the substantive challenges brought to them. Until and unless the Eighth Circuit recalls its prior mandate staying the FCC's regulations, those regulations remain of no legal effect. GTE and other parties have requested that the Eighth Circuit withhold issuance of any new mandate until the Court has an opportunity to review the substantive merit of the FCC's regulations. The Eighth Circuit has not yet ruled on that request and has not recalled or modified its original mandate staying the FCC's pricing regulations. In support of its position, GTE cites a recent decision issued by a federal district court in Oregon where the court refused to overturn portions of the MCI WorldCom-GTE interconnection agreement because the state commission failed to apply substantive regulations that were not in effect when the agreement was approved. It makes little sense for this Commission to change any of its decisions just because the Supreme Court has held that the FCC had jurisdiction to issue certain of its regulations when an immediate substantive review of those regulations is underway in the Eighth Circuit.

MCI WORLDCOM: Although the ILECs generally refer to their cost models and studies as based on "TELRIC" principles, those models and studies, and consequently the models and inputs the Commission approved, do not produce TELRIC within the meaning of the FCC's pricing rules. The Commission instead approved cost models and inputs that produce UNE rates from studies based on existing ILEC-specific network characteristics. In the case of BellSouth's models, there was no secret made of the assumption of existing network configuration. The ILECs' models and studies are infused through and through with embedded cost characteristics and assumptions. In addition, it virtually guarantees and simply does not make sense to use multiple cost models or methodologies with respect to nonrural ILECs' networks. The great disparity in prices generated from the ILECs' models appears to be a result, in part, of the models themselves. Such a result lends itself to rates that are neither efficient nor forward-looking, are not rationally related, and are discriminatory, in violation of the Act. In summary, what confronts the Commission, in light of the Supreme Court's decision reinstating the FCC's pricing rules, is not a "simple" matter of tweaking some inputs while assuming that the ILECs' cost models can be retained. The Commission, in compliance with the FCC's rules, must either formulate statewide deaveraged UNE rates from the vast amounts of data presented in this case, using one forward-looking, "scorched node" least cost model with forward-looking, least cost inputs, or rehear the case.

NCCTA AND TIME WARNER: The NCCTA and Time Warner stated that, in light of the Supreme Court decision, the manner and extent to which the combination and separation of UNEs is part of the ILECs' cost model network design will most likely demand further consideration by the Commission. Depending upon the decision of the Eighth Circuit and the determinations of the FCC, the Commission may need to conduct an extensive reconsideration of its Order and go beyond a simple revision of the inputs of the ILECs' costing models. The outcome of certain issues is likely to require, at a minimum, wholesale changes to the platform of the costing models approved by the Commission or even a fresh look at the proposed costing approaches and models.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants stated that the Commission should proceed in the wake of the Supreme Court decision to ensure that its December 10, 1998 Order reflects the sound principles underlying the FCC's reinstated pricing rules. Ignoring the FCC rules would contravene valid federal law. Failing to implement the FCC's pricing rules now would only delay the need to do so, meaning that the Commission would then need to revisit this matter yet again at a later date to ensure that the prices paid by CLPs have been developed in accordance with federal law. Such procedural inefficiency is unnecessary and undesirable.

PUBLIC STAFF: The Public Staff stated that although the Supreme Court's decision will likely have at least some impact on the UNE prices established in this proceeding, it is too early to tell what that impact will be. Even if the FCC's pricing rules have been reinstated, they could be stayed by the FCC pending further consideration or by the Eighth Circuit pending review on the merits, and they could also be modified. The Public Staff would support efforts leading to the adoption of a single TELRIC model for UNE pricing in the future. In the meantime, however, the Public Staff believes that the Commission should not retreat from its determination that rates based on TELRIC studies presented in this case should be the permanent UNE prices in North Carolina. To the extent that proposed UNE rates are based on interstate tariffs for which no cost study data was submitted, the Commission should require the ILECs to file studies showing that these rates conform to TELRIC principles or to submit revised rates which are TELRIC based.

SPRINT: Sprint did not file reply comments.

DISCUSSION

Prior to the Supreme Court's decision, the Commission endorsed the FCC's TELRIC pricing principles and found that the appropriate basis for establishing permanent UNE prices in North Carolina is TELRIC plus a reasonable allocation of joint and common costs. The Commission also found that the cost studies presented by the ILECs, with certain modifications, reflect those TELRIC pricing principles, are consistent with the Act, and are reasonable and appropriate for determining the ILECs' respective costs of providing UNEs.

BellSouth argues that the Supreme Court's decision "should have no significant impact on these proceedings." Attached to BellSouth's comments is a copy of a motion by the LECs asking the Eighth Circuit to defer the recall of its prior mandate relating to the FCC's pricing rules to avoid unnecessary disruption while the merits of the rules are under review. GTE states that the Supreme Court's decision "creates major uncertainty" as to pricing methodology. GTE further states that it has no objection to the implementation of prices established in the December 10, 1998 Order until the Eighth Circuit decides the substantive validity of the FCC's pricing rules.

AT&T, on the other hand, argues that the existing rules constitute binding federal law and must be applied by the Commission in this case. AT&T further argues that these rules "substantially impact the Commission's determination of the appropriate cost model methodology for establishing UNE prices in North Carolina." MCI WorldCom and the New Entrants also argue that the Commission must now follow the FCC's pricing rules which were vacated by the Eighth Circuit. In addition, according to these parties, the ILECs' studies based on existing network design and technology fail to comply with pricing standards prescribed by the FCC.

The Public Staff stated that although the Supreme Court's decision will likely have at least some impact on the UNE prices established in this proceeding, it is too early to tell what that impact will be. Even if the FCC's pricing rules have been reinstated, they could be stayed by the FCC pending further consideration or by the Eighth Circuit pending review on the merits, and they could also be modified. The Public Staff would support efforts leading to the adoption of a single TELRIC model for UNE pricing in the future. In the meantime, however, the Public Staff believes that the Commission should not retreat from its determination that rates based on TELRIC studies presented in this case should be the permanent UNE prices in North Carolina. To the extent that proposed UNE rates are based on interstate tariffs for which no cost study data was submitted, the Commission should require the ILECs to file studies showing that these rates conform to TELRIC principles or to submit revised rates which are TELRIC based. Any additional changes required by the FCC or the federal courts can be made later.

On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules), Rule 809 (the "pick and choose" rule), and Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Eighth Circuit also vacated FCC Rule 319 (specific unbundling requirements). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements. Iowa Utilities Board v. FCC, ____ F.3d ____ (Order Filed June 10, 1999).

Findings of Fact Nos. 1 and 4, including the reasoning set forth in support thereof by the Commission in the Order of December 10, 1998, continue to be valid and are hereby reaffirmed. That reasoning has been further strengthened as a result of the Commission's adoption of the additional changes to the UNE cost studies and rates set forth in this Order.

CONCLUSIONS

The Commission finds good cause to affirm Findings of Fact Nos. 1 and 4, subject to the proviso that, to the extent any of the UNE rates, interconnection rates, or methods of obtaining access to unbundled elements, including physical collocation and virtual collocation rates, proposed by the ILECs were based on intrastate or interstate tariffs for which no cost study data was submitted, the ILECs should be required, consistent with the general pricing standard set forth in FCC Rule 503, to either file cost studies showing that those rates conform to TELRIC principles or submit revised rates which are TELRIC based. The Commission also hereby reaffirms its previous conclusion that the cost studies presented by the ILECs, with appropriate modifications and input adjustments, follow the FCC's TELRIC principles, are consistent with Section 252(d) of the Act, and are an appropriate basis for determining permanent prices for UNEs; subject, of course, to any additional changes which may be required by future decisions rendered by the FCC and/or the federal courts as a consequence of the Supreme Court's decision.

FINDING OF FACT NO. 2 - RATE ADDITIVES TO RECOVER HISTORICAL OR STRANDED COSTS

Commission Order: The Commission concluded that the proposed UNE rate additives to recover historical and/or stranded costs are inconsistent with both the Act and state regulatory policy, which is premised on price regulation. The Commission agreed with the Georgia Public Service Commission's conclusion that the "proscription in Section 252(d)(1)(a)(ii) against traditional rate-of-return or rate base methodologies certainly supports, if not mandates, abandoning the traditional methods of establishing rates to recover all embedded costs." The Commission stated its belief that when Congress established pricing standards based on cost determined without regard to rate-of-return or other rate-based proceedings, including a reasonable profit, it did not mean for states to view this as a floor or starting point. According to the Commission, such an interpretation would run counter to the procompetitive goals of the Act and would permit the reinstatement of embedded or historical cost recovery which the ILECs have foregone by electing price regulation under G.S. 62-133.5. Furthermore, the Commission was not persuaded by arguments that the ILECs must recover historical costs in this manner in order to remain viable in today's competitive environment. Finally, the Commission noted that the quantification of the proposed additives represented only the ILECs' determinations of historical costs and that a proper determination would require something akin to a general rate case, which is no longer permitted.

Supreme Court Decision: The Supreme Court upheld the FCC's rulemaking authority under the Act to design a pricing methodology with respect to UNE pricing.

Motion for Reconsideration/Clarification:

GTE: GTE argued that it is entitled to UNE prices that reflect its actual costs and to a competitive transition charge to recover any stranded costs it incurs. According to GTE, the Commission did not dispute that in the absence of such additives GTE will be denied the opportunity to recover its actual cost of providing UNEs, and there is no doubt that this will be the case. GTE asserts that Section 252(d)(1) of the Act mandates full actual cost recovery and that the possibility of earning a reasonable profit will not exist until it has already recovered all of its actual costs. GTE further asserts that its actual costs can be discerned based on current revenues without something akin to a general rate case. Thus, the Commission's rationale for rejecting GTE's pricing proposal as being inconsistent with the Act and current state regulatory policy was incorrect. Finally, GTE asserts that setting prices that reflect all of its actual costs of constructing and maintaining its existing network would not hinder the competitive process as the Commission suggested.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not further address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated that the Supreme Court's reinstatement of the FCC's pricing rules relieves GTE's argument on this issue of any possible validity. Section 51.505(d)(1) of the FCC's pricing rules specifically provides that historical or embedded costs may not be considered in the calculation of forward-looking economic costs of a UNE.

PUBLIC STAFF: The Public Staff stated in its initial comments that GTE presented no new arguments to support its position on this issue. Subsequent to the filing of GTE's motion, however, the Supreme Court upheld the FCC's rulemaking authority under the Act with respect to UNE pricing. The TELRIC methodology prescribed in the FCC's pricing rules clearly prohibits consideration of embedded costs in calculating the forward-looking economic cost of an element. The Commission's reasoning on this issue is quite similar to that of the FCC, and the rulings of both agencies are consistent with the Act. Unless and until the FCC's and this Commission's interpretations of Section 252(d)(1)(A)(I) are struck down in favor of GTE's interpretation, rate additives to recover historical or stranded costs should be rejected in their entirety. The Public Staff recommended that the Commission affirm its decision on this issue.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General stated that the Commission correctly concluded that GTE's proposed rate additives to recover historical costs are not consistent with the Act and with state regulatory policy. Indeed, unless the FCC's pricing methodology is otherwise modified by the Eighth Circuit, this conclusion now appears to be mandated by the Supreme Court's recent holding in Iowa Utilities Board, which upheld the FCC's rulemaking authority with respect to the pricing for UNEs. The TELRIC methodology prescribed by the FCC's pricing rules prohibits consideration of historical costs in calculating the forward-looking cost of an element. Furthermore, as a matter of policy, GTE's notion of pricing UNEs in a manner to recover embedded costs is not competitively neutral and would serve as a barrier to entry because it would require competitors to pay prices for access based on monopoly costs that would be higher than the more efficient costs that GTE will incur in providing services in a competitive market. Likewise, GTE's takings argument should not dictate a different conclusion by the Commission. Therefore, the Attorney General recommended that the Commission not reverse its finding on the basis of GTE's Motion for Reconsideration.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not further address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom stated that the Commission correctly concluded that rate additives to recover historical or stranded costs are not permitted under TELRIC methodology. Nevertheless, the Commission's rejection of "rate additives" coupled with adoption of the ILECs' cost studies does not produce TELRIC within the meaning of the FCC's pricing rules. The problem is that the ILECs' cost models and studies are infused through and through with embedded cost characteristics and assumptions, which affect nearly all aspects of the Commission's Order.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

GTE presented no new arguments to support its position on this issue. Since the filing of GTE's motion, however, the Supreme Court has upheld the FCC's rulemaking authority under the Act with respect to UNE pricing. The Eighth Circuit has now reinstated the FCC's pricing rules pending a ruling on the merits. The TELRIC methodology prescribed in the FCC's pricing rules clearly prohibits consideration of embedded costs in calculating the forward-looking economic cost of an element. 51 C.F.R. 505(d)(1). In its First Report and Order in CC Docket No. 96-98 (the Interconnection Order), the FCC noted that Section 252(d)(1)(A)(I) of the Act does not specify whether historical or embedded costs or only forward-looking costs should be considered in setting arbitrated rates, but concluded that a pricing methodology based on embedded costs would be "pro-competitor -- in this case the incumbent LECs -- rather than pro-competition." Order No. 96-325, released August 8, 1996, Paragraph 705. The FCC rejected the ILECs' contentions that they must recover embedded costs in order to ensure that they will recover their total investment costs and earn a profit, stating that such a guarantee would exceed the regulatory assurances that the ILECs have received in the past. Paragraph 706. The FCC further stated that the record before it did not support the conclusion that "significant residual embedded costs will necessarily result from the availability of network elements at economic costs," but "[t]o the extent that any such residual consists of costs of meeting universal service obligations, the recovery of such costs can and should be considered in our ongoing universal service proceeding." Paragraph 707.

The Commission's reasoning on this issue is quite similar to that of the FCC, and the rulings of both agencies are consistent with the Act. GTE may and undoubtedly will contend otherwise when the Eighth Circuit reviews the FCC's pricing rules on the merits. Unless and until the FCC's and this Commission's interpretations of Section 252(d)(1)(A)(I) of the Act are struck down in favor of GTE's, rate additives to recover historical and/or stranded costs should be rejected in their entirety.

CONCLUSIONS

The Commission finds good cause to deny GTE's Motion for Reconsideration as it pertains to this matter and concludes that Finding of Fact No. 2 should be affirmed.

FINDING OF FACT NO. 3 - INTERIM UNIVERSAL SERVICE SURCHARGES

Commission Order: The Commission concluded that, inasmuch as it has pending a comprehensive proceeding to address universal service issues in Docket No. P-100, Sub 133g, such surcharges are outside the scope of this proceeding and should be rejected.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

GENERAL ORDERS - TELECOMMUNICATIONS

Motion for Reconsideration/Clarification:

GTE: GTE argued that it proposed an interim universal service surcharge to be applied to certain UNEs in order to ensure that ILECs have an opportunity to fully recover their actual costs. According to GTE, the Commission erroneously concluded that it need not address universal service issues in this docket because CLPs presently have opportunities to engage in cream-skimming and deprive GTE of universal service support. GTE argued that this is not acceptable under Section 252(f) of the Act and cited the FCC's decision to permit ILECs to collect the Carrier Common Line Charge (CCLC) and a portion of the Transport Interconnection Charge (TIC) on an interim basis to subsidize universal service during the "gap" between the institution of cost-based access rates and the reform of universal service.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not further address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated that GTE's claim that it will lose universal service support as a result of the purchase of UNEs by CLPs is no more than a last chance effort to hold onto its monopoly-era, make-whole revenue stream. The FCC, in its Interconnection Order (Paragraph 713), has ruled that states may not include universal support funding in the rates for elements and service pursuant to Sections 251 and 252 of the Act. Even if this kind of recovery were permissible, GTE has not made any showing that it is losing any support from the leasing of UNEs to competitors. GTE provides no basis for that conclusion that states must tack subsidy flow surcharges onto the forward-looking UNE prices paid by competitors. The Commission should deny GTE's Motion for Reconsideration on this issue.

PUBLIC STAFF: The Public Staff stated in its initial comments that GTE's proposed interim universal service surcharge and method of calculation suffer from many of the same defects as its proposed rate additive to recover stranded costs and also raise issues that are at the heart of the universal service proceeding now pending in another docket. There is nothing in the FCC's rules or in any of the FCC's orders implementing the Act that supports, much less requires, the protection of GTE's revenue stream that GTE seeks through this mechanism. The Public Staff recommended that the Commission affirm its decision on this issue.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General stated that the Commission correctly concluded that GTE's proposed interim universal service surcharges are outside the scope of this proceeding. It simply makes more sense to make decisions regarding universal service issues in the context of the pending universal service proceeding in Docket No. P-100, Sub 133g. The Attorney General further stated that he was not aware of any court order or FCC rule that requires otherwise. Therefore the Attorney General recommended that the Commission not reverse its finding on the basis of GTE's Motion for Reconsideration.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not further address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom stated that the Commission correctly concluded that rate additives such as interim universal service surcharges are not permitted under the TELRIC methodology. Nevertheless, the Commission's rejection of "rate additives" coupled with adoption of the ILECs' cost studies does not produce TELRIC within the meaning of the FCC's pricing rules. The problem is that the ILECs' cost models and studies are infused through and through with embedded cost characteristics and assumptions, which affect nearly all aspects of the Commission's Order.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

GTE's proposed interim universal service surcharge and method of calculation suffer from many of the same defects as its proposed rate additive to recover stranded costs, which the Commission rejected in Finding of Fact No. 2. They also raise issues that are at the heart of the universal service proceeding now pending in Docket No. P-100, Sub 133g. There is nothing in the FCC's rules or in any of the FCC's orders implementing the Act that supports, much less requires, the protection of GTE's revenue stream that GTE seeks through this mechanism.

CONCLUSIONS

The Commission finds good cause to deny GTE's Motion for Reconsideration as it pertains to this matter and concludes that Finding of Fact No. 3 should be affirmed.

FINDING OF FACT NO. 7 - COST OF CAPITAL

Commission Order: The Commission concluded that the overall costs of capital which were reasonable and appropriate to use in the cost studies to determine the forward-looking economic cost associated with the provision of unbundled network elements and interconnection equal 9.96% for BellSouth, 10.01% for GTE, and 10.10% for Carolina/Central.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

GTE: GTE stated that the Commission should not have adopted the Public Staff's recommendation that the appropriate overall cost of capital for use in GTE's forward-looking cost study is 10.01%. According to GTE, the primary flaw in the Public Staff's position is that it relies solely on telecommunications companies as proxies for GTE, which is not a forward-looking approach. GTE asserts that telecommunications companies have far less competition today than they will in the not-too-distant future. Therefore, GTE believes it is more accurate to use firms that operate in fully competitive markets as proxies to determine the forward-looking risk to GTE. Citing its Post-Hearing Brief, GTE also continued to challenge the Public Staff's use of book values to determine the capital structure ratios, use of an annual discounted cash flow (DCF) model, the use of historical growth rates versus earnings growth forecasts to predict long-run dividend growth, and the omission of a flotation cost adjustment in the cost of equity. GTE argued that each of these issues caused the cost of capital recommended by the Public Staff and adopted by the Commission to be too low. GTE opined that the Commission should reconsider Finding of Fact No. 7 and adopt the 13.03% cost of capital proposed by GTE witness Jacobson, or alternatively, the 11.25% figure currently authorized by the FCC as the rate of return on the interstate access services of ILECs.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not further address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in its initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated in their initial comments that GTE's Motion for Reconsideration had simply repeated its previously rejected arguments to support the use of GTE's excessive cost of capital proposals. The New Entrants argued that there is simply no basis for GTE's assumption that firms in the S&P Industrials experience risk to the same degree as a local telephone company like GTE will face in furnishing UNEs and interconnection. Further, the New Entrants pointed out that even GTE itself acknowledged that it raised the same concerns in its Motion for Reconsideration that GTE had already identified and discussed in its Post-Hearing Brief. The New Entrants asserted that GTE provided no new analysis or facts to warrant adoption of its previously rejected arguments. Therefore, the New Entrants urged the Commission to reject GTE's request to reconsider the "credible and reliable" evidence presented by the Public Staff with respect to the level of risk that GTE will face in furnishing UNEs and interconnection and once again defy GTE's invitation to overstate its cost of capital.

PUBLIC STAFF: The Public Staff stated that the Public Staff's DCF analysis incorporated numerous investor-related forecasts and projections which fully reflect the risks faced by telecommunications companies. The Public Staff believed that the volatile nature of securities markets and stock prices of GTE and other telecommunications companies make the use of a market weighted capital structure unreliable and inappropriate to use in regulatory proceedings while the preponderance of evidence indicates that analysts and investors rely on conventional book value accounting to evaluate capital structures. The Public Staff noted that the Commission has previously rejected the use of the quarterly version of the DCF model and has not allowed the use of a hypothetical flotation cost adjustment to the cost of equity in any proceeding since the decision of the Supreme Court in State ex. rel. Utilities Commission v. Public Staff, 331 N.C. 215, 415 S.E.2d 354

(1992). Finally, with regard to the use of only earnings growth forecasts to predict long-run dividend growth rates, the Public Staff pointed out that witness Hinton testified that investors rely on a company's historical performance as well as forecasts by stock analysts and that he gave primary weight to the forecasted growth rates in his DCF analysis. The Public Staff contended that the record clearly supports the Commission's reliance on the Public Staff's DCF analysis and its adoption of the Public Staff's recommended costs of capital. Therefore, the Public Staff recommended that Finding of Fact No. 7 should be affirmed.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General believed that GTE provided no new analysis or information to warrant reconsideration on the cost of capital issue. Therefore, the Attorney General stated that the Commission should not reverse this finding of fact on the basis of GTE's Motion for Reconsideration.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not address further this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not further address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not further address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

GTE's Motion for Reconsideration repeated its previously rejected arguments on the cost of capital issue as pointed out by the New Entrants. The Attorney General also noted that GTE had provided no new analysis or information to warrant reconsideration of this finding of fact by the Commission. The Public Staff maintains that the record clearly supports the Commission's reliance on the Public Staff's recommended costs of capital. The Commission agrees that GTE's Motion for Reconsideration provides no new analysis or information to warrant reconsideration of the cost of capital issue and that the record clearly supports Finding of Fact No. 7.

CONCLUSIONS

The Commission concludes that GTE's Motion for Reconsideration regarding Finding of Fact No. 7 should be denied and that Finding of Fact No. 7 should be affirmed.

FINDING OF FACT NO. 8 - DEPRECIATION

Commission Order: The Commission concluded that it was reasonable and appropriate to require the ILECs to use the economic lives and future net salvage values which were adopted and approved by the Commission in Docket No. P-100, Sub 133b.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

GTE: GTE stated in its Motion for Reconsideration that the Commission should reconsider its ruling regarding economic lives and future net salvage values. GTE maintained that the FCC ranges ordered by the Commission were developed from lives prescribed in the 1990-1994 time frame and were established prior to the passage of the Act. GTE stated that the depreciation lives ordered by the Commission are embedded and out-dated. GTE recommended that the Commission adopt the depreciation lives proposed by GTE which are based on the well-established National Association of Regulatory Utility Commissioners (NARUC) factors and are reasonable in comparison to those used by other telecommunications carriers. GTE stated that the Commission has made no finding that the lives recommended by GTE are inaccurate or flawed. Finally, GTE maintained that the lives used in Docket No. P-100, Sub 133b, were based on a Public Staff recommendation which was predicated on the view that the Commission was required to use the FCC lives in the context of a universal service case. GTE stated that the Commission should be willing to accept economic lives different from those adopted in the universal service case based on the clear evidence that the FCC lives are flawed, and GTE's proposed lives are more forward-looking lives.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not further address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not specifically address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated that in Docket No. P-100, Sub 133b, the Commission independently concluded that the FCC's depreciation lives are forward-looking. Therefore, the New Entrants maintained, the Commission's decision was not based on mere abstract considerations of consistency. The New Entrants stated that the Commission found the FCC's depreciation lives to be forward-looking and appropriate for use in this docket. The New Entrants also maintained that GTE presented no new reasoning to support adoption of its proposed depreciation lives. Therefore, the New Entrants recommended that the Commission reaffirm its decision on this issue.

PUBLIC STAFF: The Public Staff stated in its initial comments that there is nothing in the Act which requires the Commission to adopt the most forward-looking projection lives presented. The Public Staff maintained that it is sufficient to use depreciation rates in the TELRIC studies that are forward-looking and reasonable. Finally, the Public Staff stated that the record supports the Commission's use of the FCC's depreciation lives in the TELRIC studies. The Public Staff recommended that the Commission affirm its decision on this issue.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General stated in reply comments that GTE has provided no new information warranting reconsideration on this issue. The Attorney General, therefore, recommended that the Commission not reverse its finding on the basis of GTE's Motion for Reconsideration.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not further address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom stated in reply comments that the Commission's adoption of the ILECs' cost studies does not produce TELRIC within the meaning of the FCC's pricing rules.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

GTE did not offer any additional information on this issue, as noted by the Attorney General. Additionally, as noted by the Public Staff, the Act does not mandate that the Commission adopt the most forward-looking projection lives presented. The Commission agrees; therefore, the Commission affirms its decision on this issue.

The Public Staff noted in its comments filed on February 24, 1999, that BellSouth did not reflect all of the economic lives and future net salvage values ordered by the Commission in its December 10, 1998 Order. The Commission has reviewed the economic lives and future net salvage values used by BellSouth in its cost study and agrees with the Public Staff that BellSouth did not reflect all of the appropriate values. Therefore, the Commission finds that BellSouth should adjust its economic lives and future net salvage values so that they are all in compliance with the Commission's Order of December 10, 1998.

CONCLUSIONS

The Commission concludes that GTE's Motion for Reconsideration in this regard should be denied and that Finding of Fact No. 8 should be affirmed. Further, the Commission also concludes that BellSouth should adjust its economic lives and future net salvage values so that they are all in compliance with the Commission's Order of December 10, 1998.

FINDING OF FACT NO. 11 - RATES FOR LOOPS AND LOCAL SWITCHING ELEMENTS AND ACCESS TO POLES, DUCTS, AND CONDUITS

Commission Order: The Commission concluded that to the extent GTE and Carolina/Central had not previously filed proposed rates for digital 2-wire loops; digital 4-wire loops; Integrated Services Digital Network (ISDN) loops; DS1 loops; High-Bit Rate Digital Subscriber Line (HDSL) loops; Asynchronous Digital Subscriber Line (ASDL) loops; ISDN switching; Centrex switching; Private

Branch Exchange (PBX) switching; DS1 switching; and access to poles, ducts, and conduits, Carolina/Central and GTE should file proposed rates and cost studies consistent with the pricing methodology approved by the Commission.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

Carolina/Central: Carolina/Central stated in their Motion for Clarification that they are filing the digital 2-wire rate as a surrogate for ADSL capable loops and the DS1 loop rate as a surrogate for HDSL capable loops. Carolina/Central do not presently offer ADSL or HDSL services and have no plans to introduce these services in North Carolina until the year 2000. Consequently, Carolina/Central have performed no cost studies to establish "actual rates" for ADSL and HDSL loops. However, Carolina/Central believe the surrogate rates referred to above satisfy the Commission's Order with respect to Finding of Fact No. 11, and also are consistent with the New Entrants' specific request to Carolina/Central for "DS1 loops or HDSL". (Actual rates for ADSL and HDSL capable loops will be provided later when the services are actually introduced.) Carolina/Central requested confirmation that the surrogate rates satisfy the Commission's Order with respect to Finding of Fact No. 11.

Carolina/Central stated that, at this time, they are not quoting rates for pole attachments or for duct or conduit space. The rates charged to providers of telecommunications service for pole attachments and for duct and conduit space are controlled by the Pole Attachment Act, 47 U.S.C. Paragraph 224 (as amended by the Telecommunications Act of 1996), which provides, in part, that rates for pole attachments, ducts, and conduits are matters of FCC jurisdiction unless a state commission has certified to the FCC an intent to regulate these rates at the state level. Accordingly, Carolina/Central propose to continue their past practice of establishing reasonable rates for pole attachments and for duct and conduit space through negotiation with the other party.

Carolina/Central stated that they are not, at the present time, filing a formal Motion for Reconsideration with respect to those portions of the Commission's December 10, 1998 Order calling for UNE rates for pole attachments, duct, and conduit space. However, in the event that Carolina/Central's position with respect to pole attachments, ducts, and conduits is later challenged, Carolina/Central wish to reserve all rights to file a formal Motion for Reconsideration at that time.

GTE: GTE stated in its Motion for Reconsideration that the Commission's ruling goes too far and that the Commission should reconsider Finding of Fact No. 11. GTE argued that under Section 224 of the Act, pole attachments fall under the jurisdiction of the FCC, not this Commission. GTE further stated that the FCC (FCC Memorandum Opinion and Order of October 30, 1998, CC Docket No. 98-79) has found that ADSL is an interstate special access service subject to federal jurisdiction.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central requested that the Commission retain its original finding that GTE file proposed rates and cost studies for ADSL loops. Carolina/Central noted that because the FCC's TELRIC standard assumes a forward-looking network design in the development of recurring costs, incumbent local exchange carriers' nonrecurring charges should not include ADSL loop conditioning charges such as the removal of loading coils and bridge taps. These items do not appear in a forward-looking network. Carolina/Central also requested the Commission to find that incumbent carriers should file rates and cost studies for "all equipment and facilities," other than just the loop, that such carriers use to provision advanced telecommunications such as ADSL service to their own customers.

GTE: GTE did not further address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants, in commenting on GTE's Motion for Reconsideration, contended that GTE's claims with respect to the establishment of rates for pole attachments unnecessarily limit this Commission's authority. While it is true that Section 224 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, provides the FCC with primary jurisdiction to regulate the rates, terms, and conditions for pole attachments, GTE failed to mention that Section 224(c) gives states the authority to effectively "preempt" the FCC's regulation. Specifically, Section 224(c) provides that "[n]othing in this section shall be construed to apply to, or to give the [FCC] jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way. . ., for pole attachments in any case where such matters are regulated by a State." 47 U.S.C. Paragraph 224(c)(1)(1996). Although each state must take particular steps defined in the statute to certify to the FCC that such regulation will occur, nothing prevents the Commission from taking the preliminary steps necessary to regulate pole attachments in such a manner. The New Entrants argued that the Commission can require GTE to submit cost studies for pole attachments now. Once it has issued an effective ruling on what the appropriate rates should be, the Commission could then seek to certify to the FCC that it will regulate access to poles, ducts, conduits, and rights-of-way going forward.

The New Entrants contended, with respect to the pricing of unbundled ADSL loops, that GTE misunderstood how federal law affects ADSL services. While it is true, as GTE alleged, that the FCC has found that ADSL is an interstate special access service, that finding relates only to

ADSL service as a finished product. The correct order for determining what ILEC obligations are with respect to unbundling of DSL-conditioned loops is the FCC's August 1998 decision in CC Docket No. 98-147, in which the FCC clearly held that "the facilities and equipment used by incumbent LECs to provide advanced services are network elements and subject to section 251(c). Thus, upon request, the incumbent LEC must provide new entrants with unbundled loops capable of transporting high-speed digital signals . . . ." GTE's reference to the FCC's decision in CC Docket No. 98-79 is inapposite. In accordance with relevant FCC precedent, the Commission should uphold its decision to require GTE to submit cost studies for ADSL-conditioned loops.

The New Entrants stated that Carolina/Central's Motion for Clarification offers no rationale now why Carolina/Central should not file proposed rates and cost studies for these loops. As an interim measure, the New Entrants do not object to the use of the surrogates suggested by Carolina/Central. However, these surrogate rates should be subject to true-up when permanent rates are adopted.

PUBLIC STAFF: The Public Staff commented that this Commission has not traditionally regulated pole attachments (broadly defined as attachments to poles, ducts, conduits, and rights-of-way). Instead, the Commission has left these matters to negotiation between the parties and, if negotiation fails, to the regulations of the FCC. The Commission should not attempt to duplicate the efforts of the FCC at this time by beginning to regulate rates for pole attachments. Therefore, the Commission should require BellSouth to withdraw its proposed rates for these services, and it should not require the filing of rates and supporting studies by the other ILECs.

Regarding the rates and cost studies for ADSL and HDSL loops, since Carolina/Central will not be offering those services until next year, there is no reason why rates should be filed at this time. Given the demand for the associated services evidenced at the hearing, Carolina/Central should file UNE rates and supporting cost studies with the Commission before offering these services to their end users.

To the extent that GTE is offering ADSL or HDSL services to end users or to Internet service providers in North Carolina on an interstate or an intrastate basis, GTE should offer UNE rates, including rates for conditioning, to enable CLPs to offer those services as well.

The Public Staff recommended that this Finding of Fact should be clarified and amended to read as follows:

> BellSouth should be required to withdraw its proposed rates for poles, ducts, and conduits. Carolina/Central should be required to file proposed rates and cost studies for each of the various types of loops and local switching elements identified by the Public Staff. GTE should be required to file UNE rates to enable CLPs to offer HDSL and ADSL services, if those services are offered by GTE to its end users or to Internet service providers in North Carolina.

SPRINT: Sprint agreed with the comments of Carolina/Central that this Commission should affirm its original finding that GTE file proposed rates and cost studies for ADSL loops. Further, Sprint supported Carolina/Central in their position that incumbent carriers should file rates and cost studies for "all equipment and facilities," other than just the loop, that such carriers use to provision advance telecommunications such as ADSL service to its own customers.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: *Access to Poles, Ducts, and Conduits.* Carolina/Central stated that the Commission should put aside the New Entrants' questionable analysis of the Commission's present jurisdiction and authority in order to get to the real question, which is what the Commission should do going forward. Carolina/Central agreed with the Public Staff that the Commission should not attempt to duplicate the efforts of the FCC. The Pole Attachment Act presently provides CLPs the same beneficial attachment rates that cable television providers enjoy, and Carolina/Central failed to see how the Commission or any of the parties would benefit from the Commission assuming jurisdiction over poles, ducts, and conduits in this proceeding.

ADSL Capable Loops and Equipment. Carolina/Central stated that they complied with the Commission's UNE Order regarding the submission of rates for various specialized loops and switching. In their Motion for Clarification, however, Carolina/Central observed that they do not presently offer ADSL/HDSL services, nor do they plan to do so until the year 2000. Thus, Carolina/Central asked for clarification on whether they could offer surrogate rates for ADSL/HDSL capable loops until such time as Carolina/Central actually introduces ADSL/HDSL services. Carolina/Central stated that the Public Staff and the New Entrants agreed with Carolina/Central's proposal; however, the New Entrants asked that Carolina/Central's surrogate rates be subject to true-up when permanent rates are adopted.

Carolina/Central further stated that they have reviewed the FCC's First Report and Order in conjunction with the FCC's more recent orders in the advanced telecommunications services docket. Based upon this review, Carolina/Central plan to submit rates and supporting cost studies for ADSL/HDSL capable loops, as defined in the FCC's Orders, no later than July 15, 1999.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in its reply comments.

PUBLIC STAFF: The Public Staff stated that the Commission has not heretofore assumed the responsibility for setting rates for ducts, poles, and conduits and should not do so now without a compelling reason. No such reason has been advanced in this case.

SPRINT: Sprint did not file reply comments.

DISCUSSION

The Commission has not traditionally regulated pole attachments (broadly defined in Section 224 of the Act as attachments to poles, ducts, conduits, and rights-of-way). Instead, the Commission has left these matters to negotiation between the parties and, if negotiation fails, to the regulations of the FCC. Accordingly, the Commission agrees with the Public Staff that BellSouth should be required to withdraw its proposed rates for poles, ducts, and conduits. Prior to offering ADSL and HDSL services to their end users, Carolina/Central should file proposed UNE rates and cost studies to enable CLPs to offer ADSL and HDSL services. GTE should file UNE rates to enable CLPs to offer HDSL and ADSL services, if those services are currently offered by GTE to its end users or to Internet service providers in North Carolina.

CONCLUSIONS

The Commission concludes that Finding of Fact No. 11 should be amended to read as follows:

> BellSouth should be required to withdraw its proposed rates for poles, ducts, and conduits. Prior to offering ADSL and HDSL services to their end users, Carolina/Central should be required to file proposed UNE rates and cost studies to enable CLPs to offer ADSL and HDSL services. GTE should be required to file UNE rates to enable CLPs to offer HDSL and ADSL services, if those services are currently offered by GTE to its end users or to Internet service providers in North Carolina.

FINDING OF FACT NO. 12 - DROP WIRE LENGTHS

Commission Order: The Commission concluded that the drop wire lengths utilized by the ILECs in their cost studies were reasonable and appropriate.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

AT&T: The Commission concluded that the drop wire lengths utilized by BellSouth in its cost studies were "reasonable and appropriate for this proceeding" finding that "BellSouth's methodology appears to be more reasonable . . . [because] it is based on BellSouth's actual experience and thus is more reflective of actual demographics within North Carolina." Yet contrary to the Commission's conclusion that BellSouth's drop wire lengths were based on "North Carolina demographics," this is not what the record reflects. Rather, the only BellSouth documentary evidence in the record regarding drop lengths is a single page, handwritten list of "estimated" drop wire lengths developed by BellSouth's alleged "experts" who pay construction bills, but who do not actually install drop wire. At the hearing, BellSouth did not adequately explain how it had concluded that its estimates were accurate, reasonable, or even forward looking. Accordingly, it is impossible to tell which, if any, of these estimated lengths truly are based on North Carolina demographics or rather BellSouth's region-wide information. Moreover, as to whether they are accurate, reasonable, and forward looking, the record reflects that BellSouth witness Gray admitted in his Georgia deposition that increases in the number and proximity of residences as well as increases in the ratio of businesses to residences would tend to drop lengths in the future. Furthermore, BellSouth's proposed drop wire of 250 feet for buried wire and 300 feet for aerial is inconsistent with evidence in the record from Bell Communications Research Corporation (BellCore) that the national average drop wire length is 73 feet. Drop wire lengths are extremely important because the lengths have a dramatic impact on the price of loops.

Given the highly questionable nature of BellSouth's evidence, and the fact that BellSouth's drop wire lengths are more than three times the uncontroverted national average, the Commission should reject BellSouth's proposed drop wire lengths of 250/300 feet respectively and instead amend its Order by adopting AT&T's proposed drop wire average length of 100 feet. AT&T's proposed drop wire length is reasonable - - a length that is 27 feet (more than 33%) higher than the national average and in the range of 125 feet proposed by the New Entrants. BellSouth, on the other hand, asked this Commission to approve a drop wire length that is 250 - 300% above the national average with no credible supporting evidence other than handwritten estimated numbers scribbled on a piece of paper.

NEW ENTRANTS: The New Entrants request that the Commission reconsider its decision that BellSouth should be permitted to utilize an assumed 250-foot average drop wire length in its cost studies and adopt the more reasonable, efficient, and forward-looking 125-foot proposal recommended by New Entrant witness McMillin. Although the Commission observes that BellSouth "relied on its own subject matter experts, who applied their knowledge with respect to the areas where they actually provide telephone service," the Commission never explains in its Order why the estimates provided by these experts were forward-looking (as required in pricing unbundled network elements under the Act), or why these estimates should even be considered reliable.

As the party with the best access to its own costing data and the proponent of its cost study, BellSouth bears the burden of proving that each and every input in that cost study recovers a forward-looking cost in a manner consistent with the Act. BellSouth has not carried the burden of proof with respect to its drop lengths on the record in this case. In fact, as the New Entrants pointed out, BellSouth's "actual" estimate of a 250-foot average drop length was based on no more than a single, handwritten sheet of paper containing the scribbled notes of a single employee. The unreasonableness of BellSouth's proposal is all the more obvious when one considers that its drop length estimate is more than 175 feet longer than the national average. In fact, BellSouth's proposed 250-foot drop length is longer than GTE's own excessive drop length estimate for North Carolina - a striking fact when one considers that GTE's service territory is for the most part much more rural than BellSouth's.

By contrast, the New Entrants' forward-looking 125-foot average drop length proposal is much more reasonable. Significantly, the New Entrants' proposal is 71% longer than the national average drop length as measured in a Bell Operating Company study. The New Entrants' proposal is even 25% longer than the 100-foot average drop length proposed by AT&T for BellSouth's cost study. Even though the 73-foot national average may contain urban areas with shorter drop lengths, it also necessarily includes rural areas with longer drops such as Wyoming and North Dakota. In light of the drastic lack of support for - - and unreasonable nature of - - BellSouth's 250-foot drop length estimate, the Commission should reject this estimate in favor of the 125-foot proposal recommended by New Entrant witness McMillin.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: FCC Rule 505(b)(1) requires that TELRIC "be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the ILECs' wire centers." The 250-foot drop length proposed by BellSouth and adopted by the Commission prior to the Supreme Court ruling does not comply with this rule for two reasons.

First, the Commission's rationale for adopting BellSouth's drop length is contrary to the FCC's definition of TELRIC. In its December 10, 1998 Order, the Commission concluded that the drop lengths proposed by BellSouth in its cost model were "reasonable and appropriate for this proceeding," finding that "BellSouth's methodology appears to be more reasonable . . . [because] it is based on BellSouth's actual experience and thus is more reflective of actual demographics within North Carolina." Similarly, at the hearing, Witness Gray testified that the 250-foot drop length reflected the demographics of BellSouth's network in North Carolina and that there was no reason to conclude that this average would change in the future. BellSouth's proposed drop length is thus the very embodiment of the FCC's definition of embedded costs, because it is designed to reflect the "actual demographics" of BellSouth's current network in North Carolina. As a result of the Supreme Court decision, the use of such embedded costs now violates the law.

AT&T noted in its comments that the Tennessee Regulatory Authority had adopted its proposed drop length of 100-foot as reasonable for Tennessee in setting prices for interconnection and UNEs, finding that a 100-foot drop length best represents the conditions in a forward-looking environment. Also in its comments, AT&T repeated much of the argument previously presented in its initial motion to rescind, alter, or amend filed on January 11, 1999.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: Both AT&T and the New Entrants challenge the Commission's findings that the drop lengths proposed by BellSouth are appropriate. Although AT&T claims that the record does not reflect that BellSouth's drop wire lengths are based on "North Carolina demographics," BellSouth witness Gray testified at length that the estimated drop wire lengths developed by BellSouth's subject matter experts were North Carolina specific.

The 250-foot drop wire length advocated by witness Gray was, according to witness Gray, based on a North Carolina statewide survey of subject matter experts. Additionally, it was witness Gray's testimony that he chose to use the North Carolina survey rather than old loop surveys covering the entire nation.

Counsel for the New Entrants cross-examined witness Gray at length about BellSouth's drop wire length assumptions. In response to questions from New Entrants' counsel, witness Gray's testimony on this issue covers nearly 20 pages in the transcript. Under the circumstances, the New Entrants' claim that BellSouth's assumptions were based on a "single handwritten sheet of paper" is obviously inaccurate.

It is ironic that the New Entrants criticize BellSouth's drop wire lengths as not being sufficiently forward-looking, given that both the New Entrants' and AT&T's proposals reference a national study of drop wire lengths conducted more than 15 years ago.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: The FCC rules reinstated by the Supreme Court specifically prohibit the consideration of embedded costs in the calculation of the forward-looking economic cost of an element. BellSouth incorrectly based loop prices on the current network configuration. As a result, its prices, particularly loop prices, include costs of historical inefficiencies.

For example, BellSouth's loop investment input, derived from a sample of loops in place in BellSouth's network, reflects the historic routes and general configuration of loops. Most importantly, the routes determine the length of the loops, and loop length is a primary "driver" of loop costs. By using historic routes and configurations of a sample of loops currently in place, BellSouth has overstated loop lengths based on past inefficiencies and, therefore, has overstated loop costs. The FCC's pricing rules unequivocally prohibit the use of embedded drop lengths, among other things, in loop costing procedure. Clearly, BellSouth's loop investment costs must be determined without regard to any of the embedded characteristics of its existing network.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: Section 51.505(b)(1) of the FCC's pricing rules requires that TELRIC "be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." The 250-foot drop length proposed by BellSouth and adopted by the Commission does not comply with this rule. The drop length used in BellSouth's cost study was based on input from a BellSouth witness for which no documentation was provided. At the hearing, BellSouth witness Gray testified that the 250-foot drop length reflected the demographics of North Carolina and that there was no reason to conclude that this average would change in the future. There is nothing in the record to demonstrate that the 250-foot average drop length was based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of BellSouth's wire centers.

Section 51.505(e) of the Pricing Rules requires an ILEC to "prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with" the Pricing Rules. The evidence offered by BellSouth on average drop length does not satisfy this burden of proof.

PUBLIC STAFF: The Public Staff takes the position that the Commission should affirm its initial finding. Specifically, the Public Staff stated that the record supports the Commission's conclusion that the results of the survey of BellSouth installation managers in North Carolina was better evidence for BellSouth's average drop lengths in North Carolina than was the national average. The Public Staff also stated that the record also supports the conclusion that actual experience was not an unreasonable approach to modeling a forward-looking network.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: Notwithstanding the legal technicalities BellSouth has manufactured to defend its discredited cost studies, it can not escape the conclusion: (1) that the Supreme Court reinstated the FCC's UNE pricing rules, (2) that the FCC's UNE pricing rules are binding on the Commission, and (3) that BellSouth's cost studies violate the FCC's UNE pricing rules. Accordingly, there is no dispute that the Commission cannot adopt UNE prices based on BellSouth's embedded cost studies because they clearly violate the FCC's pricing rules.

BellSouth's drop length estimates violate the FCC's UNE pricing rules. Both BellSouth and the Commission agree that BellSouth's drop lengths are premised upon the configuration of BellSouth's network in North Carolina (however inaccurately or lacking in support). Moreover, there is no evidence in the record to demonstrate that the 250-foot average drop length used by BellSouth was based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of BellSouth's wire centers. It is simply BellSouth's "off the cuff" estimation of the average of its historic drop lengths in all of its states.

The FCC's pricing rules require BellSouth to "prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with" the FCC's pricing rules. The evidence offered by BellSouth on its average drop length does not satisfy this burden of proof. The Commission should not adopt UNE prices on the drop lengths proposed by BellSouth in this proceeding.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom continued to argue in its reply comments that the FCC's pricing rules unequivocally prohibit the use of embedded drop lengths, among other things, in loop costing procedure. Since BellSouth's loop investment costs, on which the Commission based loop prices, reflect existing embedded network configuration, such prices have been established in a manner in violation of the Act. In order to develop UNE rates that are forward-looking and thus are conducive to the development of efficient competition in the local exchange market, a consistent, statewide "scorched node" cost modeling approach, using forward-looking cost inputs, must be adopted; one that does not assume the embedded network.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: Ignoring the FCC's reinstated pricing rules would contravene valid federal law. UNE prices must be based on forward-looking costs and not embedded costs.

PUBLIC STAFF: The Public Staff takes the position that the Commission should affirm its initial finding. Specifically, the Public Staff stated that, of all the outside plant cost-study inputs, drop wire lengths are least likely to change on a forward-looking basis. The locations of the houses will be the same tomorrow as they are today. Thus, the embedded nature of actual demographics does not necessarily disqualify it as being also forward-looking for TELRIC pricing purposes.

SPRINT: Sprint did not file reply comments.

DISCUSSION

The Commission found that the drop wire lengths utilized by the ILECs in their cost studies were reasonable and appropriate for purposes of this proceeding. The Commission concluded that the weight of the evidence supported BellSouth's position on this issue, stating that BellSouth's methodology appeared to be more reasonable than the CLPs' because it was based on BellSouth's actual experience and thus was more reflective of actual North Carolina demographics. The Commission also stated that it did not appear to be an unreasonable approach to modeling a forward-looking network.

BellSouth witness Thompson sponsored the BellSouth cost study, addressing both the cost methodology and the process used to develop the TELRIC costs. She stated that the costs are long-run, forward-looking, reflect least-cost efficient technologies, and included directly attributable incremental costs that are determined based on cost causation. With respect to drop wire lengths, she stated that BellSouth used "North Carolina specific drop wire length, and travel time, and work times to place drop wire in the NID -- as part of the inputs to the loop study." BellSouth witness Gray described the network design used in the cost studies. In his prefiled testimony, witness Gray stated that the study assumes that both aerial cable drops and buried cable drops are an average of 250 feet. He also stated:

> "These assumptions were derived via a review by a BellSouth Subject Matter Expert . . . of the average length of aerial and buried drops in the states of the BellSouth region. The method used to acquire this information consisted of contacting the Installation and Maintenance Managers in the state for information based on their knowledge of the areas they serve. These managers are responsible for the installation of drop wire and would have the best working knowledge of average lengths without actually measuring individual drops. The Subject Matter Expert averaged their responses and provided a state total. Additionally, for buried service wire, the BellSouth group that administers master contracts for burying the drop was consulted and provided footage information from those contracts as a cross check. The assumptions therefore were developed from actual BellSouth information that considered the variety of demographics for drops in the region."

On cross-examination by the New Entrants, witness Gray conceded that this process was not a thorough study. He was shown a blown up copy of BellSouth's response to New Entrants' Data Request No. 51 for "workpapers, memos, and studies supporting the average length of aerial and buried drops in BellSouth's region." The response was the handwritten notepaper that the Subject Matter Experts at headquarters used to record the survey of the field installation managers (New Entrants Gray Cross Examination Exhibit 2). When asked whether it struck him as odd that the numbers were all round numbers, Gray responded that "it's not uncommon to round numbers when you're in – doing any type of planning or engineering." When asked whether the drops are installed in round numbers, witness Gray stated: "The actual footage is not a round number. I believe though that the way that we paid for the installation is in round numbers, yes." As to how the installation maintenance managers knew what the lengths were, witness Gray stated:

> "Because they're responsible for having them installed and they're responsible for -- maintaining the contract, that – that is involved in that which means they have to know what they paid for based on footage. They're – they're probably the best person to tell you what those drop lengths are because they deal with them on a day-to-day basis."

Witness Gray insisted that the survey was based on "expert opinion."

While supporting documentation would have bolstered BellSouth's position, the Commission continues to believe that it was reasonable to reject the use of national averages as reflected in the BellCore study of 1983. The record supports the Commission's conclusion that the results of the survey of BellSouth installation managers in North Carolina was better evidence for BellSouth's average drop lengths in North Carolina than was the national average. The record also supports the conclusion that actual experience was not an unreasonable approach to modeling a forward-looking network. Short of actually measuring drop length, it appears reasonable to take the footage and divide by the number of drops to arrive at an average for the State. Such an average would necessarily reflect North Carolina demographics.

CONCLUSIONS

The Commission concludes that AT&T's Motion to Rescind, Alter, or Amend and the New Entrants' Motion for Reconsideration/Clarification should both be denied.

FINDING OF FACT NO. 15 - SWITCHING COSTS

Commission Order: The Commission agreed with the Public Staff that the costs derived from studies that reflect ILEC-specific characteristics are the most appropriate basis for pricing UNEs, provided they are reasonable, forward-looking, and otherwise consistent with the Act. The Commission concluded that the ILECs' switching costs were reasonable and appropriate, except that they should have been modified to reflect the Commission approved changes in the annual cost factors and the pricing of vertical features.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

AT&T: AT&T stated in its Motion to Rescind, Alter, or Amend that the Commission should amend its Order by requiring BellSouth to make further modifications to its switching prices to reflect BellSouth's forward looking discounts and remove all historical discounts from its switching prices. AT&T maintained that BellSouth never adequately answered AT&T's concerns that its proposed switching prices are based on switch prices that do not reflect the actual discounts which BellSouth now experiences and can anticipate in the future in its contracts with switch vendors. Further, AT&T stated that BellSouth's Switching Cost Information System (SCIS) model inexplicably used switch discount inputs which produced prices many times higher than those BellSouth now has available under existing, long-term contracts with Lucent Technologies (Lucent). AT&T argued that given the current level of intense competition among switch manufacturers, the record is uncontroverted that BellSouth's forward-looking switch costs, assuming efficient contracting prices, will approach the competitive prices Lucent now offers, regardless of whether the ultimate supplier is Lucent or another switch supplier. The Commission apparently ignored the fact that the record reflects that BellSouth already has an existing contract and subsequent Letter of Authorization with Siemens Stromberg-Carlson for switches at prices even lower than those offered by Lucent. Additionally, AT&T remarked that even assuming, *arguendo*, that BellSouth should be entitled to include costs for additional line growth in its switching prices which seemed to be a consideration by the Commission for accepting BellSouth's proposed switching prices, certainly costs for future line growth should be based on forward-looking future discounts and not past historical discounts.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T stated in its initial comments that the record is uncontroverted that the switch prices similarly situated companies have achieved are 40% to 70% lower than those generated by BellSouth's cost model. BellSouth's switch costs are not forward-looking or TELRIC, and they do not even reflect the historical costs that BellSouth pays today to buy switches. Thus, AT&T argued that it is apparent that BellSouth's switch prices are not based on the lowest cost, most-efficient, telecommunications equipment, and thus violate the FCC's TELRIC rules.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth stated in its initial comments that AT&T's complaint about the Commission's decision to adopt BellSouth's switching costs conveniently ignores the evidence in the record. BellSouth argued that the approach embodied in its cost studies used existing contracts with BellSouth's switch suppliers and incorporated the actual discounts that BellSouth was currently receiving and would receive in the future in purchasing switching capabilities. Further, the switch discounts adopted by the Commission correctly reflect both initial placement and growth costs, whereas comparing those prices to a price that reflects only the initial placement cost, as AT&T attempts to do, is an "apples to oranges" comparison. BellSouth recommended that the Commission deny reconsideration of this issue.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom stated in its initial comments that the pricing methodology must be TELRIC. MCI WorldCom argued that in order to develop results that are forward-looking and thus conducive to the development of competition in the local exchange market, a consistent, statewide "scorched node" cost modeling approach must be adopted: one that does not assume the embedded network. MCI WorldCom stated that the Commission should adopt the Hatfield Model which is a scorched-node, forward-looking cost model that employs inputs consistently with the FCC's pricing rules.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants did not address this issue in their initial comments.

PUBLIC STAFF: The Public Staff stated in its initial comments that AT&T's argument over the switching prices is simply a continuation of its assertion that only the initial replacement costs should be included, despite the testimony of one of its own witnesses to the contrary. The Public Staff asserted that the position advocated by AT&T that BellSouth's unbundled switching rates should reflect the assumption that new demand will be served only by installing new switches is unrealistic. The Public Staff stated that while AT&T's argument may make sense when designing a network from scratch, rates for BellSouth's unbundled switching network elements in this docket should reflect a weighting of switch replacement costs as well as the costs associated with adding lines to existing switches. The Public Staff recommended that the Commission affirm its decision on this issue.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T stated in its reply comments that while it is correct that BellSouth used actual switch discounts found in its Lucent and Nortel contracts, that does not answer the question of whether those discounts reflect the TELRIC principles embodied in the reinstated FCC UNE pricing rules. AT&T argued that the FCC's rules require that the network be designed from scratch. By assuming only the current location of wire centers, the cost study must forecast switch cost based on placement of new switches to serve demand, i.e., reconstructing the network, rather than assuming current switch capacity or historic switch capacity plus growth to meet projected demand, i.e., using current network characteristics. Focusing on BellSouth's current switch capacity or the historic manner in which BellSouth has purchased switch capacity to serve current demand - i.e., through initial placement plus add-on lines for growth - embodies the FCC's definition of a prohibited embedded cost approach. The FCC rules require a reconstructed network. Thus, the proper TELRIC approach is to assume the purchase of switches (not add-on lines), on a forward-looking basis, to serve projected demand, as if those switches were being purchased to reconstruct the network from scratch.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not further address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom argued in its reply comments that the ILECs' cost models and studies are irretrievably tainted by embedded network investment and configuration and cannot be rehabilitated. The Commission cannot simply tweak some inputs while assuming that the ILECs' cost models can be retained. MCI WorldCom asserted that the Commission, in compliance with the FCC's rules, must either formulate statewide deaveraged UNE rates from the vast amount of data presented in this case, using one forward-looking, scorched-node, least-cost model with forward-looking, least-cost inputs, or it must rehear the case. In order to develop UNE rates that are forward-looking and thus are conducive to the development of efficient competition in the local exchange market, a consistent, statewide, scorched-node cost modeling approach, using forward-looking, least-cost inputs, must be adopted: one that does not assume the embedded network.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff stated in its reply comments that it would endeavor not to repeat its earlier comments any more than necessary. Thus, the Public Staff provided no additional comments on this issue.

SPRINT: Sprint did not file reply comments.

DISCUSSION

MCI WorldCom continued to raise the same issue that the Commission should adopt the Hatfield Model as its cost model. This position was addressed in the Order in the Evidence and Conclusions for Finding of Fact No. 4, wherein the Commission found that it was more reasonable to modify the studies presented by the ILECs than to discard those studies in favor of the models presented by AT&T and MCI WorldCom and then attempt to adjust those models to make them suitable to North Carolina. Finding of Fact No. 4 has been previously addressed elsewhere, and no further discussion is necessary.

AT&T stated in its reply comments that BellSouth used actual switch discounts consistent with those included in contracts with its switch vendors, Nortel and Lucent, thus acknowledging that BellSouth used its current discounts in determining the switching costs. However, the real issue is whether switch costs can be expected to differ from that used in the study, regardless of any future discounts which BellSouth can be expected to receive from its switch vendors. AT&T failed to show that the discounts it expects BellSouth to receive from its switch vendors in the future will result in different switch prices to BellSouth.

AT&T's argument that similarly situated companies achieve switching prices which are 40% to 70% lower than those generated by BellSouth's study relied on the use of switch costs that are not comparable to those used by BellSouth. AT&T's switch costs include only the cost of replacement switches. In contrast, BellSouth has included a weighting of the cost of replacement switches and additional lines to existing switches. This is an important distinction, because as AT&T witness Petzinger acknowledged, the initial placement cost for switches is typically less than the cost of purchasing add-on lines for an existing switch.

In effect, AT&T's argument over the switching prices is a continuation of its assertion that only the initial replacement costs should be included, despite the testimony of one of its own witnesses to the contrary. Specifically, in assessing the economic cost of switching, AT&T witness Cabe agreed that it would not be appropriate to look only at initial placement and ignore the cost of growth associated with a switch. In its comments, the Public Staff stated that the position advocated by AT&T that BellSouth's unbundled switching rates should reflect the assumption that new demand will be served only by installing new switches is unrealistic. Further, the Public Staff noted that while AT&T's argument may make sense when designing a network from scratch, the rates for BellSouth's unbundled switching network elements in this docket should reflect a weighting of switch replacement costs as well as the costs associated with adding lines to existing switches. The approach embodied in BellSouth's cost studies used existing contracts with BellSouth's switch suppliers and incorporated the actual discounts that BellSouth was currently receiving and would receive in the future in purchasing switching capabilities. Based on the foregoing, the Commission believes that its decision on this issue should be reaffirmed.

There is one additional matter relating to this issue that needs to be addressed. The Public Staff filed comments on February 24, 1999, regarding their evaluation of the ILECs' compliance with the modifications to their studies that were required by the findings of the Commission Order issued December 10, 1998. In those comments, the Public Staff stated that Carolina/Central and GTE adjusted their switching costs to reflect the appropriate changes in the annual cost factors. The Public Staff stated that BellSouth's study also reflected the appropriate changes, except that certain economic lives and future net salvage values did not comply with the factors approved in Appendix B of the December 10, 1998 Order. In this regard, the Commission agrees with the Public Staff's finding that BellSouth did not reflect all of the appropriate values. Therefore, BellSouth needs to adjust its economic lives and future net salvage values such that they are all in compliance with the Commission's December 10, 1998 Order.

CONCLUSIONS

The Commission concludes that AT&T's Motion to Rescind, Alter, or Amend in this regard should be denied and that Finding of Fact No. 15 should be affirmed. Further, the Commission also concludes that BellSouth should be required to revise its switching costs, such that they reflect annual cost factors incorporating depreciation rates consistent with Finding of Fact No. 8, as discussed herein.

FINDING OF FACT NO. 16 - SHARED AND COMMON COST FACTORS

Commission Order: The Commission concurred with the Public Staff that the ILECs' cost studies, subject to modification, are consistent with Section 252(d) of the Act. The Commission concluded that the ILECs' proposed shared and common cost factors are reasonable and appropriate and should be adopted.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

AT&T: AT&T requested clarification since it was unclear as to which particular modifications or adjustments to BellSouth's study, if any, were suggested by the Public Staff or ordered by the Commission with respect to shared and common costs. Noting that it had argued that BellSouth had improperly allocated these costs to its nonrecurring costs, AT&T stated that it appears that the Commission's failure to include any modifications or adjustments to remove them was an oversight.

NEW ENTRANTS: The New Entrants requested reconsideration of the Commission's decision to adopt the shared and common cost factors proposed by the ILECs. According to the New Entrants, the Commission has misconstrued the New Entrants' position and overlooked numerous criticisms of the ILEC cost studies.

With regard to GTE's common cost study, the New Entrants identified two areas that lead to an inflation of the common costs. The first is GTE's assumption that it would require the same investment or expense in the same mix, type, size, and quantity as if it purchased all of its assets today. The second is GTE's inclusion of certain expenses in its common cost pool that have nothing to do with the provisioning of an unbundled element. The New Entrants also criticized Carolina/Central's study for including costs that will benefit the purchaser of an unbundled local loop.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: After noting that the New Entrants had not objected to BellSouth's shared and common cost factors, BellSouth asserted that AT&T was mistaken that the Commission had not made modifications and adjustments to BellSouth's shared and common costs. On the contrary, following the Public Staff's recommendation, the Commission modified a number of inputs to its cost studies, including cost of capital, capital structure, depreciation, and effective tax rates. By modifying these inputs, the Commission necessarily modified BellSouth's shared and common costs. AT&T's real complaint is that the Commission did not modify BellSouth's shared and common costs the way AT&T suggested as, for example, to remove shared and common costs from BellSouth's nonrecurring costs. This action was intentional, not an oversight.

CAROLINA/CENTRAL: Carolina/Central maintained that its cost studies were not flawed as the New Entrants maintained, nor should the Commission impose a productivity factor on common costs, as suggested by the New Entrants. Carolina/Central pointed out that it had made significant reductions in its common cost pool, but the named accounts - external relations, legal, and research and development - should not be excluded in toto. Such accounts represent legitimate includible expenses, and the New Entrants have presented no substantive evidence otherwise as for productivity factors, Carolina/Central added that its model already accounts for increases in productivity.

GTE: GTE noted that the fixed allocator which it had proposed was 14% but that in its compliance filing, GTE had recomputed its common cost allocation based on the findings in the Commission Order. The compliant cost allocation is 16%, which is appropriate and reasonable. GTE rejected the New Entrants' arguments that its study inflated its common costs by failing to take into consideration productivity gains that might decrease common costs and including in common costs certain inappropriate expenses such as chauffeurs and artwork. GTE noted that the New Entrants had initially proposed a common cost factor for GTE of 14.65%. No party presented evidence that competition (or any other factor) will cause GTE's common costs to decline as a percentage of GTE's direct costs.

MCI WORLDCOM: MCI WorldCom did not address shared and common cost factors specifically but argued that the pricing methodology must be TELRIC. The FCC rules reinstated by the Supreme Court specifically prohibit consideration of embedded costs in the calculation of the forward-looking, economic cost of an element.

NCCTA AND TIME WARNER: The NCCTA and Time Warner supported the New Entrants' Motion for Reconsideration on this issue.

NEW EAST TELEPHONY: New East Telephony supported the New Entrants' Motion for Reconsideration.

NEW ENTRANTS: Section 51.505(d)(2) of the Pricing Rules prohibits consideration of retail costs associated with retail services in the computation of TELRIC costs. Both GTE and Carolina/Central have included retail costs in their cost studies. Moreover, GTE's cost study is based on status quo assumptions and are contrary to Section 51.505(b).

PUBLIC STAFF: The Public Staff stated that although it made no recommendation for specific changes to the ILECs' shared and common cost studies in its Proposed Order, it had clearly stated in Section V, Item I, that the effect of changes to the annual cost factors -- cost of capital, capital structure, depreciation rates, and effective tax rates -- recommended in other sections should be reflected in the shared and common cost calculations.

The New Entrants are complaining that the Commission rejected their arguments concerning the expenses that were included in the ILECs' common cost studies. However, the Public Staff expressed puzzlement over the New Entrants' discontent over the Commission's summary of the New Entrants' position. The Commission's Order simply said "[t]hat New Entrants stated that the ILECs are entitled to recover an appropriate share of their shared and common costs to the extent that those costs are fairly allocable to the UNE being provided." As the Commission indicated in its discussion of this finding, the question centered on whether the amount proposed by the ILECs was reasonable.

One error in GTE's study outlined by the New Entrants is the inclusion of cost associated with maintaining public telephone terminals. The Public Staff argued that the common costs associated with maintaining public telephones should be excluded from the common cost study; nor should GTE have included public telephone revenues in the revenue base for determining its common costs. Although the methodology used by GTE did include both public telephone revenues and expenses, excluding them does not change the common cost factor of 14%.

The New Entrants also complained that GTE's study included purchase of artwork and payments to chauffeurs. The New Entrants argued that neither cost is associated with the provisioning of an unbundled network element and that these expenses unnecessarily inflate the common costs. The Public Staff agreed with the New Entrants that these costs are not associated with unbundled network elements. These costs are not directly allocable to any service offered by GTE. However, they are expenses incurred by GTE in conducting business. Indeed, that is why these costs are listed as common or shared costs. Only if the New Entrants can show that GTE is not expected to incur these costs in the future should they be excluded from the common cost studies in this case.

As with the GTE study, the New Entrants complained that Carolina/Central's common cost study included expenses which were not related, or beneficial, to purchasers of unbundled network elements. Again, the Public Staff agreed that these costs are not associated with the provision of unbundled network elements. However, they are expenses incurred by Carolina/Central in conducting its business. This is why these costs are listed as common or shared costs. Only if the New Entrants can show that Carolina/Central is not expected to incur these costs in the future should they be excluded from the common cost studies in this case.

The Public Staff recommended that the Commission clarify and amend this finding to read as follows:

> The ILECs' proposed shared and common cost factors, adjusted for the effects of changes to the annual cost factors -- cost of capital, capital structure, depreciation rates, and effective tax rates -- are reasonable and appropriate and should be adopted. GTE's common cost study should be modified to exclude public telephone revenues and expenses.

SPRINT: Sprint did not address this issue except to support Carolina/Central's position with respect to this issue.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: Citing a recent order from Tennessee, AT&T argued that the Commission should amend its Order by directing BellSouth to remove shared and common costs from BellSouth's nonrecurring charges.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not specifically address this issue in its reply comments but argued generally that the Commission had properly relied on BellSouth's cost studies in establishing rates.

CAROLINA/CENTRAL: Carolina/Central reiterated that it had excluded significant sums from its common costs, such as corporate operations expense accounts, in recognition of retail and other nonunbundled network element activities. Its corporate operations expenses could not be completely avoided even if Carolina/Central became a pure reseller.

GTE: GTE reiterated that the Commission should not amend its finding regarding shared and common costs. GTE disagreed with the Public Staff's recommendation and proposed that the Order should provide that the ILECs' common cost factors, adjusted for the effects of other charges recommended by the Commission in its Order, are reasonable and appropriate and should be adopted.

MCI WORLDCOM: MCI WorldCom argued that shared and common costs based on artwork, chauffeurs, and payphone terminals are not based on TELRIC, are anticompetitive, and anticonsumer.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not specifically address this issue but argued generally that the FCC pricing rules should be implemented quickly.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

In its December 10, 1998 Order in this docket, the Commission noted that the question in this issue centered on whether the shared and common cost factors proposed by the ILECs were reasonable. The Commission concluded that they were, subject to modification.

In its February 24, 1999, Comments on Company Filings, the Public Staff stated that GTE used a 16% shared and common cost factor instead of the 14% factor recommended in its proposed order and adopted by the Commission.

AT&T and the New Entrants have identified what they deem to be flaws in the ILECs' studies. The Commission agrees with the Public Staff's analysis with respect to these studies. Specifically, the Commission agrees that GTE should not have included the costs associated with maintaining public telephone terminals, nor should GTE have included public telephone revenues in its revenue base for determining its common costs. However, with respect to the purchases of artwork or chauffeurs, while these costs are not associated with UNEs, they are expenses incurred by GTE in conducting its business and are not directly allocable to any service offered by GTE. As noted by the Public Staff, this is why these costs are listed as shared or common costs. The same analysis applies with respect to the New Entrants' complaint that Carolina/Central's common cost study included expenses incurred by Carolina/Central in conducting its business, and this is why they are listed as shared or common costs. The only basis for exclusion is if it can be shown that the companies are not expected to incur these costs in the future.

CONCLUSIONS

The Commission concludes that it should clarify and amend Finding of Fact No. 16 to read as follows:

> The ILECs' proposed shared and common cost factors, adjusted for the effects of changes to the annual cost factors -- cost of capital, capital structure, depreciation rates, and effective tax rates -- are reasonable and appropriate and should be adopted. GTE's common cost study should be modified to exclude public telephone revenues and expenses.

FINDING OF FACT NO. 17 - FILL FACTORS/UTILIZATION RATIOS

Commission Order: The Commission concluded that the ILECs' fill factors/utilization ratios as filed should be adopted, with certain exceptions. With regard to GTE's study, the Commission concluded that the appropriate cable sizing factors should be 69% for feeder cable and 65% for distribution cable, consistent with the factors set out for GTE in the FLEC Order. In addition, to the extent necessary, GTE's input value for distribution pairs per residential housing unit should be adjusted to 1.4 to be consistent with the Commission's FLEC Order.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

NEW ENTRANTS: In their Motion for Clarification, the New Entrants requested that the Commission clarify whether the fill factors and the input value for distribution pairs are separate inputs into the GTE cost model.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants did not address this issue in their initial comments except to renew their requests that this item be reconsidered or clarified for the reasons set forth in its motion.

PUBLIC STAFF: The Public Staff stated that it has reviewed the cost model used by GTE and has determined that to account for changes in the fill factors, an adjustment must be made to the values in the Outside Plant tab. This tab is reached through the Options/User tab that shows the Run Time Options. By specifying that the model should use the user specified fill, a factor for distribution and feeder fill can be input to override the defaults. The adjustment for the distribution pairs is made on the same tab by changing the engineering Feeder and Distribution factors. Thus, the fill factors and input value for distribution pairs are separate inputs. The Public Staff recommended that the Commission clarify that the fill factors for distribution and feeder plant and the input value for distribution pairs are separate inputs in GTE's cost model.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments except, as part of its discussion on deaveraged rates, to question whether it is appropriate to use the same values for the model inputs across all rate zones, or for example, would fill factors be higher in one zone vis-a-vis another zone.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

The Public Staff was the only party responding to this request for clarification as to whether the fill factors distribution and feeder plant and the input value for distribution pairs are two separate inputs into GTE's cost model. As outlined in the original discussion and conclusions regarding this issue and further explained by the Public Staff in its initial comments, the inputs clearly are two separate inputs.

CONCLUSIONS

The Commission concludes that Finding of Fact No. 17 should be clarified to indicate that the fill factors for distribution and feeder plant and the input value for distribution pairs are two separate inputs in GTE's cost model.

FINDING OF FACT NO. 19 - PRICING OF VERTICAL FEATURES

Commission Order: The Commission concluded that the vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILEC's studies, as modified by the Order. The Commission found that the Eighth Circuit's decision supported the ILECs' proposals to price vertical features as individual network elements. The Commission found that each feature the ILEC offers to its own subscribers on an individual feature basis should also be made available as an individual unbundled element. The Commission stated that this treatment recognizes that there are costs associated with provisioning vertical features in addition to basic switch functions, citing evidence that many features require specialized hardware and right-to-use fees. The Commission concluded that these costs should be borne by the customer using the features.

Supreme Court Decision: The Supreme Court stated that given the breadth of the definition of the term "network element" in the Telecommunications Act, it was proper for the FCC in Rule 319 to include operator services and directory assistance, operational support systems, and vertical switching functions such as caller I.D., call forwarding, and call waiting within the features and services that must be provided by competitors. The Supreme Court further stated that it agreed with the Eighth Circuit that the FCC's application of the "network element" definition is eminently reasonable. Nevertheless, the Supreme Court found it necessary to vacate Rule 319 because the FCC did not adequately consider the Section 251(d)(2) "necessary and impair" standards when it gave requesting carriers blanket access to these and other network elements.

<u>Eighth Circuit Decision on Remand from Supreme Court</u>: On June 10, 1999, the Eighth Circuit Court of Appeals entered an order on remand in response to the Supreme Court's decision which, in pertinent part, vacated FCC Rule 319 (specific unbundling requirements).

<u>Motions for Reconsideration/Clarification</u>:

AT&T: AT&T stated in its Motion to Rescind, Alter, or Amend that the Commission should amend its Order to provide that vertical features are included in the switch price. AT&T maintained that the Commission's conclusion is not supported by the record on two major fronts.

First, the Commission's statement that "BellSouth argued that vertical features use switch capacity and should bear their proportionate share of the costs" ignores the evidence that BellSouth's SCIS model inappropriately assigns costs related to vertical features to a traffic sensitive category. AT&T argued that the cost of providing vertical features is clearly not traffic sensitive. In other words, the one-time, up-front costs of the switch – and even assuming, *arguendo* that there are additional right-to-use fees associated with vertical features – are not affected at all by the level of vertical feature traffic imposed on the network. AT&T argued that BellSouth's own cost studies confirm this, reflecting that, on average, BellSouth's switch processors are only 59% to 77% utilized even at the point of when they are retired. Accordingly, the record does not support a conclusion that by providing vertical features that BellSouth incurs additional costs beyond its up-front switch processor costs.

Second, AT&T stated that the Commission's reliance on the Eighth Circuit's decision to support its acceptance of BellSouth's proposal to separately price vertical features as individual network elements is misplaced. AT&T believes it is incorrect for the Commission to state that the Eighth Circuit found that vertical features qualify as separate UNEs in order to justify its decision now to separately price vertical features. The word "separate" does not appear in the Eighth Circuit's decision regarding vertical features. Consequently, there is no legitimate justification for the Commission to now change its prior decision regarding the pricing of vertical features which was addressed in the AT&T/BellSouth arbitration proceeding, wherein the Commission stated that ". . . when local switching is purchased as an unbundled network element under Section 251(c)(3) of the Act, vertical services should be included in the price of that element at no additional charge, but when vertical services are obtained through the resale provision of Section 251(c)(4), they should be priced at the retail rate less the wholesale discount."

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T stated in its initial comments that BellSouth's separate UNE prices for vertical features violates the FCC's pricing rules. AT&T remarked that the FCC's rules require that UNE prices recover costs in a "manner that reflects the way they are incurred." It is AT&T's position that BellSouth's separate pricing of vertical features violates this rule. Vertical features are nothing more than software in the switch. This software is included in the initial purchase cost of the switch, and the one-time, up-front costs of the switch are in no way affected by the number of customers who purchase vertical features. Thus, AT&T argued that the price of unbundled switching should include the provision of all vertical features the switch is capable of providing, and CLPs should not have to pay additional fees to purchase vertical features.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth stated in its initial comments that AT&T is mistaken on both counts on this issue. First, there is ample evidence in the record that the switch processing costs related to vertical features are traffic sensitive, as testified to by BellSouth witness David Garfield. Second, the Commission's decision that vertical features should be unbundled and priced separately from the local switch is completely consistent with the Eighth Circuit's decision, as recently affirmed by the Supreme Court. BellSouth remarked that the Supreme Court held that "vertical switching features, such as Caller I.D., are 'functions. . . provided by means of' the switch, and thus fall squarely within the statutory definition [of a network element]." 119 S. Ct. at 734.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom stated in its initial comments that pricing cannot be premised on refusal to provide access to combinations of UNEs. MCI WorldCom argued that the prices that would be calculated based on the ILECs' models would be inflated by the flawed assumption of physical separation of elements. Now that the Supreme Court has reinstated Rule 315(b), MCI WorldCom argued that the Commission must require BellSouth and other ILECs to revise their recurring and nonrecurring cost models and studies to provide inputs for UNE combinations.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants did not address this issue in their initial comments.

PUBLIC STAFF: The Public Staff stated in its initial comments that AT&T does not appear to take issue with the fact that vertical features increase both the initial cost of a switch and traffic on a switch compared to a switch without such features. However, AT&T would have the Commission ignore the fact that, if these legitimate costs of the switch are not recovered through vertical features, they must be recovered through rates for other traffic-sensitive functions, such as local and/or interoffice switching. In other words, denying recovery through vertical feature rates would require recovery through other rates. The Public Staff believes that the Commission was fully justified in basing its conclusion on the SCIS model. The fact that the SCIS model prices certain of these costs on a traffic-sensitive basis is not unreasonable.

Further, the Public Staff stated that the factual and legal rationales given for the Commission's conclusion on this issue were valid and remain so. If vertical features are network elements and their costs are separately identified, then it follows that they should be priced as separate network elements. There is nothing in the Supreme Court's decision that would prohibit the Commission from reaching this conclusion, particularly since it is the ILECs who proposed the further unbundling rather than the CLPs. The Public Staff recommended that the Commission affirm its decision on this issue.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T stated in its reply comments that it is true for a very small subset of features, special equipment may be required in a switch. However, as AT&T witness Petzinger made clear, this equipment was already included in the general prices for switches in BellSouth's vendor contracts and in the costs that SCIS produced in BellSouth's cost studies. Thus, while in theory, additional equipment may be necessary for some features, in actual practice, the cost of such equipment was included in BellSouth's contracts, and more importantly, those costs were already included in BellSouth's cost studies. To add such costs again in the form of separate additional feature costs results in a double count of costs. In summary, there are no additional costs to be added for vertical features, precisely because the cost studies already capture all costs associated with such vertical features. Therefore, AT&T continued to assert that the Commission should not establish additional prices for vertical features beyond the price for the switch port.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not further address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom stated in reply comments that the ILECs' cost models and studies are irretrievably tainted by embedded network investment and configuration and cannot be rehabilitated. The Commission cannot simply tweak some inputs while assuming that the ILECs' cost models can be retained. MCI WorldCom asserted that the Commission, in compliance with the FCC's rules, must either formulate statewide deaveraged UNE rates from the vast amount of data presented in this case, using one forward-looking, scorched-node, least-cost model with forward-looking, least-cost inputs, or it must rehear the case.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff stated in its reply comments that AT&T added nothing new in its comments but merely restated its opposition to pricing vertical features based on BellSouth's SCIS model. The Public Staff stands by its initial comments on this issue. The Public Staff asserted that AT&T's attempts to cloak its previous arguments in the mantle of the Supreme Court's decision are unavailing.

SPRINT: Sprint did not file reply comments.

DISCUSSION

The Commission fully discussed the reasons for its conclusions in its Order, and AT&T has brought up nothing new in its motion. AT&T takes issue with the conclusion that vertical features should have a cost assigned to them despite the fact that BellSouth's SCIS model assigns traffic sensitive costs to these elements. The Public Staff stated that the Commission was fully justified in basing its conclusion on the SCIS model for allocating costs. Further, the Public Staff asserted that the fact that the SCIS model prices certain of these costs on a traffic sensitive basis is not unreasonable. SCIS provides a mechanism to apportion the getting started investment to individual calls and features based on the real-time actually consumed by such calls and features. BellSouth witness Garfield explained,

> "As such, BellSouth, using SCIS, apportions the getting started investment on a basis that tracts cost causation, namely real-time consumption of different call types (line-to-line, line-to-trunk, etc.) and features. There is a strong linkage between processor real-time as a cost recovery mechanism and the getting started investment. This linkage is supported by the precise real-time consumption data obtained by Bellcore from the switch vendors for different types of calls and features. The getting started investment is apportioned to each call type and feature based on actual real-time consumption."

Vertical features increase both the initial cost of a switch and traffic on a switch compared to a switch without such features. Many vertical features require specialized hardware and the payment of right-to-use fees. AT&T would have the Commission ignore the fact that, if the legitimate costs of the switch are not recovered through vertical features, they must be recovered through rates for other traffic-sensitive functions, such as local and/or interoffice switching. In other words, denying recovery through vertical feature rates would require recovery through other rates.

The FCC, in its *First Report and Order* in CC Docket No. 96-98 released August 8, 1996, broadly interpreted the definition of "network element" in Section 153(29) of the Act to include operational support systems, operator services, and directory assistance, and vertical switching features. The Eighth Circuit held "that the FCC reasonably concluded that these features qualify as network elements that are subject to the unbundling requirements of [Section 251(c)(3)] of the Act," and, in AT&T Corp. v. Iowa Utilities Bd., 119 S.Ct. 721, 734 (1999), the Supreme Court agreed. Specifically, the Supreme Court held: "And vertical switching features, such as caller I.D., are 'functions . . . provided by means of' the switch, and thus fall squarely within the statutory definition. We agree with the Eighth Circuit that the Commission's application of the 'network element' definition is eminently reasonable." The Supreme Court went on to hold, however, that the FCC did not adequately consider the "necessary and impair" standards of Section 251(d)(2) when it adopted Rule 319, requiring ILECs to provide unbundled access to a minimum of seven network elements.

The Public Staff remarked that one can assume that the last chapter in the vertical features portion of the UNE pricing saga is yet to be written. The Commission anticipates this may be true. Nevertheless, the factual and legal rationales given for the Commission's conclusion on this issue were valid and remain so. If vertical features are network elements and their costs are separately identified, then it follows that they should be priced as separate network elements. The Public Staff proffered that there is nothing in the Supreme Court's decision that would prohibit the Commission from reaching this conclusion, particularly since it is the ILECs who proposed the further unbundling rather than the CLPs. The Commission agrees. Therefore, the Commission believes its decision on this issue should be affirmed.

There is one additional matter relating to this issue that needs to be addressed. The Public Staff filed comments on February 24, 1999, regarding their evaluation of the ILECs' compliance with the modifications to their studies that were required by the findings of the Commission Order issued December 10, 1998. In those comments the Public Staff stated that Carolina/Central and GTE adjusted their studies to reflect the appropriate adjustments to the annual cost factors. The Public Staff stated that BellSouth's revised study does not result in the appropriate vertical feature prices because of its failure to reflect all of the required economic lives and future net salvage values established in Appendix B of the December 10, 1998 Order. In this regard, the Commission agrees with the Public Staff's finding that BellSouth did not reflect all of the appropriate values. Therefore, BellSouth needs to adjust its economic lives and future net salvage values such that they are all in compliance with the Commission's December 10, 1998 Order.

CONCLUSIONS

The Commission concludes that AT&T's Motion to Rescind, Alter, or Amend in this regard should be denied and that Finding of Fact No. 19 should be affirmed. Further, the Commission concludes that BellSouth should be required to revise its vertical features costs, such that they reflect annual cost factors incorporating depreciation rates consistent with Finding of Fact No. 8, as discussed herein.

FINDING OF FACT NO. 20 - COPPER/FIBER CROSSOVER

Commission Order: The Commission concluded that BellSouth's recommended copper/fiber crossover of 12,000 feet is reasonable and appropriate.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

CAROLINA/CENTRAL: In its Motion for Clarification, Carolina/Central stated that the 12,000-foot copper/fiber crossover cited by the Commission with respect to BellSouth is inherent in the BCPM 3.1 loop development and is appropriate to Carolina/Central. Carolina/Central has requested confirmation/clarification whether the 12,000-foot copper/fiber crossover for BellSouth is intended to also apply to Carolina/Central.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not further address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants did not address this issue in their initial comments.

PUBLIC STAFF: The Public Staff stated in its initial comments that one of the inputs used by Carolina/Central in the BCPM 3.1 model is a copper/fiber crossover point of 12,000 feet. The Commission's Order did not require Carolina/Central to make an adjustment to this input. Therefore, it appears that the Commission intended to use a 12,000-foot copper/fiber crossover point for calculating the loop costs for Carolina/Central. The Public Staff recommended that the Commission clarify that the 12,000-foot copper/fiber crossover point also applies to Carolina/Central.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not further address this issue in their reply comments.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

In their Motion for Clarification, Carolina/Central stated that the 12,000-foot copper/fiber crossover cited by the Commission with respect to BellSouth is inherent in the BCPM 3.1 loop development and is appropriate to Carolina/Central. Therefore, Carolina/Central has requested confirmation/clarification as to whether the 12,000-foot copper/fiber crossover for BellSouth is intended to also apply to Carolina/Central.

The Public Staff stated in its initial comments that one of the inputs used by Carolina/Central in the BCPM 3.1 model is a copper/fiber crossover point of 12,000 feet. The Commission's Order did not require Carolina/Central to make an adjustment to this input. The Commission agrees with the Public Staff recommendation that it is appropriate for the Commission to clarify that the 12,000-foot copper/fiber crossover point also applies to Carolina/Central.

CONCLUSIONS

The Commission concludes that Carolina/Central's Motion for Clarification should be granted and that the 12,000-foot copper/fiber crossover input for calculating loop costs approved for BellSouth should also apply to Carolina/Central.

FINDING OF FACT NO. 21 - NONRECURRING CHARGES

Commission Order: The Commission concluded that the ILEC-specific nonrecurring cost studies, subject to certain modifications and adjustments as discussed in the Order, should be used in this proceeding, rather than the Nonrecurring Cost Model (NRCM) sponsored by AT&T and MCI.

Supreme Court Decision: The Supreme Court noted that FCC Rule 315(b), which forbids an incumbent to separate already-combined network elements before leasing them to a competitor, is entirely rational, finding its basis in the nondiscrimination requirement set forth in Section 251(c)(3) of the Act.

Eighth Circuit Decision on Remand from Supreme Court: On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements.

Motions for Reconsideration/Clarification:

No formal Motion for Reconsideration/Clarification was filed on this issue. However, the issue was raised in comments and reply comments filed by the parties which are addressed below.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI stated in its initial comments that the Commission should make sure that the nonrecurring charges comport with federal cost-based, forward-looking economic principles. ACI believes that the Commission needs to amend its findings as to BellSouth's proposed rates. The Commission must make sure that the ILECs do not receive compensation on inflated costs. According to TELRIC, "incumbent LECs' prices for interconnection and unbundled network elements shall recover the forward-looking costs directly attributable to the specified element. . . ." Further, these prices must be "based on the most efficient technology deployed in the incumbent LEC's current wire center locations and most efficient technology available." ACI asserted that the Commission proposed nonrecurring charges do not properly reflect these principles and therefore must be revisited and amended. ACI stated that BellSouth's nonrecurring charges for unbundled loops and transport facilities are grossly inflated and entirely incongruous with nonrecurring charges in other regions.

AT&T: AT&T stated in its initial comments that FCC Rule 507(e) states that "nonrecurring charges . . . shall not permit an ILEC to recover more than the total forward-looking economic costs of providing the applicable element." AT&T asserted that BellSouth's nonrecurring charges violate this rule. First, they are predicated on an assumption that all UNEs must be physically separated. For elements that are already combined in BellSouth's network, most, if not all, of the nonrecurring costs BellSouth claims are associated with provisioning the individual elements will never be incurred. For example, nonrecurring charges for the provision of an individual loop element and an individual switch element consist almost entirely of costs of rewiring them back together within the central office after BellSouth has taken them apart before agreeing to lease them to a CLP. Now that BellSouth must provide UNE combinations, however, no disassembling of any of the combined elements will be necessary, and no costs to rewire them will be incurred. Second, BellSouth's nonrecurring charges are premised on the cost of work BellSouth currently does to provide UNEs, based on BellSouth's historic operations, operating procedures, and network configuration rather than the cost an efficient, forward-looking firm would incur, using forward-looking technology in a competitive environment and efficient network. Significant nonrecurring costs legitimately can occur only where a CLP's orders for UNEs require manual human intervention in BellSouth's otherwise mechanical systems. BellSouth's existing IDLC technology, in conjunction with BellSouth's existing computer systems, eliminate nearly all nonrecurring charges associated with manually providing UNEs to CLPs. BellSouth failed to develop a model incorporating these forward-looking technologies. As with BellSouth's recurring rates, BellSouth's nonrecurring cost model and rates violate the FCC's pricing rules.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom stated in its initial comments that now that the Supreme Court has reinstated the FCC Rule that prohibits ILECs from physically separating network elements before providing them to CLPs, BellSouth may not calculate nonrecurring charges by including costs that would be incurred only if individual network elements were separated.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated in their initial comments that FCC Rule 505(b)(1) requires that TELRIC be measured on the basis of the most-efficient telecommunications technology currently available. The New Entrants stated that Carolina/Central's and GTE's nonrecurring charges were based on embedded time and motion studies. It is their opinion that none of these costs comply with FCC Rule 505 — forward-looking economic cost.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its initial comments. However, the Public Staff recommended, as subsequently discussed, that Finding of Fact No. 33, relating to recombination of UNEs, should be amended to read as follows:

> The ILECs should not be required to combine unbundled elements for CLPs, but the ILECs should be prohibited, except upon request, from separating requested network elements that they currently combine themselves. BellSouth and the other ILECs should submit loop cost studies with inputs based on deploying DLC technology in an integrated fashion.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their reply comments.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom stated in reply comments that the ILECs' cost models and studies are irretrievably tainted by embedded network investment and configuration and cannot be rehabilitated. The models and inputs the Commission approved do not produce TELRIC within the meaning of the FCC's pricing rules. MCI WorldCom asserted that the Commission, in compliance with the FCC's rules, must either formulate statewide deaveraged UNE rates from the vast amount of data presented in this case, using one forward-looking, scorched-node, least-cost model with forward-looking, least-cost inputs, or it must rehear the case.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

No Motions for Reconsideration, Clarification, or Rescission were filed on this issue. However, several parties provided opinions on the impact on nonrecurring charges of the Supreme Court's decision as it relates to TELRIC pricing principles and UNE combinations. The impact of the Supreme Court's decision as it relates to TELRIC pricing principles has been previously addressed in conjunction with Findings of Fact Nos. 1 and 4, and no further discussion is necessary in this regard.

The Commission believes that the present finding on nonrecurring charges would be impacted by the UNE combination decision addressed elsewhere. As subsequently discussed in conjunction with Finding of Fact No. 33, the Commission concludes that whether the provision of a loop and a switch using IDLC technology is viewed as a combination or a single UNE, the current state of the law now supports the arguments of AT&T and the other CLPs that this technology should be made available to them at UNE prices. Accordingly, the Commission believes that additional nonrecurring charges should be developed for loop-port combinations using IDLC technology.

There is one additional matter relating to this issue that needs to be addressed. The Public Staff commented that since BellSouth did not change all of its depreciation rates to be in compliance with the Commission's December 10, 1998 Order, BellSouth's calculated annual cost factors are not completely in compliance with the Commission's December 10, 1998 Order. Consistent with our conclusions in Finding of Fact No. 8, the Commission believes that BellSouth should change all of its depreciation rates to be in compliance with the Commission's December 10, 1998 Order. If BellSouth makes those revisions, the annual cost factors should also then be correct and therefore the nonrecurring costs would be correct and would be in compliance with the Commission's December 10, 1998 Order.

CONCLUSIONS

Consistent with the conclusions reached in conjunction with Finding of Fact No. 33, the Commission concludes that Finding of Fact No. 21 should be amended to read as follows:

> The nonrecurring charges proposed by the ILECs, subject to certain modifications and adjustments, are reasonable and appropriate for recovering their respective nonrecurring costs associated with providing UNEs and interconnection. The ILECs should submit combined loop-port TELRIC-based cost studies with inputs based on deploying DLC technology in an integrated fashion and provide the nonrecurring charges for such loop-port combinations.

Further, the Commission concludes that BellSouth should be required to revise its nonrecurring costs such that they reflect annual cost factors incorporating depreciation rates consistent with Finding of Fact No. 8, as discussed herein.

FINDING OF FACT NO. 24 - NEW RESALE SERVICE NONRECURRING CHARGES (NRCs)

Commission Order: The Commission concluded that GTE's proposed resale service NRCs were outside the scope of this proceeding.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

GTE: GTE requests that the Commission reconsider this finding. In its Motion for Reconsideration, GTE submits that the differences between resale NRCs and the ruled-upon UNE NRCs are minimal. Both activities engage the same personnel working in the same work center, and the process for the provisioning of resale and UNE NRCs is the same. GTE acknowledges that the Commission has already decided this issue. However, GTE argues that it has filed resale NRC cost studies in this docket, and the Commission should make its judgment at this time based on the new facts which GTE has filed and supported in this docket.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in its initial comments.

GTE: GTE did not further address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in its initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated that the Commission correctly excluded the consideration of GTE's NRCs for resold services from the scope of this proceeding. According to the New Entrants, GTE would have the Commission examine these resold NRCs in this docket because of GTE's mistaken belief that these charges should be determined on the same basis as NRCs associated with the provision of UNEs. The New Entrants asserted that such a belief is erroneous because TA96 makes clear that the costs associated with resold services are to be based upon an avoided cost methodology (see 47 U.S.C. § 252(d)(3) (1996)), whereas costs associated with UNEs are to be determined through the use of a forward-looking examination of the ILEC's costs. Id. at § 255(d)(1). The New Entrants claim that this Commission and other state regulatory commissions have already found as a matter of law and policy that NRCs for resold services should be established through the use of an avoided cost methodology. Thus, the New Entrants argue that GTE's alleged introduction of "new facts" is immaterial. Finally, the New Entrants stated that the pricing of GTE's resold NRCs involves an analysis that is legally and mathematically different than the UNE NRC determinations undertaken in this proceeding, and the Commission was correct in declining to consider GTE's resold NRCs in this proceeding.

PUBLIC STAFF: The Public Staff stated that the scope of this proceeding has been clear since September 26, 1997, when the Commission issued its Order Setting Consolidated Hearing To Determine Permanent Pricing For Unbundled Network Elements. According to the Public Staff, that Order consolidated the arbitration dockets solely for the purpose of determining permanent UNE rates while the wholesale discounts established in those arbitration dockets are already permanent and were unaffected by the consolidation. Further, the Public Staff believed that even if issues related to resale services were properly before the Commission, it would be a mistake to single out one group of rate elements for reconsideration (i.e., resale NRCs) while leaving all others based upon the percentage discount determined in the arbitration cases. Since the NRCs are among all the retail rates to which the previously established discount would apply, removing NRCs from the group would technically require a recalculation of the discount for the remaining rates and charges. The Public Staff noted that GTE made no attempt to address this aspect of the issue.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in its reply comments.

GTE: GTE did not further address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not further address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not further address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

In its Order in this proceeding, the Commission agreed with the reasoning offered by the Public Staff on this issue and concluded that GTE's proposed resale service NRCs are outside the scope of this proceeding.

As discussed above, GTE argued in its Motion for Reconsideration that while it is true that this issue was previously decided, GTE has filed and supported new facts in this docket, and the Commission should reconsider its decision on this issue. The New Entrants essentially argued in their comments that the resale service NRCs proposed by GTE in this proceeding are not based upon an avoided cost methodology as required by the Act; and therefore, GTE's alleged introduction of new facts is immaterial. The Public Staff continued to believe that this docket concerns only permanent UNE prices and that the permanent wholesale discounts have already been established. In addition, the Public Staff added that even if issues related to resale services were properly before the Commission, it would be a mistake to reconsider the resale service NRCs without a recalculation of the wholesale discount rate for the remaining resale services. The Commission continues to believe that GTE's proposal to establish new resale service NRCs is outside the scope of this proceeding and for that reason there is no need to address the legal argument raised by the New Entrants which was not commented on by any other party.

CONCLUSIONS

The Commission concludes that GTE's Motion for Reconsideration regarding Finding of Fact No. 24 should be denied and that Finding of Fact No. 24 should be affirmed.

FINDING OF FACT NO. 25 - RECOVERY OF OPERATIONS SUPPORT SYSTEMS (OSS) DEVELOPMENT COSTS

Commission Order: The Commission concluded that the one-time development costs for new OSS and improvements to existing systems that the ILECs proposed to recover through nonrecurring charges should instead be recovered through recurring rates applicable to users of the OSS. The Commission stated that OSS development expenses should be recovered over five years at the overall cost of capital and that any investment that was to be recovered through one-time charges should be converted to a monthly rate using the ILECs' TELRIC methodology and adding common costs using the annual cost factors found reasonable for that category of plant.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

GTE: GTE stated in its Motion for Reconsideration that the Commission should reconsider its ruling. GTE maintained that the recovery of the one-time development costs of OSS through recurring rates, even though charged against the cost causer, effectively forces the ILECs to subsidize/finance the CLPs entry into the telephone business. The ILEC will bear all the risk of recovery of those costs. It is GTE's position that the risk of the CLPs entry into the industry should not be borne by the ILEC and can be lessened via recovery over a short period of time. GTE stated that this can be accomplished through assessment of an additional charge in nonrecurring rates (installation), which will allow the ILEC to recover up-front a portion of its development costs.

NEW ENTRANTS: The New Entrants filed a Motion for Clarification requesting that the Commission clarify this portion of the Order by specifying that ILECs may impose recurring charges for one-time development costs for OSS systems for only five years, and that thereafter, CLPs who use OSS should have no further obligation to pay such charges. The New Entrants stated that the Commission concluded in its Order that the one-time development costs incurred by ILECs for new OSS systems and improvements should be amortized over five years and recovered by a monthly recurring charge. Thus, the New Entrants argued that the Order implies this recurring rate will be eliminated after five years.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central stated in their initial comments that they object to the New Entrants' request to impose recurring charges for one-time development costs for OSS systems for only five years. Carolina/Central argued that the five-year period referred to in the Order should be viewed only as an assumed period to fully amortize the OSS costs. The OSS monthly recurring charge is based upon estimates of future demand. If demand has been underestimated, then the needed recovery period will be less than five years, and if demand has been overestimated, then the needed recovery period will be greater than five years. Thus, Carolina/Central stated that the recovery period should continue until they have fully recovered their one-time OSS development costs.

GTE: GTE did not further address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated in their initial comments that the Commission should deny GTE's objections to the use of an amortized recovery schedule in this instance. The New Entrants argued that there is no reason to believe that amortizing the costs of OSS development over five years will expose GTE to any business risks.

PUBLIC STAFF: The Public Staff stated in its initial comments that it is a common practice in telephone rate design to recover nonrecurring costs through recurring charges over a specified period based on the useful life of the investment. While such rates would theoretically be subject to revision at the end of the specified period, it is generally assumed that new costs are being incurred on an ongoing basis to replace them so no adjustment is required. The Public Staff stated that it is unlikely with the frenzied pace of new technological breakthroughs that the current OSS systems will be adequate in five years. As new and improved technology becomes available in connection with OSS systems, it is reasonable to expect the ILECs to upgrade the current systems to incorporate improvements. Thus, it is expected that there will be ongoing investment to be recovered through recurring rates. If this is not the case, then the nonrecurring charges should be revisited and perhaps eliminated after five years. However, the Public Staff does not believe such an event is likely and should not be anticipated as the New Entrants propose. The Public Staff recommended that the Commission affirm its decision on this issue.

SPRINT: Sprint indicated in its initial comments that it did not concur in or support Carolina/Central's position on this issue.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central stated in their reply comments that they support the comments of the Public Staff on this issue. Carolina/Central asserted that the New Entrants' position, that OSS cost recovery be allowed for five years only and then terminated regardless of whether the ILECs have recovered their costs or not, is contrary to the FCC's pricing rules, including among others Rule 507(e) which states that "[s]tate commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time."

GTE: GTE again argued in its reply comments that the recovery of one-time OSS development costs through monthly recurring rates does not require the cost causer to incur the nonrecurring charges based on the costs it has caused. The Commission's proposed approach instead spreads these nonrecurring expense costs across all wholesale customers for a period of five or more years. GTE stated that if it is ordered to recover its costs in this manner, then GTE agrees with Carolina/Central's suggestion regarding the actual recovery period that will be required to fully recover the OSS cost on a monthly basis.

MCI WORLDCOM: MCI WorldCom did not address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants stated in their reply comments that the Commission should adopt the procedural recommendations set forth in their filing of March 18, 1999.

PUBLIC STAFF: The Public Staff stated in its reply comments that it would endeavor not to repeat its earlier comments any more than necessary. Thus, the Public Staff provided no additional comments on this issue.

SPRINT: Sprint did not file reply comments.

DISCUSSION

As stated by the Public Staff, it is a common practice in telephone rate design to recover nonrecurring costs through recurring charges over a specified period based on the useful life of the investment. The Public Staff, in its Proposed Order, recommended that one-time development costs for new OSS systems and improvements to existing systems be recovered through monthly recurring rates based on the amortization of the investment and expenses over five years. This recommendation is entirely consistent with the FCC's Rule 507(e), which provides that "State commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time." These costs are likely to be substantial, and to require the CLPs to pay them as initial nonrecurring charges upon entry into the market would effectively bar many potential new entrants and reduce competition. On the other hand, if such barriers are removed and entry is encouraged, the risk of ILECs failing to recover all of their OSS development costs is slight.

As new and improved technology becomes available in connection with OSS systems, it is reasonable to expect the ILECs to upgrade the current systems to incorporate improvements. Thus, there will be ongoing investment to be recovered through recurring rates. The Public Staff's recommendation assumes that this will be the case. The Commission believes that this is a reasonable assumption; however, if it is not, then the recurring charges should be revisited and perhaps eliminated after five years. Regardless, the Commission sees no need for reconsideration or clarification of the Commission Order as GTE and the New Entrants, respectively, proposed.

CONCLUSIONS

The Commission concludes that GTE's Motion for Reconsideration and the New Entrants' Motion for Clarification in this regard should be denied and that Finding of Fact No. 25 should be affirmed.

FINDINGS OF FACT NOS. 27, 28, AND 30 - COLLOCATION CHARGES

Commission Order: The Commission concluded that the collocation charges proposed by the ILECs, as modified, are cost-based, reasonable, and appropriate and should be approved. The Commission further concluded that BellSouth's application fee for physical collocation is excessive and should be reduced to BellSouth's current tariffed rate of $3,850. The Commission also concluded that GTE's revised collocation rates should be adopted, and that GTE should be required to refile its intrastate tariff to include the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered.

Supreme Court Decision: The Supreme Court held that the FCC has jurisdiction under Sections 251 and 252 of the Act to design a pricing methodology and adopt pricing rules.

Eighth Circuit Decision on Remand from Supreme Court: On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules).

Motions for Reconsideration/Clarification:

No formal Motion for Reconsideration/Clarification was filed on this issue. However, the issue was raised in comments and reply comments filed by the parties which are addressed below.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T stated in its initial comments that the FCC determined that "collocation should be subject to the same pricing rules [as unbundled network elements and interconnection]." First Report and Order ¶ 629. AT&T further stated that the FCC concluded that "because collocation is a method of obtaining interconnection and access to unbundled network elements, collocation is properly treated under the same pricing rules." (Id.) Therefore, AT&T concluded, the Commission must price collocation based on TELRIC principles as defined in the FCC rules. AT&T also stated that BellSouth's collocation cost model violates the FCC's rules by assuming current configurations of BellSouth's central offices in determining collocation costs. AT&T concluded that since the Commission adopted BellSouth's collocation rates based on BellSouth's collocation model, with slight modification, the collocation prices established by the Commission for BellSouth are invalid under the FCC rules.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom stated in its initial comments that since the FCC found that the same pricing methodology must be employed as that used for interconnection and UNEs, collocation must be priced using TELRIC principles as defined in the FCC rules. MCI WorldCom argued that BellSouth's collocation study violates the FCC's rules. MCI WorldCom stated that the Commission should review the collocation charges and reset them to comply with the FCC rules.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated in their initial comments that Section 51.501(a) of the FCC's pricing rules applies to physical and virtual collocation. The New Entrants pointed out that the collocation rates approved by the Commission were from tariffs, and no cost studies were filed to support the tariff rates. The New Entrants further explained that the ILECs' proposed collocation rates are based on existing network configuration and that this feature violates the scorched node methodology inherent in Section 51.505(b)(1) of the FCC's pricing rules. Therefore, the New Entrants concluded, none of the collocation rates adopted by the Commission comply with the FCC's pricing rules.

PUBLIC STAFF: The Public Staff did not address this issue in its initial comments.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central stated in their reply comments that they reject the New Entrants' contention that Carolina/Central's intrastate collocation tariffs are inconsistent with the FCC's pricing rules. Carolina/Central maintained that the New Entrants are correct that the FCC's pricing rules apply not only to UNEs but also to physical and virtual collocation. Carolina/Central stated that the New Entrants are correct that Carolina/Central did not file specific TELRIC collocation studies but filed their North Carolina intrastate collocation tariffs. Carolina/Central maintained that the intrastate collocation tariff mirrors Sprint's federal tariff and are thus compliant with the FCC pricing rules. However, Carolina/Central stated that with the Supreme Court's recent decision reinstating the pricing rules, Carolina/Central recognize a need to complete a TELRIC-based collocation cost study. Carolina/Central plan to submit their TELRIC-based collocation study no later than July 15, 1999.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom stated in reply comments that the Commission's adoption of the ILECs' cost studies does not produce TELRIC within the meaning of the FCC's pricing rules.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff stated in reply comments that to the extent that proposed UNE rates are based on interstate tariffs for which no cost study data was submitted, the Commission should require the ILECs to file studies showing that the tariff rates conform to TELRIC principles or to file revised rates which are TELRIC based. However, the Public Staff did not specifically address collocation rates and instead referenced UNE rates.

SPRINT: Sprint did not file reply comments.

DISCUSSION

Section 51.501(a) of the FCC's pricing rules states:

> "The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, ***including physical collocation and virtual collocation.***" [emphasis added]

Further, the FCC's First Report and Order states:

> "We further conclude that, because section 251(c)(6) requires that incumbent LECs provide physical collocation on 'rates, terms, and

> conditions that are just, reasonable, and nondiscriminatory,' which is identical to the standard for interconnection and unbundled elements in sections 251(c)(2) and (c)(3), collocation should be subject to the same pricing rules." [¶ 629]

Although there was no formal Motion for Reconsideration/Clarification filed with respect to these Findings of Fact, the Commission believes after reviewing the comments and reply comments filed by the parties and re-analyzing the FCC's pricing rules and First Report and Order that physical and virtual collocation rates should be priced based on TELRIC. Therefore, the Commission finds good cause to revise Finding of Fact No. 27 to read as follows: "The ILECs should file TELRIC-based cost studies for physical and virtual collocation."

Further, Finding of Fact No. 28 of the Commission's December 10, 1998 Order states: "The Commission concludes that BellSouth's application fee for physical collocation is excessive and should be reduced to BellSouth's current tariffed rate of $3,850." Finding of Fact No. 30 of the Order states: "The Commission concludes that GTE's revised collocation rates should be adopted, and that GTE should be required to refile its intrastate tariff to include the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered." In order to be consistent with the Commission's conclusion that the ILECs should file TELRIC-based cost studies for physical and virtual collocation, the Commission rescinds Finding of Fact No. 28 and the Discussion on Finding of Fact No. 28 on pages 101 through 103 of the Commission's December 10, 1998 Order. In addition, the Commission rescinds Finding of Fact No. 30 and the Discussion on Finding of Fact No. 30 on pages 106 through 107 of the Commission's December 10, 1998 Order.

CONCLUSIONS

The Commission revises Finding of Fact No. 27 to read as follows: "The ILECs should file TELRIC-based cost studies for physical and virtual collocation." Further, in light of the decision to revise Finding of Fact No. 27, the Commission rescinds Finding of Fact No. 28 and the Discussion on Finding of Fact No. 28 on pages 101 through 103 of the Commission's December 10, 1998 Order. In addition, the Commission rescinds Finding of Fact No. 30 and the Discussion on Finding of Fact No. 30 on pages 106 through 107 of the Commission's December 10, 1998 Order.

FINDING OF FACT NO. 31 - COLLOCATION METHODS

Commission Order: The Commission concluded that, while collocation is a legally permissible way for an ILEC to provide access to UNEs, it declined to rule at this point whether there are any other legally permissible or practical ways for ILECs to provide such access.

Supreme Court Decision: The Supreme Court found that the FCC was reasonable in forbidding an ILEC, except upon request, from separating network elements that the ILEC currently combines. The Supreme Court agreed with the FCC that a contrary result could lead to the imposition of wasteful costs to the detriment of competition.

Motions for Reconsideration/Clarification:

AT&T: AT&T argued that the Commission's decision ignored the current prevailing law and quotes from a section of the Eighth Circuit's decision where the court discusses the ability of competing carriers to provide finished services entirely through UNEs. There the Court found the FCC's "all elements" rule was consistent with the Act. In the preceding section of the opinion, the court vacated the rule requiring ILECs to recombine UNEs and observed, as AT&T points out, that the ILECs' objection to the rule "indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them."

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI supported AT&T's position. ILECs may not require competitors to collocate in order to obtain combined UNEs. The Commission should revisit its decision to require the provisioning of UNEs, specifically loops and transport facilities, without forcing CLPs to collocate. The Commission should also ensure that all CLPs that request it have the ability to physically collocate and should set up a procedure for reviewing ILEC waiver applications.

AT&T: AT&T did not specifically address this issue but noted that the Supreme Court decision clearly establishes that BellSouth may not separate already combined network element combinations.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth maintained that AT&T had misstated the Commission's decision. The Commission did not hold that collocation is the only method for providing access to UNEs, but rather it declined to decide whether there are other legally permissible or practical ways for ILECs to provide access. If there are such methods, AT&T should ask to negotiate on them.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom argued that the Supreme Court had eliminated any lawful basis for BellSouth's collocation policy that CLPs may serve customers through combinations only by leasing collocation space and recombining elements which BellSouth has taken apart. It violates Rule 315(b) and the "all elements" rule by denying CLPs the ability to provide the use of BellSouth's network elements.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants did not address this issue in its initial comments.

PUBLIC STAFF: The Eighth Circuit's statement allowing entrants access to the ILECs' networks does not eliminate collocation as a method of obtaining access. Based on the record before it, and the status of the law at the time, the Commission's conclusion in its December 10, 1998, Order was reasonable.

The Supreme Court, however, has reinstated the FCC's Rule 315(b), which prohibits ILECs' from separating UNEs that are otherwise combined. Since the heart of the issue raised by AT&T was not the method of access but the physical separation of the loop and port which made access necessary, the legal issue appears to have been decided in AT&T's favor and the so-called "glue charge" is not permissible. The question now is whether all of the combined loop-port costs are included in BellSouth's study so that the price of the UNE combination should be simply the sum of the loop and the port prices or whether there are other costs that BellSouth incurs in providing the combination to itself. Even if BellSouth is prohibited from separating elements that are otherwise combined and imposing additional costs on the CLPs, it is not prohibited from recovering the TELRIC-based costs of the UNEs as originally combined.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI reiterated that the Supreme Court had held that ILECs may not require CLPs to collocate in order to obtain UNE combinations and that the Commission should adopt substantive rules for collocation provisioning.

AT&T: AT&T did not directly address this issue in its reply comments, but it reiterated its view that BellSouth is obligated to provide CLPs with combinations of unbundled elements.

ATTORNEY GENERAL: The Attorney General stated that he believes the law now requires the Commission to revise its findings to include language indicating that ILECs may not, except upon request, separate network elements already combined.

BELLSOUTH: BellSouth did not specifically address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central noted that while, in reality, collocation may be the only technically feasible way for a CLP to gain access to network elements where CLPs must combine network elements themselves; under FCC Rule 315(b), CLPs may purchase unseparated network elements from the ILEC. In such a circumstance, the CLPs will have no combination work of their own to perform. Thus, ILECs should not require collocation from CLPs in these circumstances. This is especially true in the case of loop, switch, and transport combinations, the so-called UNE platform.

GTE: GTE did not address this issue in its reply comments except to say that ACI's collocation proposals are without merit and would be wasteful and impractical.

MCI WORLDCOM: MCI WorldCom urged the Commission to move forthwith to comply with the Supreme Court mandates, especially with respect to UNE combinations, but did not specifically address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue specifically in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

The Commission agrees with the analysis of those that have argued that the Supreme Court, by reinstating Rule 315(b) which prohibits ILECs from separating UNEs already combined and renders impermissible the so-called "glue charge" to separate already-combined network elements and then to recombine those network elements, has decided this issue in AT&T's favor. Carolina/Central have aptly observed that, while collocation may be necessary when the CLP itself must combine network elements, this is not the case where it has purchased unseparated network elements from an ILEC in such a way that the CLP has no combination work of its own to perform.

The question now is whether all of the combined loop-port costs are included in each of the ILEC's studies so that the price of the UNE combination should be simply the sum of the loop and the port prices or whether there are other cost considerations to be taken into account. Even if the ILECs are prohibited from separating elements that are otherwise combined and imposing additional costs on the CLPs, they are not prohibited from recovering the TELRIC-based costs of the UNEs as originally combined.

CONCLUSIONS

The Commission concludes that Finding of Fact No. 31 should be amended to read as follows:

> While collocation is a legally permissible way for an ILEC to provide a CLP access to UNEs, an ILEC may not, except upon request, physically separate requested network elements that the ILEC currently combines and require a CLP to collocate in order to recombine those elements. The ILECs should submit TELRIC-based cost studies showing the cost of the various loop-port combinations that have not been separated.

FINDING OF FACT NO. 32 - GEOGRAPHICAL DEAVERAGING

Commission Order: The Commission concluded that proposals for geographical deaveraging of UNE prices were premature and should be rejected for purposes of this proceeding.

Supreme Court Decision: As noted previously, the Supreme Court held, in pertinent part, that the FCC has jurisdiction under Sections 251 and 252 of the Act to design a pricing methodology and adopt pricing rules.

Eighth Circuit Decision on Remand from Supreme Court: Also, as noted previously, on June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules).

Motions for Reconsideration/Clarification:

AT&T: The Commission should reconsider its decision not to geographically deaverage prices for UNEs based on the law as well as for sound public policy reasons. Fundamentally, the Act requires state commissions to set prices for UNEs on the basis of the cost of providing requested UNEs. The Commission should order BellSouth to deaverage its prices in order to determine the true cost of serving customers in various geographic regions throughout North Carolina.

It is well accepted that costs associated with the provision of local loops are subject to geographic variations corresponding to population density. This is because loops in high-density, urban areas typically serve more customers on a smaller circumference and with less cable than loops in low-density, rural areas. The record in this proceeding clearly establishes that the cost of providing UNEs is dependent upon the size of the existing network in a specific area and varies by "density zones" - - lower costs where BellSouth's network is larger and more developed, and higher costs where the network is smaller and less developed. Thus, under the plain terms of the Act, the prices for UNEs to serve these different geographic areas also must be different.

Geographic deaveraging would prevent BellSouth from erecting barriers to competitive entry by charging aggregated prices across the state. When aggregated prices are used, customers in lower cost, high-density, urban areas pay the same for services as do customers in higher cost, low-density, rural areas. Geographic deaveraging sets prices at varying levels across the state, based on the varying costs across the state. This pro-competitive approach is capable of straightforward application because loops generally will be the only UNEs for which there are such significant geographic cost differences. After noting the "general support [among interested parties] for geographic deaveraging," the FCC agreed "that deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements." The FCC concluded "that rates for interconnection and unbundled elements must be geographically deaveraged."

An aggregated "one price fits all" pricing structure ignores the plain meaning of Subsection 252(d)(1) of the Act that prices for UNEs be based on the cost of providing those UNEs. Such a pricing structure would require AT&T to pay prices that bear no relation to the "costs" actually incurred by BellSouth in providing these UNEs. The practical consequences are that BellSouth is given the opportunity to undercut AT&T's ability to compete in high-density, urban areas by artificially increasing AT&T's costs by reducing its own prices for services in these lower cost areas. This type of anticompetitive activity is known as "price squeezing." In arguing that geographic deaveraging will harm consumers, BellSouth has it exactly backwards. The anticompetitive subsidy created by an aggregated pricing structure for loops will ensure that North Carolina consumers will not receive the benefits of competition, including lower prices, higher levels of quality, and a greater range of choices, because no competitor could afford to offer meaningful competition on the basis of bloated, anticompetitive prices charged by BellSouth. Refusing to set prices for UNEs based on forward-looking costs discourages the "efficient entry and utilization of the telecommunications infrastructure" sought by Congress.

In this proceeding, BellSouth argued that pricing UNEs based on the costs for specific geographic areas would encourage carriers such as AT&T to "cherry pick" those customers in high-density, urban areas that would provide the most profit, leaving BellSouth with higher cost, less profitable, low-density, rural customers. However, geographic deaveraging neither will undermine BellSouth's ability to deliver service to all residents of North Carolina, nor raise basic rural telephone rates. Accordingly, once more AT&T urges this Commission to see BellSouth's scare tactics for what they really are - - nothing more than scare tactics.

Support for abandoning BellSouth's scare tactics can be found in the Act. Before the Act was passed, BellSouth was allowed to subsidize its delivery of services in higher cost, low-density, rural areas by charging retail rates in lower cost, high-density, urban areas that far exceeded costs in these urban areas. BellSouth then used some portions of these monopoly rates to offset the higher cost of providing service in low-density, rural areas. As a result, urban and rural customers paid the same rates for telephone service but with urban customers subsidizing their rural counterparts. This aggregated "one price fits all" pricing structure is one of the methods by which these implicit subsidies were generated. However, abandoning this implicit subsidy now will not undermine the goal of universal service by leaving BellSouth "high and dry" without sufficient revenues to cover costs of service anywhere in the state - - whether low cost or high cost. Rather, the Act preserves the goal of universal service through explicit subsidies. The Act provides that telecommunications carriers "shall contribute, on an equitable and nondiscriminatory basis," to the advancement of universal service. It was clearly Congress' intent that any support mechanism maintained or installed to generate such contributions be explicit "rather than implicit as many support mechanisms are today."

Preserving any implicit subsidy would allow BellSouth an unlawful recovery of universal service costs beyond those authorized by the Act. Any implicit subsidies, such as an aggregated pricing structure, are disallowed. Thus, if prices are not deaveraged in this proceeding, any universal service contributions levied upon AT&T and other competitors arising out of the Commission's Universal Service Docket would give AT&T and other competitors lawful grounds upon which to appeal the prices for UNEs established in this proceeding. BellSouth may not like it, but geographically deaveraged prices for UNEs would greatly stimulate competition in North Carolina and equally compelling - - it is the law. Accordingly, the Commission should amend its Order to provide for the geographic deaveraging of prices for UNEs.

CAROLINA/CENTRAL: Carolina/Central agree with the following assessment concerning deaveraging of rates for UNEs and retail services as set forth on Page 112 of the December 10, 1998

Order: "... the deaveraging of rates for UNEs and retail services should be implemented by means of a carefully considered and well-coordinated plan. Development of such a plan requires that all aspects of this process be identified, debated, carefully studied, and clearly understood." Carolina/Central believe that: (i) the appropriate proceeding to further consider geographical deaveraging is the Commission proceeding in Docket No. P-100, Sub 133g (the USF proceeding); and (ii) deaveraging of UNE rates should be implemented at the same time deaveraging is implemented for purposes of USF. Carolina/Central interpret the Commission's Finding of Fact No. 32 to be fully consistent with the foregoing statements and request confirmation that Carolina/Central's interpretation is correct.

NEW ENTRANTS: The New Entrants request that the Commission reconsider its decision not to require ILECs to geographically deaverage prices for unbundled local loops and to order upon reconsideration that such prices be geographically deaveraged.

The FCC has interpreted the Act to require geographically deaveraged local loop rates. Loop rates based on a statewide average do not comply with the Act's cost-based pricing requirement. By adopting a statewide average loop rate, the Commission would require competitors in lower cost, more densely populated areas - - the areas in which CLPs are most likely to be able to compete initially - - to pay a loop rate that is actually much higher than its forward-looking cost. Using averaged loop rates affords ILECs an artificial, perhaps insurmountable cost advantage in offering basic telephone service in more densely populated areas. This result is contrary to the very purpose of the Act - - to promote the development of competition in the local exchange market. In short, averaging loop rates will have the effect of at least chilling competitive entry through the use of unbundled loops and perhaps barring competition entirely in North Carolina.

While BellSouth witness Varner and GTE witness McLeod testified that recurring loop rates should not be deaveraged until retail rates have been rebalanced and a universal service mechanism is in place, these policy concerns are not questions presented in this proceeding. The Act requires that the prices for unbundled network elements be developed on the basis of cost. This mandate does not permit the Commission to create cost distortions through the use of averaged loop rates, even though the ILECs may have expressed concerns about retail rate structures or universal service support.

A review of decisions in other jurisdictions reveals that other state commissions have moved successfully past ILEC concerns about "arbitrage" and universal service concerns to direct the implementation of deaveraged loop rates. At least eleven states have adopted geographically deaveraged loop rates. In fact, deaveraging of loop rates has encouraged competitive entry in these other jurisdictions, as envisioned by the Act. All of the states which have adopted deaveraged loop rates have experienced far more competitive entry using unbundled local loops than has North Carolina.

Carolina/Central proposed geographically deaveraged rates in this proceeding. These proposals show that deaveraging can be implemented on a practical basis and in compliance with Federal law.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI agrees with and supports the motions of New Entrants and AT&T to reconsider and amend Finding of Fact No. 32 to provide for geographical deaveraging. Any attempt to impede the implementation of geographical deaveraging, such as that proposed by Carolina/Central, must be rejected as anticompetitive and contrary to federal law. ACI is therefore opposed to the requested clarification of Carolina/Central.

The Act unequivocally requires that state commissions set UNE prices on the basis of the ILEC's cost of provisioning them. The FCC has expressly ordered geographically deaveraged rates for interconnection and network elements and required state commissions to adopt at least three separate rate zones. The United States Supreme Court has affirmed the FCC's authority in this regard.

The Commission in its Order opted to delay the implementation of geographic deaveraging until a "carefully considered and well-coordinated plan" can be developed, because deaveraging "will likely have a significant impact on the overall availability of competitively priced services." The Commission more specifically determined that "it would be unwise to begin the process of deaveraging before the necessary mechanisms to support universal service are in place." The Commission cannot sustain this decision in the face of the current federal mandate.

The Commission's refusal to implement geographical deaveraging is plainly inconsistent with the overriding purpose of the deregulation of the telecommunications industry, which is to promote competition. The Commission's decision to continue with the practice of implicitly subsidizing rural customers through higher rates to urban customers serves only to delay the onset of the competition that will produce lower telecommunication service costs to a majority of North Carolina's residents. Such a result cannot be consistent with the public interest.

The Commission's concern that deaveraging would create arbitrage opportunities for CLPs is unwarranted. Such concerns, which were raised by the ILECs, even if real, are only temporary. The implicit universal subsidies that have funded low-cost local service will soon be replaced by an explicit contribution system. Therefore, the Commission should, consistent with the Supreme Court's decision, require geographic rate deaveraging consistent with the Act in order to achieve compliance with federal law.

Carolina/Central's request that the Commission clarify its ruling by considering geographical deaveraging in the universal service fund proceeding in Docket No. P-100, Sub 133g, and waiting to implement deaveraging of UNE rates until deaveraging is implemented for purposes of the universal service fund is nothing more than a naked attempt to impose procedural delay and confusion upon an otherwise clear issue. For such reasons, Carolina/Central's request for clarification must be rejected.

AT&T: No one disputes that the Act requires state commissions to set prices for UNEs on the basis of the cost of providing requested UNEs. It also is well accepted that the costs associated with the provision of local loops are subject to geographic variations in a state corresponding to population density. Thus, under the plain terms of the Act, the prices for UNEs to serve these different geographic areas also must be different.

The Act also expressly requires that network element rates be "nondiscriminatory." Thus, if BellSouth's actual forward-looking cost of providing an element (both to itself and to competing carriers) in an area is $10, charging competing carriers $20 for the $10 element based on some notion of statewide "average" costs would be flatly discriminatory. In light of the Act's requirements, more than twenty state commissions required deaveraging even before the Supreme Court reinstated the FCC's deaveraging rule.

Because local loop costs are such a significant portion of the total cost of providing local telephone service, failure to account for cost differences in loop rates can create prohibitive entry barriers. The threat that averaged loop rates pose to competitive entry in urban areas is direct and obvious. A loop rate based on statewide average costs can exceed the actual costs of providing urban loops by 50% to 100% or more. Thus, there can be no dispute that the failure to deaverage loop rates discourages the "efficient entry and utilization of the telecommunications infrastructure" sought by Congress.

The harm to rural customers is equally serious, if less obvious. Any policy that discourages entry in the urban areas in which a CLP is likely to be able to most quickly attract a sufficiently large customer base to support entry will necessarily discourage any broader entry plans that encompass widely dispersed rural areas that would be unlikely to attract standalone entry. In short, averaged loop rates, which require competing carriers to pay network element charges that bear no relation to the costs borne by an incumbent in actually providing the network elements, constitute a classic entry barrier that would harm competition and the using and consuming public of North Carolina.

In its December 10, 1998 Order, the Commission declined to deaverage BellSouth's UNE prices, even though the Commission did agree that "deaveraging will likely have a significant impact on the overall availability of competitively priced services." Thus, BellSouth's loop rates violate the FCC's rules, and consistent with the Act, the Supreme Court decision, and the FCC's rules, the Commission must set geographically deaveraged rates.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: Although the Commission did not follow all of the FCC's pricing rules (such as Rule 507(f), which purports to require that rates be geographically deaveraged), the Supreme Court's decision does not require that the Commission do so. First, notwithstanding any claim to the contrary, the FCC's pricing rules are not currently in effect because the Eighth Circuit has yet to issue a mandate reinstating those rules. On February 17, 1999, several parties filed a motion with the Eighth Circuit requesting that the appellate court withhold issuance of the mandate pending a decision on merits of the FCC's rules. These parties argue that because the Eighth Circuit will be considering the substantive challenges to the FCC's pricing rules, "it makes little sense for the Court to recall its prior mandate with respect to these rules." According to the motion, reinstating the FCC's rules would seriously disrupt the telecommunications industry, in the event the Eighth Circuit subsequently vacated some or all of the FCC's pricing rules on the merits. The Eighth Circuit has not ruled on the motion, let alone reinstated the FCC's rules.

Even if the Eighth Circuit were to reinstate the FCC's pricing rules, the FCC has indicated that it intends to revisit its rules. For example, the FCC is considering extending the time within which geographic deaveraging must be implemented, even though the FCC rules currently do not contain such an extension. Under the circumstances, the Commission should decline any invitation in the context of this proceeding to apply rules that are not yet in effect and which the FCC has indicated it will revisit.

The Public Staff has expressed similar views. In its comments filed on February 24, 1999, the Public Staff observed:

> "There is considerable uncertainty as to how long it will be before the Supreme Court's decision can be fully evaluated and what changes will be required, but we anticipate that it will be a fairly lengthy process. In the meantime, we believe it would be appropriate for the Commission to go forward and establish permanent UNE prices after it has ruled on the requests for reconsideration. The interim rates now in effect can then be trued up accordingly. Any additional changes required by the FCC or the federal courts can be made later."

BellSouth agrees with the Public Staff.

CAROLINA/CENTRAL: The Supreme Court's decision reinstates the FCC's rule on geographic deaveraging. FCC Rule 507(f) requires that the "[s]tate commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences." The Commission concluded in the UNE Order that proposals for geographical deaveraging of network element prices were premature and should be rejected for the purposes of this proceeding.

The Commission reasoned that it would be unwise to begin the process of deaveraging before the necessary mechanisms to support universal service are in place. The Commission also stated it was mindful of the effects deaveraging would have on the availability of competitively priced services in higher cost, rural areas. The Commission further stated that:

> "The deaveraging of rates for UNEs and retail services should be implemented by means of a carefully considered and well-coordinated plan. Development of such a plan requires that all aspects of this process be identified, debated, carefully studied, and clearly understood. The record in this proceeding does not contain the information and data needed for this purpose."

Carolina/Central's initial cost studies deaveraged rates for local loops and switching plus dedicated transport. The cost studies deaveraged local loop and switching prices into six bands and established route specific dedicated transport prices. Carolina/Central stated in their January 11, 1999, Motion for Clarification that they could support the Commission's conclusion that deaveraging should be implemented by a carefully considered and well-coordinated plan, and suggested that the appropriate forum to develop this plan is the Commission's current universal service policy proceeding. Carolina/Central also emphasized the need for, and asked for clarification on, the simultaneous deaveraging of network element prices and universal service costs so as to prohibit arbitrage opportunities.

The Supreme Court's decision reinstating Rule 507(f) means the Commission should begin a proceeding that develops a record from which the Commission may implement an appropriate deaveraging plan for network elements. Due to current procedural schedules, Carolina/Central understand that the deaveraging of network elements and the creation of a North Carolina intrastate universal service fund may not necessarily occur at the same time. Regardless, Carolina/Central believe it is imperative that the deaveraging of network element prices occur at the same time universal service costs are deaveraged. Carolina/Central therefore renew their recommendation that the Commission consider deaveraging issues as part of the current universal service policy proceeding.

GTE: GTE agrees with the Commission's decision that deaveraging should await the implementation of the necessary mechanism to support universal service. This conclusion was well founded as a matter of both policy and law. As a policy matter, if deaveraging precedes universal service reform, it will undermine the ability of GTE and other ILECs to meet their universal service obligations, especially in rural areas. As a legal matter, the Commission has the right to take this reality into account by postponing rate deaveraging while it develops and implements an adequate universal service support mechanism.

In seeking reconsideration of the Commission's finding, neither the New Entrants nor AT&T rebuts the Commission's finding that deaveraging at this time would adversely affect universal service. The New Entrants simply dismiss these concerns as "not questions presented in this proceeding" and assert that Section 252(d)(1) requires deaveraged rates now. They thus urge the Commission to "move past" ILEC concerns about arbitrage and universal service. Similarly, although AT&T characterizes these concerns as "scare tactics" by BellSouth, its only response is to suggest that universal service can be protected through explicit subsidies under Section 254. The problem, however, lies with what will happen during the period between the time this Commission sets UNE prices and the time the USF mechanism is in place - a problem AT&T (like the New Entrants) fails to address.

The problem nonetheless is real. Absent a fully implemented USF mechanism, ILECs will have no means of recovering the revenues they will lose when AT&T and other entrants "cherry pick" their best customers. Deaveraged rates would exacerbate this problem by creating opportunities for CLPs to cut even more deeply into the margins GTE relies upon to support the provision of below-cost urban customers and ignore high-cost, rural ones. Neither AT&T nor the New Entrants denies any of this.

The only issue then is whether the Commission was legally required to ignore the adverse policy implications of deaveraging. The answer clearly is "no." The only statutory support any of the CLPs invokes is Section 252(d)(1), which requires that the prices for UNEs be based on the "cost" of providing them. But nothing in Section 252(d)(1) speaks to whether (or to what extent) "cost" must be deaveraged. The New Entrants claim that a statewide averaged cost is a distorted one, but this argument proves too much. For even if the Commission were to adopt the New Entrants' proposal and create three sets of rates, costs could still be said to be distorted, since there are many more than three levels of costs. Nothing in the Act tells the Commission how much disaggregation, if any, is appropriate. Thus, the Commission is free to make its own judgment on this matter, based on relevant policy consideration. Protecting universal service is, indisputably, a key policy consideration under the Act.

Any contention that the Commission erred by considering universal service in its decision on deaveraging is rebutted by the Eighth Circuit's decision in Competitive Telecommunications Ass'n v. F.C.C. (CompTel), 117 F.3d 753 (8th Cir. 1997). The issue there was whether the FCC had violated the Act's cost-based pricing provisions by allowing ILECs to collect, on an interim basis, certain charges not related to cost (i.e., the Common Carrier Line Charge and the Transport Interconnection Charge). The Eighth Circuit ruled that the imposition of these non-cost related charges was permissible during the interim period until universal service reform was completed. The Court reasoned that "Congress did not intend that universal service should be adversely affected by the institution of cost-based rates." 117 F.3d at 1074. If the FCC could impose charges bearing no relation to cost in the interests of protecting universal service, then this Commission, in setting cost-based rates, can certainly elect not to deaverage cost-based rates until such time as the necessary safeguards for universal service are in place.

Finally, the Commission was correct in its view that, given the relationship between UNE pricing and the pricing of retail services, the deaveraging of the two sets of rates should occur together pursuant to a "carefully considered and well-coordinated plan." As the Commission recognized, the record in this proceeding does not contain the information necessary to formulate such a plan. AT&T and the New Entrants ignore this argument.

MCI WORLDCOM: The FCC rules reinstated by the Supreme Court require geographical deaveraging. As stated by AT&T and the New Entrants, and as recognized by Commissioner Pittman, deaveraging encourages competitive entry. As also stated by the New Entrants, Carolina/Central proposed geographically deaveraged rates in this proceeding, thus demonstrating that deaveraging can be implemented on a practical basis. The reinstatement of the FCC pricing rules therefore requires the ILECs to deaverage their rates in accordance with FCC rules. AT&T's proposal to deaverage loop prices into six wire center groupings strikes a reasonable balance between matching UNE rates to their underlying geographic cost characteristics and implementation concerns.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: In its Order, the Commission adopted statewide averaged rates for unbundled local loops. These rates are not in compliance with the FCC's pricing rules and are not consistent with the Act and the FCC's binding regulations. The Commission should set geographically deaveraged rates.

PUBLIC STAFF: The consequences of UNE and retail rate deaveraging cannot be overemphasized. The impact of such deaveraging and rate rebalancing on universal service support requirements will be substantial, even if implemented "by means of a carefully considered and well-coordinated plan," as the Commission suggests. If they are undertaken piecemeal, the consequences could be far worse. It would be extremely inadvisable at this time for the Commission to go even so far as to commit to take action in the future on this crucial issue without an absolute and inescapable legal mandate.

Proponents of geographical deaveraging of UNE prices assume that rates based on average costs are somehow not "cost based" as required by the Act. Taken to its logical extreme, their argument would call for individually priced UNEs for all service locations, which no one seriously advocates. The record clearly supports the conclusion that the UNE prices being established in this proceeding are based on cost. They are derived from studies of forward-looking costs without regard to other factors, such as value of service, on which retail rates have traditionally been based. Whether and to what extent UNE prices should be deaveraged is a policy issue that cannot be adequately addressed in any but the most careful and systematic way.

The Supreme Court has remanded the FCC's pricing rules to the Eighth Circuit, where they will be reviewed on the merits. One of these rules, 507(f), requires different UNE rates for at least three defined geographic areas within the state to reflect cost differences. This rule is likely to be opposed by a number of states, and there has been some discussion of a possible stay by the FCC itself pending further consideration along with other rules. It has been suggested, for example, that the specific unbundling requirements of Rule 319 may vary geographically when the FCC revisits the "necessary and impair" standards of Section 251(d)(2) of the Act.

In light of the present uncertainty regarding the FCC's rules as well as universal service support mechanisms, it is still premature to take steps toward geographical rate deaveraging.

SPRINT: Sprint agrees that it is imperative that the deaveraging of network element prices occurs at the same time universal service costs are deaveraged. Sprint supports the suggestion that the Commission consider deaveraging issues as part of the current universal service policy proceeding.

REPLY COMMENTS (filed April 15, 1999)

ACI: BellSouth, GTE, and the Public Staff assert that the Commission is not compelled by federal law to implement geographical deaveraging. Secondly, they assert that, if the Commission implements geographical deaveraging, it should wait until it can act in conjunction with a universal service proceeding. Both arguments are plainly inconsistent with federal law as well as this Commission's pro-competitive policies and must therefore be rejected.

The opponents of geographical deaveraging argue that federal law does not compel the Commission to implement geographical deaveraging because: (1) the Eighth Circuit has not yet issued a mandate to reinstate the FCC's rules; (2) the Eighth Circuit's consideration of the substantive pricing rules is still pending; (3) the only relevant statute, Section 252(d)(1), merely requires cost-based rates rather than deaveraged rates; and (4) the FCC may at some point stay its deaveraging rules pending further reconsideration. These arguments are spurious.

The Supreme Court's decision has removed the stay on the FCC's rules, making them binding on the states while the Eighth Circuit revisits them on the merits. Thus, for all practical purposes, the FCC's pricing rules, which include the mandate for geographical deaveraging, are again the law of the land.

GTE's argument, that the Commission is not required to implement geographically deaveraged rates because Section 252(d)(1) merely requires cost-based rates rather than deaveraged rates, likewise ignores the principle that the FCC's pricing rules have the force of law. The FCC's rules require different UNE rates for at least three defined geographic areas within the state to reflect cost differences. This Commission should therefore implement geographical deaveraging in accordance with this rule.

BellSouth argues, in its own comments, that the Commission should not deaverage rates because the FCC may at some point stay its deaveraging rules pending further reconsideration. Yet, BellSouth completely undermines its own argument by including in its comments an excerpt from the February 24, 1999, issue of *Communications Daily*, in which FCC Chairman Kennard is quoted as stating *"[W]e won't back away from deaveraging because it is essential to development of local competition,"* (emphasis added). This statement unequivocally demonstrates that BellSouth's argument that a revised geographical deaveraging rule is forthcoming is simply false. Rather, Chairman Kennard has explicitly stated his commitment to geographical deaveraging. BellSouth's fictitious claims of further action by the FCC provides no basis for this Commission to further delay implementation of geographical deaveraging.

The Commission should also reject the argument that it must wait or proceed slowly on the issue of deaveraging. According to the opponents of deaveraging, (1) retail rate deaveraging will have substantial consequences on universal service support, (2) geographical deaveraging will enable competitors to "cherry pick" low-cost, urban customers at the expense of high-cost, rural customers, resulting in a loss of ILEC revenues in the absence of a fully-implemented universal service fund mechanism, and (3) the Commission ought to postpone deaveraging of UNE rates in order to coordinate the deaveraging of UNE rates with retail rates. None of these arguments justifies a delay in UNE rate deaveraging.

The opponents' dire pronouncements that deaveraging will substantially harm customers is based upon little or no relevant experience. This Commission has no basis on which to accept opponents' claims that geographical deaveraging will encourage CLPs to "cherry pick" customers, thereby causing harm to rural and low-income customers. To the contrary, as AT&T has correctly stated, failure to deaverage rates will cause significant harm to rural customers. Thus, any concerns regarding potential "cherry picking" by CLPs should not dissuade this Commission from implementing geographical deaveraging.

Further, this Commission should not delay implementation of geographical deaveraging for procedural reasons. Although ACI recognizes that implementation of geographical deaveraging requires some record, this process should not be unduly protracted. Geographical deaveraging is an essential component of cost-based, nondiscriminatory pricing for unbundled elements. Any decision to postpone deaveraging simply serves to postpone full competition in contradiction to the goals of the Act. ACI therefore urges the Commission to develop such a record on an expedited basis in order to implement geographical deaveraging as soon as possible. According to Congress' clear pro-competitive goals, the Commission should not permit any further delay in implementing geographical deaveraging.

For these reasons, the Commission should reverse its earlier decision and begin the process for implementing geographical deaveraging immediately.

AT&T: In its Response, BellSouth presents no compelling reason for the Commission not to geographically deaverage UNE rates. BellSouth vaguely asserts that "the record in this proceeding did not contain all of the information necessary to implement geographically deaveraged rates." AT&T has no idea what BellSouth means by this statement. There is ample evidence in the proceeding that the costs associated with the provision of local loops are subject to geographic variations in a state corresponding to population density.

AT&T can only surmise that BellSouth means that BellSouth failed to present to the Commission a cost model which is capable of producing deaveraged loop rates. The logic of this conclusion is inescapable. BellSouth's loop costs are based on a statewide sample of 400 loops in North Carolina. If a statistical sample is representative of a larger group, it is representative only of the entire population from which the sample is derived. Thus, there is no statistically accurate way to "deaverage" the average statewide cost of a loop that is derived from a sample of loops in the state. Of course, the fact that BellSouth's cost studies are incapable of producing deaveraged loop prices is no justification for failing to establish deaveraged rates. Rather, it is merely another reason to reject BellSouth's cost studies.

The FCC's rules are in effect and are legally binding on the Commission. The Commission is thus obligated today to follow the FCC's rules requiring geographic deaveraging. Moreover, the fact that a single press report speculates that the FCC might establish additional time to deaverage rates in no way lessens or eliminates that obligation.

ATTORNEY GENERAL: The FCC's rules state that state commissions should establish rates for elements "in at least three defined geographic areas within the state to reflect geographic cost differences." The FCC also indicated recently that it is considering issuing an order to provide the states with guidance in terms of timing on the deaveraging issue. Therefore, in light of the serious impact that deaveraging would have on North Carolina consumers, the FCC's lack of guidance at this time, and the fact that decisions regarding universal service mechanisms are still pending at both the state and federal level, the Attorney General believes that it is premature for the Commission to issue an order on this issue.

Therefore, the Attorney General believes that the Commission should not reverse this finding on the basis of the New Entrants' and AT&T's motions for reconsideration.

BELLSOUTH: None of the Intervenors bothers to reconcile their position that the FCC rules require geographically deaveraged rates with the FCC's publicly stated view that it intends to revisit those rules.

AT&T is simply wrong when it claims that the Act requires that rates be geographically deaveraged. At least two federal courts have considered and rejected this precise argument, even after the Supreme Court's decision. In *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, a federal district court in Kentucky concluded "that the Act appears to be silent on the issue of deaveraging." The court recognized the possibility that with geographically deaveraged rates "new entrants would only purchase UNEs in urban areas or other low cost segments of the industry," while ignoring "remote rural areas which are less densely populated." According to the court, the Kentucky Commission's decision "to balance universal service goals with the purpose of the Act by refusing to deaverage the UNE rates was lawful."

A federal court in Oregon recently reached the same conclusion. *See MCI Telecommunications Corp. v. GTE Northwest, Inc.*, 1999 U.S. Dist. LEXIS 3129 (D. Oregon March 17, 1999). The court recognized the concerns voiced by the Oregon Public Utility Commission "that the deaveraging of loop prices needs to be coordinated with the deaveraging of retail prices for those services and the implementation of explicit universal service programs." The court rejected MCI's reliance upon the FCC regulation, concluding that "[d]eaveraging into at least three zones is not a requirement imposed directly by the Act," since, according to the court, "the Act does not even mention deaveraging, let alone a minimum of three zones." The court noted that "[w]hether the FCC has the authority to require deaveraging will be decided by the Eighth Circuit."

In short, there is no legal requirement that the Commission implement geographically deaveraged rates at this time, particularly when the "record in this proceeding does not contain the information and data needed for this purpose."

CAROLINA/CENTRAL: ACI's comments call Carolina/Central's clarification motion - - which asks for network element and universal service deaveraging to be considered in the same proceeding and done at the same time - - "a naked attempt to impose procedural delay and confusion upon an otherwise clear issue." ACI obviously does not understand the history of this proceeding. Instead of seeding delay and confusion, Carolina/Central have consistently advocated and supported deaveraging throughout this proceeding, having originally proposed deaveraged loops, switching, and transport rates.

Carolina/Central do not dispute the basic policy or legal analysis of ACI, the New Entrants, AT&T, or MCI WorldCom regarding this issue. In their comments, Carolina/Central concluded that the Supreme Court's decision reinstating Rule 507(f) means that the Commission may implement an appropriate deaveraging plan for network elements. However, Carolina/Central believe that deaveraging of network elements needs to occur at the same time of, and in coordination with, universal service deaveraging. Carolina/Central take this position not as an avenue of delay, but only to prevent unfair regulatory arbitrage that will seriously affect the availability of universal service in North Carolina.

On the other hand, Carolina/Central are skeptical of observations and speculations that the FCC pricing rules have not technically been reinstated by the Eighth Circuit, that the FCC may grant an extension of time for implementation, or that the Eighth Circuit must still review the pricing rules on the merits and may yet strike the rules down. These speculations could cause the Commission and the parties to lose valuable time in what promises to be a difficult yet inevitable project. This danger is compounded by parties claiming that any regulatory arbitrage will be temporary and who then argue that a universal service fund is not needed and should not be established.

GTE: Again in mistaken reliance on the Supreme Court's decision, the New Entrants and others urge the Commission in their comments to amend its Order to provide for geographically deaveraged UNE prices. They base their comments on the mistaken belief that the Commission is now required to heed the FCC's regulations requiring deaveraged rates, but the FCC's previously stayed regulations are still not legally in effect and may well never be.

The recent Oregon federal court decision reflects that even after *Iowa Utilities* there remains legal difficulties with deaveraging. In that federal case, MCI argued that the Oregon PUC had erred by establishing a single state-wide loop price. The court, however, concluded "average loop prices are cost-based," as statutorily required. As the court observed, "the PUC simply chose to set a single loop price based upon the average cost of providing service rather than separately calculating the costs attributable to a particular loop and pricing each loop accordingly." Just as GTE has noted in its earlier submission here, the court in Oregon noted that it had earlier acknowledged concerns in other cases "that the deaveraging of loop prices needs to be coordinated with the deaveraging of retail prices for those services and the implementation of explicit universal service programs." Otherwise, companies such as MCI WorldCom and the New Entrants, which have no obligation to serve all customers, "could solicit the most profitable customers leaving the ILEC to service the unprofitable accounts the CLECs do not want."

GTE also observed that the Oregon court had noted that "[d]eaveraging into at least three zones is not a requirement imposed directly by the Act . . . . The Act does not even mention deaveraging, let alone require a minimum of three zones. Rather, this requirement is a creation of the FCC . . . whether the FCC has the authority to require deaveraging will be decided by the Eighth Circuit."

For the foregoing reasons, GTE strongly encourages the Commission to follow the recommendation of the Public Staff and to continue to refrain from any geographic deaveraging of UNE prices until such time as what, if any, FCC standards are finally defined and until this Commission can ensure a comprehensive treatment of the universal service and retail rate rebalancing issues.

MCI WORLDCOM: The Supreme Court found that the FCC was within its authority to base its *Local Competition Rules* on TELRIC, and that whatever possibility of "arbitrage" might arguably result from using UNE combinations would be at most temporary. The court recognized that the FCC was rightly concerned that ILECs not manipulate sentiment regarding universal service to undermine the FCC's pricing rules. Contrary to the assertions of some, averaged UNE costs are not "cost based" in any meaningful way if the purpose is to establish a viable alternative to interconnection and resale. If TELRIC pricing is to be implemented in accordance with the FCC's rules, BellSouth, GTE, and Carolina/Central must deaverage UNE rates geographically.

NCCTA AND TIME WARNER: The Commission has required the incumbent carriers to develop statewide average rates for unbundled network elements. In contrast, the FCC has made it clear that deaveraged rates more closely reflect costs and that unbundled elements must be geographically deaveraged. The FCC concluded that three zones are presumptively sufficient to reflect geographic cost differences in establishing rates for unbundled network elements. The three rate zones for the implementation of deaveraged rates serve as a minimum. The states can further disaggregate rate zones if found appropriate. Thus, in all likelihood, the Commission will be required to once more evaluate the incumbent carriers' cost models and the reliability of the model results in developing deaveraged rates. As Carolina/Central have recognized, geographic deaveraging must be implemented in concert with the establishment of a permanent universal service support mechanism.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: Unproven concerns about "arbitrage" and the unjustified insertion of implicit conditions into a statutory directive do not provide a basis for delaying geographic deaveraging in this instance. In fact, as the New Entrants have asserted throughout this proceeding, geographic deaveraging is an essential precondition for truly effective competitive entry. The New Entrants have submitted testimony explaining that entry into more densely populated areas will provide CLPs with the initial customer base that they need to justify expansion into other parts of the ILECs' serving areas. The New Entrants therefore urge the Commission to follow the FCC's rules with respect to geographic deaveraging and to reject arguments that urge delayed compliance with the FCC's rules.

PUBLIC STAFF: Chairman Kennard has indicated that the FCC will revisit this requirement. The Commission should take no action on this issue unless absolutely required to do so.

SPRINT: Sprint did not file reply comments.

DISCUSSION

The proponents of deaveraging UNE rates continue to assert that such deaveraging is required by the Act and public policy considerations. Generally, they argued that the Supreme Court has now reinstated the FCC's rules and that, consistent with the Act, the Supreme Court's decision, and the FCC's rules, the Commission must set geographically deaveraged rates without delay.

At least two proponents of deaveraging argued that geographic deaveraging of UNE rates should be implemented at the same time of, and in coordination with, universal service deaveraging. It was also argued that the appropriate proceeding in which to further consider geographic deaveraging is the Commission proceeding in Docket No. P-100, Sub 133g (the universal service proceeding).

Opponents of deaveraging continue to assert that, without rate rebalancing, deaveraging would create arbitrage opportunities for CLPs by allowing them to target high margin customers and services. Such targeting, according to opponents, would ultimately lead to higher prices for rural customers.

Opponents argued that the Eighth Circuit has yet to issue a mandate reinstating the FCC's pricing rules and that several parties have filed a motion with the Eighth Circuit requesting that the appellate court withhold issuance of the mandate pending a decision on the merits of the FCC's rules. These parties argued that, because the Eighth Circuit will be considering the substantive challenges to the FCC's pricing rules, "it makes little sense for the Court to recall its prior mandate with respect to these rules." According to the motion, reinstatement of the FCC's rules would seriously disrupt the telecommunications industry, in the event the Eighth Circuit subsequently vacated some or all of the FCC's pricing rules on the merits.

The Eighth Circuit has now issued its Order reinstating the FCC's pricing rules. Such Order was filed on June 10, 1999. The court has not ruled on pleadings challenging the merits of the FCC's pricing rules.

Opponents of deaveraging further argue that, even if the Eighth Circuit were to reinstate the FCC's pricing rules, the FCC has indicated that it intends to revisit its rules. Indeed, the FCC, in a Stay Order issued on May 7, 1999, postponed the effectiveness of Section 51.507(f) of its rules. That section requires each state commission to establish at least three geographic rate zones for unbundled network elements and interconnection that reflect cost differences. The stay is to remain in effect until six months after the FCC issues its Order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for nonrural ILECs. Under the circumstances, opponents argue that the Commission should decline any invitation in the context of this proceeding to apply rules that are not yet in effect and which the FCC has indicated it will revisit.

The Commission, in its discussion of the geographical deaveraging issue in its December 10, 1998 Order now on reconsideration, stated that:

> "The historical practice of maintaining statewide average retail rates based on the number of lines in a calling area, in all likelihood, will not be sustainable in the long run as competition develops. The Commission, however, is of the opinion that it would be unwise to begin the process of deaveraging before the necessary mechanisms to support universal service are in place.
>
> "The Commission is also mindful of the relationship between the prices of UNEs and the pricing of retail services and accordingly is of the opinion that deaveraging will likely have a significant impact on the overall availability of competitively priced services. Therefore, to ensure that all competitors are treated fairly and that the interests of all consumers are fully protected, the Commission is of the opinion that the deaveraging of rates for UNEs and retail services should be implemented by means of a carefully considered and well-coordinated plan. Development of such a plan requires that all aspects of this process be identified, debated, carefully studied, and clearly understood. The record in this proceeding does not contain the information and data needed for this purpose.
>
> "For the foregoing reason, the Commission is of the opinion that it would be inappropriate to deaverage UNE rates at this time."

In its Stay Order, the FCC stated that:

"By linking the duration of the stay to the universal service proceeding, we afford the states and ourselves the opportunity to consider in a coordinated manner the deaveraging issues that are arising in a variety of contexts affecting local competition."

The FCC also stated in its Stay Order that the six-month period of the stay would run from the release date of its Order implementing high-cost universal support for nonrural ILECs. The FCC further observed that neither petitions for reconsideration nor appeals of that Order would have any bearing on the length of the stay.

Additionally, the FCC, in its Stay Order, commented that:

"Because of the Eighth Circuit's decisions, the section 251 pricing rules were not in effect for approximately two-and-a-half years. During that time, not all states established at least three deaveraged rate zones for unbundled network elements and interconnection. Some have taken no action yet regarding deaveraging; others have affirmatively decided to adopt less than three zones. A temporary stay will ameliorate the disruption that would otherwise occur, and will afford the states an opportunity to bring their rules into compliance with section 51.507(f)." (emphasis added).

The FCC also noted that:

"By linking the duration of the stay to the universal service proceeding, we afford the states and ourselves the opportunity to consider in a coordinated manner the deaveraging issues that are arising in a variety of contexts affecting local competition. We are considering in the universal service proceeding what level of geographic deaveraging to use in determining the universal service support available to non-rural LECs serving high-cost areas. States are confronting similar issues. In addition, in the access charge reform proceeding, we are continuing to assess the application of deaveraging policies to the interstate access rates of incumbent LECs. Applying different contexts might create arbitrage opportunities or distort entry incentives for new competitors. Temporarily staying the effectiveness of section 51.507(f) will afford regulators the opportunity to consider the ramifications of deaveraging for the pricing of unbundled network elements, for universal service support in high-cost areas, and for interstate access services." (footnotes omitted and emphasis added).

It would appear from the language of the Stay Order, that the FCC does not plan to voluntarily revisit its requirements with respect to geographic deaveraging. Moreover, it would appear that the FCC fully expects state commissions to take such action as may be required in order to accomplish full compliance with its deaveraging rules upon the tolling of the stay. In an Order released on May 28, 1999, in CC Docket Nos. 96-45 and 96-262, the FCC concluded that its ". . . new forward-looking, high-cost support mechanism should be implemented on January 1, 2000, instead of July 1, 1999, as previously planned." It would therefore appear, under a best-case scenario, that state commissions, who do not now have geographically deaveraged rates in place, have a maximum period of less than 13 months to comply with the FCC's deaveraging mandate. However, the FCC also stated in its May 28, 1999, Order that it anticipated adopting the permanent methodology for calculating and distributing support for nonrural carriers, based on forward-looking economic costs, this fall for implementation on January 1, 2000. Therefore, it would appear, most realistically, that state commissions now have in the range of 10 months to adopt geographically deaveraged UNE rates.

CONCLUSIONS

In consideration of (1) the Eighth Circuit's now having issued its Order reinstating the FCC's pricing rules, (2) the uncertainty as to how the Eighth Circuit will rule on pleadings challenging the merits of those rules, (3) the FCC's position on geographic deaveraging, and (4) the time constraint imposed by the FCC for state commissions to comply with Section 51.507(f) of the FCC's pricing rules, the Commission concludes that further proceedings should be undertaken for the purpose of developing geographically deaveraged UNE rates. Thus, by such action, the Commission hereby grants AT&T's, Carolina/Central's, and the New Entrants' Motions for Reconsideration/Clarification, with respect to this issue, to the extent that said motions request such further proceedings.

FINDING OF FACT NO. 33 - RECOMBINATION OF UNBUNDLED ELEMENTS AND INTEGRATED DIGITAL LOOP CARRIER (IDLC) TECHNOLOGY

Commission Order: The Commission concluded that, based on the current status of the law, including relevant court decisions, the ILECs should not be required to combine unbundled network elements for CLPs. The Commission further concluded that the ILECs had adequately answered the CLPs' complaints related to recombination requirements, discrimination, inefficiencies, and IDLC/Universal Digital Loop Carrier (UDLC) technology, including associated Digital Loop Carrier (DLC)-related cost study inputs. The Commission stated that it would work diligently with affected parties to ensure that interconnection agreements are amended and revised, as necessary and at the appropriate point or points in time, to conform to the mandates of applicable federal court decisions. Commissioner Pittman concurred, noting that the law as it existed did not require ILECs to combine UNEs for CLPs but suggesting careful examination of the word "combination" in the case of IDLC technology; that If IDLC loops and switches cannot be separated without destroying the essential character of the technology, they cannot be called a combination; and that, instead, they ought to be offered and priced as a stand-alone element.

Supreme Court Decision: The Supreme Court noted that FCC Rule 315(b), which forbids an incumbent to separate already-combined network elements before leasing them to a competitor, is entirely rational, finding its basis in the nondiscrimination requirement set forth in Section 251(c)(3) of the Act.

Eighth Circuit Decision on Remand from Supreme Court: On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules) and Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Eighth Circuit also vacated FCC Rule 319 (specific unbundling requirements). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements. Iowa Utilities Board v. FCC, ____ F.3d ____ (Order Filed June 10, 1999).

Motion for Reconsideration/Clarification:

AT&T: AT&T argues that BellSouth should be ordered to provide IDLC as a UNE combination, claiming that to require AT&T to use UDLC, as opposed to the forward looking, least cost IDLC technology would be to endorse unlawful, discriminatory, and anticompetitive activity. AT&T cites uncontroverted evidence that BellSouth uses IDLC technology to serve its own customers and that this technology is included in the BCPM 3.1 model adopted by the Commission in the FLEC study docket. AT&T asserts that by requiring use of UDLC and prohibiting use of IDLC, BellSouth materially increases the prices for individual UNEs. For example, by insisting that all switches be terminated in a main distribution frame (MDF) to make the new IDLC technology accommodate the older UDLC technology, BellSouth requires AT&T to pay for an arbitrary addition of equipment in its cost studies, an Analog Interface Unit (AIU), to convert analog signals traveling to the MDF to digital signals required by digital switches. AT&T also asserts that terminating loops and switches in MDFs creates large nonrecurring costs for extensive manual labor.

AT&T challenges BellSouth's position that it cannot provide unbundled loops using IDLC technology because these loops are "integrated" with the switch. This argument, AT&T states, assumes that "unbundling" means "physically separated," a definition which BellSouth itself does not consistently apply. For example, BellSouth will allow CLPs access to a loop and a NID, which are separate UNEs with separate prices, without first requiring that they be physically separated from each other. According to AT&T, the testimony in this proceeding reveals that BellSouth requires physical separation only for the loop-switch UNE combination. AT&T cites the cross-examination of BellSouth witnesses Gray and Landry, who could not answer whether common transport is physically separated from the switching element when it is ordered as a separate UNE, and compares it to the testimony of BellSouth witness Varner in Florida stating that the only technically feasible way of offering common transport is to combine it with the port. Thus, AT&T argues, if the only technically feasible way for BellSouth to provide CLPs with access to IDLC technology is to leave loops and ports combined, the Commission should order this arrangement.

AT&T further argues that denial of access to IDLC technology is inherently discriminatory in violation of Section 251(c)(3) of the Act and will result in CLP customers obtaining service that is inferior to that enjoyed by BellSouth's customers. According to AT&T, the digital to analog conversion required with UDLC technology can cause impairment of transmission quality. IDLC, on the other hand, is the technology that forward-looking providers including BellSouth now use and plan to use more in the future. It is cheaper and more efficient than the inferior UDLC technology, which costs twice as much. Thus, AT&T asserts, by basing its cost studies on only UDLC technology, BellSouth is not only denying AT&T the benefits of superior technology, it is also inflating its costs. Moreover, it is proposing to charge even more to move customers from IDLC to UDLC technology, namely, a "special construction" fee, in addition to the prices proposed in this proceeding.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T stated that the Supreme Court's decision clearly establishes that BellSouth may not separate already-combined network element combinations. The Supreme Court upheld the validity of FCC Rule 315(b), which forbids ILECs from separating already-combined network elements before leasing them to CLPs. The Court's decision unequivocally and conclusively eliminates the legal basis for BellSouth's position on this issue. The Commission cannot now legally adopt UNE prices which are generated by a cost model which assumes that elements must be physically separated. BellSouth's legally untenable insistence on providing separated loops and ports to CLPs affects both recurring and nonrecurring UNE rates. The Supreme Court's decision to vacate FCC Rule 319 has no impact on BellSouth's obligation to provide UNEs individually or combined, because the Commission's arbitration decision, independent of Rule 319, requires BellSouth to provide the same seven elements required under Rule 319. BellSouth has never challenged the decision of the Commission on this issue. Moreover, Section 271 of the Act also enumerates several of the very same elements set forth in Rule 319, including loops, ports, and transport. These elements are separately required under Section 271 and are thereby unaffected by the Supreme Court decision.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth stated that AT&T complains about the Commission's decision that rates for UNEs should not be developed using IDLC technology. A facilities-based carrier that has invested substantial sums to deploy a switch in North Carolina is not interested in the cost of a loop physically integrated with BellSouth's switch, which comprises IDLC. Thus, the so-called "UNE Platform" is irrelevant to the Commission's task of establishing prices for UNEs. AT&T will surely argue that the Supreme Court's decision requires that BellSouth provide AT&T with a combined loop and port, but such an argument would be seriously misguided. First, while the Supreme Court upheld FCC Rule 315(b), it is equally significant that the Supreme Court did not disturb the Eighth Circuit's decision to invalidate those rules that purported to require an ILEC to combine elements that are not currently combined in the ILEC's network on behalf of a requesting carrier (Rules 315(c) - (f)). Because these rules remain vacated, any demands that BellSouth is required to provide combinations of network elements that are not currently combined in BellSouth's network - such as a combined loop and port - must be rejected as contrary to the terms of the Act. Second, even though upheld by the Supreme Court, Rule 315(b) lacks any meaningful content today (it is not even currently in effect because the Eighth Circuit has not yet issued a mandate reinstating it), since Rule 319 has been invalidated by the Supreme Court. The impact of the Supreme Court's decision is that, at the moment, no one knows what network elements must be made available to CLPs, either on an unbundled or combined basis. The futility of any demand for immediate access to "currently combined" elements in light of the FCC's remand proceeding should be clear. Because switching is virtually ubiquitously available in BellSouth territory, switching may not constitute a network element that ILECs will be required to provide on an unbundled basis, let alone on a combined basis through the "UNE Platform." Indeed, even CLPs have acknowledged the possibility that switching may not be on the list of UNEs ultimately adopted by the FCC. It would be inappropriate merely to assume that the FCC will simply reissue the list contained in Rule 319. Determining what elements are essential will involve FCC proceedings of some complexity. In the interim, BellSouth cannot lawfully be ordered to provide combinations of network elements that have yet to be identified.

CAROLINA/CENTRAL: Carolina/Central stated that because the Supreme Court has reinstated FCC Rule 315(b), the Commission must amend the UNE Order to provide that ILECs may not separate, except upon request, network elements that the ILEC has already combined. The Supreme Court affirmed the Eighth Circuit's holding that the provision of finished telecommunications service entirely through the UNEs of an ILEC at cost based rates (instead of discounted retail rates) was consistent with the Act.

GTE: GTE stated that the Commission should preserve the "status quo," including the implementation of the recently determined UNE prices, pending implementation by the FCC of final rules that comply with the Act. In no event should the Commission expand UNE requirements pending resolution of the remand of Rule 319 to the FCC. Section 251(d)(3) of the Act does not authorize a state commission to impose UNE requirements in a general rulemaking context prior to the FCC's decision on remand. Expanding the scope of required UNEs in the context of arbitration would be similarly impermissible. Until the FCC completes its remand proceeding, state commissions will have no basis for imposing UNE obligations.

MCI WORLDCOM: MCI WorldCom stated that the Supreme Court reinstated FCC Rule 315(b) which prohibits ILECs from separating already-combined network elements before leasing them to competitors. Rule 315(b) also requires the ILEC to provide UNE combinations not already combined, provided the ILEC "currently combines" them for its customers. There is no question that BellSouth currently combines all elements included in the UNE Platform to provide its own local service and that BellSouth currently combines loop and transport to provide special access service. Thus, BellSouth must offer UNE Platform and loop-transport combinations to competitors, without restrictions. The Commission must require the ILECs to revise their recurring and nonrecurring cost models and studies to provide inputs for UNE combinations. Under the reinstated Rule 315(b), ILECs must make available loops provisioned with IDLC, with a Bellcore interface, as well as extended loops that combine loop and transport. IDLC is the least-cost and most-efficient, forward-looking technology. BellSouth's assumption that loops would not be provisioned using IDLC technology violates the FCC pricing rules, since the TELRIC of an element should be calculated based on the use of "the most efficient telecommunications technology currently available and the lowest cost network configuration." Therefore, cost studies must be based on the assumption that IDLC technology will be used. Likewise, GTE's cost study does not comply with the FCC's rules, since the ICM is based on UDLC. GTE's cost study does not reflect the bandwidth efficiencies supported by today's GR-303 IDLC technology.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated that with the Supreme Court's reinstatement of Section 51.315(b) of the FCC's Rules, the ILECs must now provide network element combinations. The ILEC cost studies do not provide for combinations and must be revised to make them available consistent with the FCC's Rules. Moreover, the "glue charge" proposed by the ILECs for recombining network elements is invalid under the Supreme Court decision.

PUBLIC STAFF: The Public Staff recommended that Finding of Fact No. 33 be amended to read as follows:

> The ILECs should not be required to combine unbundled elements for CLPs, but the ILECs should be prohibited, except upon request, from separating requested network elements that they currently combine themselves. BellSouth and the other ILECs should submit loop cost studies with inputs based on deploying DLC technology in an integrated fashion.

SPRINT: Sprint stated that the Supreme Court's decision reinstated Rule 315(b). Therefore, the Commission must amend the UNE Order to provide that ILECs may not separate, except upon request, network elements that the ILECs have already combined. The Supreme Court affirmed the Eighth Circuit's holding that the provision of finished telecommunications services entirely through the UNEs of an ILEC, at cost based rates instead of discounted retail rates, was consistent with the Act. The Supreme Court's decision resolves this issue.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T stated that BellSouth continues to evade its obligation to provide combinations of elements to CLPs, even though the Supreme Court reinstated the FCC's rule requiring BellSouth to provide UNE combinations. AT&T is a facilities-based carrier that has invested substantial sums to deploy a switch in North Carolina, and contrary to the assertions made by BellSouth, AT&T is indeed interested in the cost of loops physically integrated with BellSouth's switches. The use of combined BellSouth network elements is the only way residential and small business competition will occur throughout the state, as opposed to just large cities. Because IDLC is the forward-looking technology, IDLC must be included in calculating the cost of UNEs, including unbundled loops and unbundled switching. BellSouth cannot simply ignore IDLC in its cost studies on the grounds that facilities-based carriers will purchase only unbundled loops. As the Supreme Court has now decided, all CLPs are entitled to purchase combinations of elements as well as individual elements. Therefore, the cost studies used to establish prices for UNEs must allow for the fact that CLPs may purchase combinations of elements as well as individual elements. Not surprisingly, BellSouth also sees the Supreme Court's remand of FCC Rule 319 as an opportunity to narrow UNE offerings to CLPs. BellSouth should be required to provide all of the elements previously identified by the FCC. The FCC itself has said that one of the fundamental premises of BellSouth's cost studies--that BellSouth will only provide unbundled elements physically separated from one another--violates the FCC's rules, regardless of the outcome of the FCC Rule 319 remand proceeding. North Carolina law provides the Commission with additional authority to determine the UNEs which BellSouth must provide to CLPs. The Commission should conclude that BellSouth, as a result of the Supreme Court decision, is now required to provide CLPs with combinations of unbundled elements and that it is inappropriate to establish UNE prices based on cost studies which assume that elements must be or will be physically separated.

ATTORNEY GENERAL: The Attorney General stated that the law now requires the Commission to revise its previous finding that ILECs should not be required to combine unbundled elements for CLPs to indicate that ILECs may not, except upon request, separate requested network elements which are already combined.

BELLSOUTH: BellSouth stated that both AT&T and MCI WorldCom continue to criticize BellSouth for failing to incorporate IDLC technology in its cost studies. Whether AT&T and MCI WorldCom may someday be entitled to purchase a combined loop and port via IDLC is irrelevant to the Commission's task of establishing prices for UNEs. The fallacy in the reasoning of AT&T and MCI WorldCom is revealed in their attack on the UNE rates established by the Commission. While focusing on the Supreme Court's decision to uphold FCC Rule 315(b), AT&T and MCI WorldCom neglect to mention that the Supreme Court did not disturb the Eighth Circuit's invalidation of the FCC rules that purported to require ILECs to combine network elements on behalf of a CLP. The attempt by AT&T and MCI WorldCom to downplay the significance of the Supreme Court's decision to vacate FCC Rule 319 is unpersuasive. The effect of the Supreme Court's decision is that, at the moment, no one knows what network elements are required by the FCC to be made available to CLPs. Under the Court's decision, there can be no requirement for BellSouth to provide any combinations of a type or in a locality where there are already alternatives to any of the constituent network elements even where those alternatives may be somewhat more costly for the CLP to obtain from another supplier or by providing them for itself. Until the FCC completes the remand proceedings contemplated by the Supreme Court, no useful purpose would be served in predicting which elements ILECs will be required to unbundle and will be prohibited from separating when they are currently combined in the ILEC's network. For this reason, BellSouth disagrees with the recommendation of the Public Staff on this issue. Although MCI WorldCom insists that BellSouth must now offer the UNE Platform as a result of the Supreme Court's decision, many of MCI WorldCom's fellow CLPs do not share this view. Any Commission decision mandating combination of loops and ports via IDLC or the UNE platform would necessarily be premature.

CAROLINA/CENTRAL: Carolina/Central stated that they supported the Public Staff's suggested modifications to the UNE Order with respect to this issue. All cost studies submitted by Carolina/Central in this proceeding assumed that CLPs would be required to purchase separated network elements from the ILEC, with the CLPs performing any and all combination of elements themselves. Because some network elements may still be purchased separately, all of the current Carolina/Central cost studies remain relevant and require no modification. However, for instances where CLPs request that currently combined network elements not be separated, Carolina/Central should submit additional cost studies that remove the costs incurred in physically separating elements, while adding those costs incurred to originally combine the elements.

GTE: GTE reiterated its initial comments on this issue, stating that the Commission should neither adopt the recommendation that it expand the list of UNEs which ILECs must provide nor amend its finding on this issue as recommended by the Public Staff. GTE stated that it has agreed voluntarily to provide all UNEs called for under any existing agreements even though it is not legally obligated to do so; provided, however, that the other party agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.

MCI WORLDCOM: MCI WorldCom stated that the Commission should require the ILECs to provide UNEs, including the UNE Platform, and IDLC at TELRIC costs, pending further action by the Eighth Circuit and FCC. Maintaining the "status quo ante" pending further review by the Eighth Circuit and the FCC would fail to comply with the Supreme Court's ruling and would relegate North Carolina indefinitely to a continued lack of competition in local exchange service.

NCCTA AND TIME WARNER: The NCCTA and Time Warner stated that, in light of the Supreme Court decision, the manner and extent to which the combination and separation of UNEs is part of the ILECs' cost model network design will most likely demand further consideration by the Commission. IDLC technology is widely held to be the most efficient loop technology currently available, but the proxy models of the ILECs reflect the use of UDLC in the network design as a means to separate the loop and the port. Substantial revisions to the previously approved cost proxy models will be required in the event that the ILECs must make IDLC technology available in the provision of UNEs. The substitution of IDLC technology for UDLC is a fundamental network design issue that will not only materially affect recurring costs but the manner in which nonrecurring costs are incurred as well.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

BellSouth witness Gray maintained that it was appropriate to assume Next Generation Digital Loop Carrier (NGDLC) technology was deployed in a nonintegrated fashion in the UNE cost study. He stated that BellSouth provides basic local exchange service by taking a switch and a loop and integrating or bundling them together. CLPs can buy this service through BellSouth's resale offering or they can purchase individual network elements. Witness Gray explained BellSouth's position:

> By nature of unbundling or unintegrating the network we have broken the connection between the switch and the loop apart. Yet Integrated Digital Loop Carrier by definition provides a bundling of the switch and the loop together. Thus by definition it's impossible to provide unbundled or unintegrated network elements using the technology that was designed to bundle or integrate those individual network elements together.

Thus, to obtain IDLC technology, a CLP would have to resell local service that utilizes IDLC technology or lease an entire IDLC system.

There was considerable discussion on the record about the kind of technology BellSouth is deploying on a forward-looking basis. Witness Gray agreed that BellSouth's plans are to deploy about 20% UDLC and 80% IDLC. There was also considerable discussion about what would happen if AT&T wants to serve a BellSouth customer that is currently being served by IDLC. AT&T attempted to show that the alternatives (copper or UDLC) would be inferior and more costly, especially if AT&T were required to pay a special construction fee. MCI WorldCom witness Carter identified three options for CLP access to this technology: purchasing the integrated loop with the BellSouth switch, integrating its own switch with the ILECs' integrated digital loop carriers, or using a digital cross-connect. With the third option, any customer being served by digital carrier remote could be routed electronically by the digital cross-connect to the CLP switch by performing the same function in the digital network as the main distribution frame performed in the analog network. Witness Carter also recommended that BellSouth be directed to base its cost study on IDLC technology.

The Supreme Court has now reinstated the FCC's Rule 315(b), which prohibits the ILECs from separating elements that are otherwise combined. The Court said the rule was entirely rational based on the nondiscrimination requirement in Section 251(c)(3) of the Act. The Court also said that it was not persuaded by the ILECs' argument that "on an unbundled basis" means "physically separated." The Court recognized that Rule 315(b) would allow entrants to purchase an entire preassembled network or platform. However, the Court stated that its remand of Rule 319 might render the ILECs' concern academic. Rule 319, which specifies the elements that must be provided on an unbundled basis, was remanded for further consideration by the FCC in light of the "necessary and impair" standards of Section 251(d)(2). The Court concluded that Congress did not intend "blanket access . . . on a basis as unrestricted as the scheme the Commission has come up with . . .." Noting that Section 251(c)(3) indicates *where* unbundled access must occur, not *which* elements must be unbundled, the Court ruled that the FCC's application of Section 251(d)(2) was colored by its erroneous interpretation of that Section 251(c)(3).

The status of the FCC's Rules 315(c) - (f), on the other hand, is less clear. These rules have to do with requiring ILECs to perform functions necessary to combine UNEs. The Eighth Circuit vacated these rules, and the Supreme Court did not address them. The ILECs have taken the position that no further proceedings are required with regard to these rules, while the FCC has argued that the Eighth Circuit should reopen them in light of the Supreme Court's decision. In its June 10, 1999 Order on remand, the Eighth Circuit has now requested the parties to address whether or not it should take any further action with respect to FCC Rules 315(c) - (f).

Nevertheless whether the provision of a loop and a switch using IDLC technology is viewed as a combination or a single UNE, the current state of the law now supports the arguments of AT&T and the other CLPs that this technology should be made available to them at UNE prices.

CONCLUSIONS

The Commission concludes that Finding of Fact No. 33 should be amended to read as follows:

The ILECs should not be required to combine unbundled elements for CLPs, but the ILECs should be prohibited, except upon request, from separating requested network elements that they currently combine themselves. The ILECs should submit combined loop-port TELRIC-based cost studies with inputs based on deploying DLC technology in an integrated fashion.

FINDING OF FACT NO. 34 - INTERCONNECTION RATES

Commission Order: The Commission concluded that BellSouth's and GTE's proposals to apply the UNE rates for local switching and transport to interconnection were reasonable and appropriate.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

CAROLINA/CENTRAL: Carolina/Central requested confirmation that their proposed UNE rates for local switching and transport are approved for interconnection. Carolina/Central state that their proposed rates are reasonable and appropriate and should apply to interconnection in the same manner as do the BellSouth and GTE rates.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI stated that BellSouth's only UNE transport offering is at the DS1 level. Therefore, ACI and other CLPs must order transport at the DS3 level from BellSouth's access tariff which imposes prices that are greatly in excess of cost. ACI believes the lack of such an offering acts as a barrier to entry for CLPs seeking to provide advanced services in North Carolina. ACI notes that until a rate is established through arbitration or settlement, ACI must order transport at levels DS3 and higher out of BellSouth's access tariff. ACI urges the Commission to use the reconsideration of its costing decision to require BellSouth to provide a cost-based, forward-looking UNE rate for DS3 transport in North Carolina.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth did not address this issue in its initial comments.

CAROLINA/CENTRAL: Carolina/Central did not further address this issue in their initial comments.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants did not address this issue in their initial comments.

PUBLIC STAFF: The Public Staff stated that it based its recommendation that BellSouth and GTE be allowed to apply UNE rates to interconnection on the companies' request to do so through the testimony of BellSouth witness Varner and GTE witness Dye. There does not appear to have been such a request on the part of any Carolina/Central witness. Moreover, the original cost study information filed by Carolina/Central presented the UNE costs and the interconnection costs in a different manner, particularly the local switching elements. The local switching UNE rate was a flat monthly rate that represented a combination of port and usage costs. The local switching interconnection rate was based on minutes-of-use. The common transport rates filed by Carolina/Central were based on minutes-of-use and were the same for both UNEs and interconnection. The difference in local switching has continued through subsequent cost study filings in this docket. The local switching UNE rate has continued to be a flat monthly rate combining port cost and usage, while the local switching interconnection rate is still based on minutes-of-use. Therefore, the Public Staff recommended that the Commission clarify this finding by making an additional finding as follows:

> Carolina/Central are allowed to apply their proposed UNE rates to interconnection for tandem switching, DS1 dedicated transport, DS3 dedicated transport, and common transport. At such time as Carolina/Central can provide cost support for a minutes-of-use based local switching UNE rate, they may request permission to apply that element to interconnection.

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not further address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central acknowledged in their reply comments that their proposed UNE rate for local switching is a flat rate for the combination of port and average use switching costs. Carolina/Central stated that they intend to supply the Commission with studies that replace their flat rate port and local switching network element with a usage sensitive local switching rate and a flat rate port no later than July 15, 1999. However, according to Carolina/Central, this change should only represent a change in pricing structure and should not affect the switching minutes-of-use or port costs currently incorporated in Carolina/Central's local switching UNE rate.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its reply comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff pointed out in its reply comments that several parties had raised new issues which were not addressed in the December 10, 1998 Order and in the motions to reconsider, rescind, alter, or amend. Included as an example was ACI's comments on DS3 transport as discussed above from ACI's initial comments. The Public Staff recommended that the Commission should decline to consider new issues and direct the parties to raise them in complaint or arbitration proceedings, as appropriate.

SPRINT: Sprint did not file reply comments.

DISCUSSION

In the Motion for Clarification, Carolina/Central stated that their proposed UNE rates for local switching and transport are reasonable and appropriate and should apply to interconnection in the same manner as the BellSouth and GTE proposals are approved for interconnection. However, Carolina/Central's proposed UNE rate for local switching is a flat monthly rate unlike BellSouth's and GTE's local switching UNE rate elements which consist of flat monthly rates for the port and usage sensitive rates for local switching. The Public Staff recommends that Carolina/Central should be allowed to apply their proposed UNE rates for interconnection for tandem switching, DS1 dedicated transport, DS3 dedicated transport, and common transport. Carolina/Central's proposed rates for these UNEs are usage sensitive. The Public Staff also recommends that at such time as Carolina/Central can provide cost support for a minutes-of-use based local switching UNE rate, they may request permission to apply that element to interconnection. Carolina/Central stated that they intend to supply the Commission with studies that replace their flat rate port and local switching network element with a usage sensitive local switching rate and a flat rate port no later than July 15, 1999. On July 30, 1999, Carolina/Central filed cost studies and proposed usage sensitive local switching rates and flat port rates for purposes of interconnection.

In addition, ACI requested that the Commission should use the reconsideration of its costing decision to require BellSouth to provide DS3 transport as a UNE. The Public Staff recommended that the Commission should decline to consider this new issue and instead direct the parties to raise them in complaint or arbitration proceedings, as appropriate.

The Commission believes that Finding of Fact No. 34 should be amended in response to Carolina/Central's Motion for Clarification. The Commission also believes that the new issue raised in the initial comments of ACI is outside the scope of this proceeding.

CONCLUSIONS

The Commission concludes that Finding of Fact No. 34 should be amended in response to Carolina/Central's Motion for Clarification to read as follows:

> The proposals of BellSouth and GTE to apply the unbundled network element rates for local switching and transport to interconnection are reasonable and appropriate. Carolina/Central are allowed to apply their UNE rates to interconnection for tandem switching, DS1 dedicated transport, DS3 dedicated transport and common transport. The Commission will address the appropriateness of the interconnection rates proposed by Carolina/Central on July 30, 1999 in a future Order.

The Commission also concludes that ACI's request to require BellSouth to provide DS3 transport is outside the scope of this proceeding.

FINDING OF FACT NO. 35(a) - COST RECOVERY MECHANISM FOR INTERIM NUMBER PORTABILITY (INP)

Commission Order: The Commission concluded that the rates for INP proposed by the ILECs with the exception of GTE's Remote Call Forwarding (RCF) rates and the cost recovery mechanism for INP costs as proposed by the ILECs are reasonable and appropriate for purposes of this proceeding. The Commission also noted that its decision should in no way be considered a precedent for the purpose of determining cost-recovery for long-term number portability costs.

Supreme Court Decision: The Supreme Court does not appear to have specifically addressed this issue.

Motions for Reconsideration/Clarification:

NEW ENTRANTS: The New Entrants requested that the Commission reconsider its decision to require CLPs to pay BellSouth, GTE, and Carolina/Central for INP. The New Entrants maintained that the Commission correctly cited the FCC's *Third Report and Order* in CC Docket No. 95-116 for the proposition that each carrier must pay to support long-term number portability. However, the New Entrants stated that long-term number portability is not an issue in this docket. The New Entrants maintained that the *Third Report and Order* does not address INP cost recovery at all and does not supersede the FCC's *First Report and Order* in CC Docket No. 95-116 which sets forth how the costs of INP should be recovered. Therefore, the New Entrants stated that utilizing the *Third Report and Order* as authority in establishing an INP cost recovery mechanism confuses long-term number portability and INP. The New Entrants quoted paragraph 138 of the *First Report and Order* which states that, "Imposing the full incremental costs of number portability solely on new entrants would contravene the statutory mandate that all carriers share the cost of number portability." The New Entrants maintained that the Commission is required to adhere to the FCC's *First Report and Order*. The New Entrants concluded that the most administratively simple method for the Commission to adhere to the FCC's *First Report and Order* is to require that each carrier pay for its own cost of currently available number portability.

INITIAL COMMENTS (filed March 18, 1999)

ACI: ACI did not address this issue in its initial comments.

AT&T: AT&T did not address this issue in its initial comments.

ATTORNEY GENERAL: The Attorney General did not file initial comments.

BELLSOUTH: BellSouth argued in its initial comments that the Commission's Order clearly distinguishes between long-term number portability and INP. BellSouth maintained that the Commission's decision is consistent with the INP rates established by nearly every other state commission in BellSouth's region. BellSouth further stated that the Commission was correct in its assertion that no need exists to revisit INP rates because INP rates will be a moot point after long-term number portability is implemented in the three North Carolina Metropolitan Statistical Areas (MSAs). BellSouth stated that the implementation of long-term number portability in Charlotte, Raleigh, and Greensboro is complete and currently available. Therefore, BellSouth maintained, there is no reason for the Commission to reconsider rates for INP. BellSouth commented in footnote 12 of its comments that since long-term number portability is not available to every customer in the State and that during the transition to long-term number portability some customers may continue to use INP, BellSouth will agree to forego its right to continue to charge for INP in North Carolina on a going-forward basis, which should alleviate any of the New Entrants' concerns. BellSouth maintained that the number of customers that will still need INP is relatively small. BellSouth recommended that the Commission deny the New Entrants' Motion for Reconsideration in this regard.

CAROLINA/CENTRAL: Carolina/Central stated in their initial comments that Carolina/Central have accounted for the cost of INP in accordance with the FCC's *First Report and Order*. Carolina/Central maintained that the FCC's Order does not require CLPs to bear all of the costs associated with INP costs, and therefore, Carolina/Central accordingly apply a 55% reduction to their incremental cost. Finally, Carolina/Central estimated that over 80% of their lines will be local number portability (LNP) capable by the end of 1999. Therefore, Carolina/Central concluded, the Commission should reject the New Entrants' Motion for Reconsideration in this regard.

GTE: GTE did not address this issue in its initial comments.

MCI WORLDCOM: MCI WorldCom did not address this issue in its initial comments.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their initial comments.

NEW EAST TELEPHONY: New East Telephony did not address this issue in its initial comments.

NEW ENTRANTS: The New Entrants stated in their initial comments that they renew their request for reconsideration of the Commission's decision on the recovery of costs for INP as set out in the New Entrants' Motion for Reconsideration.

PUBLIC STAFF: The Public Staff stated in its initial comments that the FCC's *First Report and Order* does address the issue of INP. The Public Staff pointed out that in paragraph 126 of the Order, the FCC states that Section 251(e)(2) of the Act requires that the cost of "number portability be borne by all telecommunications carriers on a competitively neutral basis." The Public Staff maintained that the Commission is bound by the FCC's decision in its *First Report and Order* and that for purposes of this proceeding, the New Entrants' proposal that each carrier pay for its own costs of INP appears to be a reasonable and appropriate alternative. The Public Staff recommended that the Commission rescind its conclusion for Finding of Fact No. 35(a) and replace it with the following: "Each provider of local exchange service should be required to pay for its own cost of interim number portability".

SPRINT: Sprint did not address this issue in its initial comments.

REPLY COMMENTS (filed April 15, 1999)

ACI: ACI did not address this issue in its reply comments.

AT&T: AT&T did not address this issue in its reply comments.

ATTORNEY GENERAL: The Attorney General did not address this issue in his reply comments.

BELLSOUTH: BellSouth did not address this issue in its reply comments.

CAROLINA/CENTRAL: Carolina/Central stated in reply comments that their proposed INP pricing is fully consistent with the Act and with FCC requirements (§251(e) of TA96, FCC Rule 52.29 and the FCC's First Report and Order in CC Docket 95-116). Carolina/Central argued that their methodology does not put the CLP at an appreciable cost disadvantage or have a disparate impact on the ability of CLPs to earn normal returns, because it approximates a 50/50 sharing of the costs between provisioning carriers. Carolina/Central recommended that the Commission reaffirm its finding that Carolina/Central's INP prices are reasonable and appropriate.

GTE: GTE did not address this issue in its reply comments.

MCI WORLDCOM: MCI WorldCom stated in reply comments that the Commission's adoption of the ILECs' cost studies does not produce TELRIC within the meaning of the FCC's pricing rules.

NCCTA AND TIME WARNER: The NCCTA and Time Warner did not address this issue in their reply comments.

NEW EAST TELEPHONY: New East Telephony did not file reply comments.

NEW ENTRANTS: The New Entrants did not further address this issue in their reply comments.

PUBLIC STAFF: The Public Staff did not address this issue in its reply comments.

SPRINT: Sprint did not file reply comments.

DISCUSSION

On July 2, 1996, the FCC released its *First Report and Order* in CC Docket No. 95-116. Paragraph 136 of that Order states, "We conclude that a variety of approaches currently in use today essentially comply with our competitive neutrality criteria . . . . Finally, we believe that a mechanism that requires each carrier to pay for its own costs of currently available number portability measures would also be permissible." Additionally, in the FCC's *Third Report and Order* released on May 12, 1998, the FCC stated in paragraph 43 that, "Shifting all these incremental costs (for INP) to the competitive LEC would not be competitively neutral, however, because the competitive LEC could suffer a competitive disadvantage when competing with the incumbent LEC for that subscriber." The *Third Report and Order* also restated in paragraph 45 that requiring each carrier to pay its own costs of INP was an acceptable cost recovery mechanism for INP costs.

The New Entrants are incorrect in stating that the *Third Report and Order* does not address INP cost recovery at all; in fact it does, in reiterating the findings of the *First Report and Order.* The Commission agrees with the New Entrants that the Commission is required to adhere to the FCC's *First Report and Order* on cost recovery for INP costs. The Commission further agrees with the New Entrants' assertion that the most administratively simple method for the Commission to adhere to the FCC's *First Report and Order* is to require that each carrier pay for its own cost of currently available number portability. Additionally, this is a recommendation shared by the Public Staff.

BellSouth commented in footnote 12 of its initial comments that since long-term number portability is not available to every customer in the State and that during the transition to long-term number portability some customers may continue to use INP, BellSouth will agree to forego its right to continue to charge for INP in North Carolina on a going-forward basis, which should alleviate any of the New Entrants' concerns. BellSouth further noted that the number of customers that will still need INP is relatively small.

Carolina/Central maintained in their initial and reply comments that they have accounted for the cost of INP in accordance with the FCC's *First Report and Order.* Carolina/Central maintained that the FCC's Order does not require CLPs to bear all of the costs associated with INP costs, and therefore, Carolina/Central accordingly applies a 55% reduction to its incremental cost. Further, Carolina/Central noted in comments that they project that over 80% of their lines will be LNP capable by the end of 1999.

Based on the comments and reply comments filed on this issue and the Orders issued by the FCC, the Commission finds it appropriate to grant the New Entrants' Motion for Reconsideration in this regard. Therefore, the Commission revises Finding of Fact No. 35(a) to read, "Each carrier should pay for its own costs of INP."

CONCLUSIONS

The Commission finds good cause to grant the New Entrants' Motion for Reconsideration in this regard. Therefore, the Commission revises Finding of Fact No. 35(a) to read, "Each carrier should pay for its own costs of INP."

ADDITIONAL ISSUES FROM THE PUBLIC STAFF'S FEBRUARY 24, 1999 COMMENTS

The Commission's December 10, 1998 Order requested BellSouth, GTE, and Carolina/Central to file cost studies incorporating and reflecting the modifications, adjustments, and conclusions set forth in the Order. Further, the Commission requested the Public Staff to either concur in the accuracy of the ILEC filings or file comments setting forth any areas of disagreement. The Public Staff filed its comments on February 24, 1999, outlining decisions from the Commission's December 10, 1998 Order that were not adopted by the companies in their cost studies. The following are issues which the Public Staff commented on in its February 24, 1999, comments which have not been previously discussed.

FINDING OF FACT NO. 6 - CAROLINA/CENTRAL'S LOOP INVESTMENT

In commenting on Carolina/Central's modification of their cost studies to reflect actual loop investment, the Public Staff stated that, while the cost studies were modified to reflect uncapped loop investment as required by the Commission, some of the inputs used by Carolina/Central in their revised studies, which affect the loop investment, do not reflect the inputs used in the Commission-approved study in Docket No. P-100, Sub 133b. The Public Staff recommended that the Commission require Carolina/Central to revise the loop investment inputs in its UNE study to reflect the same inputs filed in Docket No. P-100, Sub 133b. The Commission is in agreement with the Public Staff's position on this issue and concludes that Carolina/Central should be required to comply with the Public Staff's recommendation.

FINDING OF FACT NO. 10 - RECURRING AND NONRECURRING CHARGES

The Public Staff commented that since BellSouth did not change all of its depreciation rates to be in compliance with the Commission's December 10, 1998 Order, BellSouth's calculated annual cost factors are not completely in compliance with the Commission's December 10, 1998 Order. Finding of Fact No. 8 orders BellSouth to change all of its depreciation rates to be in compliance with the Commission's December 10, 1998 Order. Accordingly, BellSouth's annual cost factors must also be corrected to comply with the Commission's December 10, 1998 Order.

FINDING OF FACT NO. 14 - LOADING FACTORS

The Public Staff commented that GTE did not reflect the appropriate loading factors in its cost study. The Commission has investigated the comments of the Public Staff and has found that GTE did not reflect the loading factors adopted and approved by the Commission in Docket No. P-100, Sub 133b, as ordered by the Commission in its December 10, 1998 Order. Therefore, the Commission concludes that it is appropriate to require GTE to use the loading factors ordered by the

Commission in its December 10, 1998 Order as referenced in the Public Staff's February 24, 1999 comments.

FINDING OF FACT NO. 23 - BELLSOUTH'S AND GTE'S DISCONNECT COSTS

The Public Staff observed, in its comments, that BellSouth and GTE filed modifications to reflect the recovery of the nonrecurring costs associated with disconnecting local loops and ports. In making their calculations, however, the companies computed the present value of the nonrecurring costs rather than the future value, thus overstating the impact of including these costs in the recurring rates. The Public Staff recommended that BellSouth and GTE be required to reflect the future value of disconnect costs instead of the present value in calculating the increment to be added to the monthly recurring rates. The Commission is in agreement with the Public Staff's position on this issue and concludes that BellSouth and GTE should be required to comply with the Public Staff's recommendation.

FINDING OF FACT NO. 29 - WIRE CAGES

The Public Staff noted in its comments that BellSouth did not include a cost study or proposed rates for physical collocation using wire cages as ordered by the Commission in its December 10, 1998 Order. The Public Staff further commented that BellSouth filed a study on February 15, 1999, and that the Public Staff anticipated filing comments on the study within two weeks. The Commission notes that the Public Staff never filed comments on BellSouth's study. Therefore, the Commission concludes that the Public Staff should file any comments it may have on BellSouth's cost study for physical collocation using wire cages within 15 days from the date of this Order, if appropriate, given the conclusions requiring TELRIC-based collocation studies as detailed in this Order.

FINDING OF FACT NO. 35(b) - GTE'S RATES FOR REMOTE CALL FORWARDING (RCF)

The Public Staff commented that GTE did alter its rates for RCF, however, that GTE's proposed rate for an initial path is still considerably higher than BellSouth's (GTE's proposed initial path rate of $3.33 versus BellSouth's rate for initial path of $1.90). GTE did alter its rate for an additional path from $6.06 to $0.37 which is identical to BellSouth's rate for an additional path. The Commission ordered GTE in its December 10, 1998 Order to revise its rates for RCF with the goal of reducing the rates to a level within the range of those of the other ILECs, but in no case higher than BellSouth's proposed recurring rates for RCF. GTE's proposed RCF rate of $3.33 for an initial path is still considerably higher than BellSouth's rate ($1.90) and, therefore, GTE's rate is not in compliance with the Commission's December 10, 1998 Order. The Commission concludes that it is appropriate to require GTE to comply with the Commission's December 10, 1998 Order concerning GTE's RCF rate for an initial path.

FURTHER CONCLUSIONS

Based on the foregoing, the Commission is of the opinion that the permanent UNE rates to be filed and approved pursuant to this Order will be just, reasonable, nondiscriminatory, and cost-based in accordance with federal and state law and should be the permanent prices charged by the ILECs under their arbitrated agreements and by BellSouth under its SGAT. It is the Commission's continuing hope that these rates will advance the development of competitive markets in a way that is fair to new entrants and incumbents alike. The Commission recognizes that no cost study is perfect and that no rate is really permanent. All of the rates established in this proceeding are subject to revision **prospectively** as changes in cost and other circumstances warrant, including further Orders to be entered by the FCC in its Rule 319 remand proceeding and the Eighth Circuit in response to the decision of the Supreme Court. Finally, the Commission again encourages the parties to continue to negotiate in good faith whenever possible, so that competition can move forward without undue delay.

In addition, the Commission expects and hereby directs all parties to comply with the provisions of this Order without further delay. Except for compliance filings, the Commission will entertain no further pleadings, such as additional motions for reconsideration, regarding this matter. If deemed necessary, the parties are certainly free to appeal and seek a stay of this Order from the appellate court. In the meantime, however, all parties should cooperate to move this stage of the proceeding to a successful conclusion.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth, Carolina/Central, and GTE shall, not later than 30 days from the date of this Order, file new and revised cost studies, supporting documentation, and rates for unbundled network elements and interconnection. Said filing shall fully incorporate and reflect the modifications, adjustments, and conclusions set forth in this Order and the comments filed by the Public Staff on February 24, 1999. Further, BellSouth, Carolina/Central, and GTE shall file combined loop-port, TELRIC-based cost studies with inputs based on deploying DLC technology in an integrated fashion and provide the charges for such loop-port combinations. GTE shall file UNE rates with supporting cost studies to enable CLPs to offer HDSL and ASDL services, if those services are currently offered by GTE to its end users or to Internet service providers in North Carolina. Finally, BellSouth, Carolina/Central, and GTE shall file TELRIC-based cost studies for physical and virtual collocation. BellSouth, Carolina/Central, and GTE shall coordinate fully with the Public Staff in order to ensure the accuracy of their filings. The Public Staff shall, not later than 60 days from the date of this Order, either concur in the accuracy of the ILEC filings or file comments setting forth any areas of disagreement with those filings.

2. That the cost studies and supporting documentation shall be filed by the ILECs in electronic form and shall, upon request, be provided to all parties subject to previous restrictions on disclosure of information for which proprietary treatment has been requested.

3. That, after approval by the Commission, the rates filed pursuant to this Order shall be deemed permanent prices pursuant to Section 252(d) of TA96 for purposes of replacing interim prices contained in existing interconnection agreements and BellSouth's SGAT.

4. That BellSouth, GTE, and Carolina/Central shall, not later than 30 days from the date of this Order, file proposals to refund the difference between revenues collected for services provided

under interim prices subject to true-up and revenues that would have been collected under the permanent prices established in this docket.

5. That the Public Staff shall, not later than 15 days from the date of this Order, file comments and recommendations regarding the cost study filed in this docket by BellSouth on February 15, 1999, for physical collocation using wire cages, if appropriate, given the conclusions requiring TELRIC-based collocation studies as detailed in this Order.

6. That the Public Staff shall, not later than 60 days from the date of this Order, file comments and recommendations regarding the cost studies and proposed interconnection rates filed by Carolina/Central on July 30, 1999.

7. That BellSouth shall withdraw its proposed rates for poles, ducts, and conduits.

8. That, prior to offering ADSL and HDSL services to their end users, Carolina/Central shall file proposed UNE rates and cost studies to enable CLPs to offer ADSL and HDSL services.

9. That each of the Findings of Fact contained in the Order Adopting Permanent Prices for Unbundled Network Elements entered in this docket on December 10, 1998, are hereby either affirmed, revised, rescinded, amended, and/or clarified in conformity with the provisions of this Order.

10. That further proceedings shall be, and are hereby, initiated in this docket for the purpose of developing geographically deaveraged UNE rates pursuant to Section 51.507(f) of the FCC's pricing rules. Further, the parties to this proceeding are hereby requested to meet as necessary for the purpose of developing a consensus as to the major issues and subissues in need of resolution in the instant regard and the procedures the Commission should follow in resolving those issues. The Commission requests that one or more parties volunteer to coordinate and facilitate such meeting or meetings. The parties are further requested to advise the Commission, not later than 20 days from the date of this Order, of the identity of the party or parties who will serve as meeting coordinator and the date, time, and location of the meeting. A listing of the issues and a chronological listing of the procedural steps the Commission should follow in resolving those issues shall be filed with the Commission not later than 45 days from the date of this Order. Reply comments shall be filed not later than 75 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of August, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mb081799.02

DOCKET NO. P-100, SUB 133d

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
General Proceeding to Determine Permanent	)	ORDER ON BELLSOUTH'S
Pricing for Unbundled Network Elements	)	CHARGES FOR PHYSICAL
	)	COLLOCATION USING
	)	WIRE CAGES

BY THE COMMISSION: On August 18, 1999, the Commission issued its Order Ruling on Motions for Reconsideration and Clarification and Comments. Ordering paragraph five required the Public Staff to file comments and recommendations within 15 days regarding the cost study filed by BellSouth Telecommunications, Inc. (BellSouth) on February 15, 1999, for physical collocation using wire cages, if appropriate, given the conclusions requiring total element long-run incremental cost (TELRIC)-based collocation studies as detailed in the Order.

On September 2, 1999, the Public Staff filed its comments and recommendations. The Public Staff stated that BellSouth has proposed two recurring monthly charges for physical collocation using wire cages: one for the first 100 square feet of a wire cage and the other for additional 50 square foot increments. The Public Staff maintained that to calculate the proposed rates, BellSouth first determined the cost of the wire cage investment and then applied annual carrying cost factors to these investment amounts to compute the proposed monthly recurring rates. The Public Staff argued that BellSouth has overstated the cost of the wire cage investment to which the carrying cost factors are applied; therefore, the proposed monthly recurring charges are overstated. Further, the Public Staff stated that BellSouth separately calculated the cost of investment necessary for providing the first 100 square feet and the additional square foot increments of wire cage facilities. However, instead of applying the carrying cost factors to these investment costs, the Public Staff maintained that BellSouth made a further adjustment to reflect the projected utilization of the facilities which has the effect of requiring collocation customers to pay both for the wire cage facilities they use and for facilities they do not use. The Public Staff stated that, for example, BellSouth's study reflects the cost of constructing ten wire cage facilities in a central office when only seven wire cage facilities will actually be used, thus requiring the seven customers to pay for the three additional facilities. The Public Staff argued that the adjustment is inappropriate and should be eliminated. The Public Staff noted that BellSouth did not make an adjustment for projected utilization in calculating the cost of investment for physical collocation using gypsum board drywall enclosures. The Public Staff recommended that the monthly recurring rates without adjustment be approved by the Commission for physical collocation with wire cages provided by BellSouth. The following is a comparison of the recommended rates:

	BellSouth	Public Staff
Physical Collocation - welded wire cage		
Initial 100 square feet	$146.80	$102.76
Additional 50 square feet	$ 14.91	$ 10.44

On September 9, 1999, the Chair issued an Order Seeking Comments and Reply Comments on the Public Staff's September 2, 1999 comments. Comments were only received from GTE South, Incorporated (GTE).

GTE stated that its comments are in relation to the use of utilization factors in general and their relationship to cost studies and related prices. GTE maintained that the Public Staff's comments indicate that unless the collocated space is permanently, immediately and fully occupied, the incumbent local exchange company (ILEC) would never fully recover the cost of conditioning the collocated space. GTE argued that many of the fixed costs associated with preparing collocation space do not depend on the number of competing local providers (CLPs) that ultimately occupy the space or the amount of space a competitor uses. GTE stated that, for example, an entire floor of a building may need to be wired for power, air conditioning, and other necessary build-outs in order for any collocator to use any portion of the space. GTE argued that the Public Staff's recommendation would prevent ILECs from ever recouping all of the costs of preparing collocation space, because full reimbursement would require immediate and permanent 100% occupancy. GTE argued that inevitably some space will go unused at various times, and the ILEC itself will be forced to forego that portion of the costs. GTE recommended that collocation charges be pro-rated among sharing CLPs, and if some space never gets used, the collocating companies should bear that risk, not the ILEC. GTE stated that as an example, if the first CLP to collocate requires 70% of a shared cage, and the remaining 30% is too small to be practical for another competitor's use, the ILEC must bear 30% of the fixed costs with no hope of reimbursement. GTE concluded that ILECs should not bear all of the risk associated with unused collocation space and should not become a financial hostage if competitors are not interested in fully occupying the space.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The area of disagreement concerns the application of a ***projected utilization factor*** to the cost of investment for physical collocation using wire cages. BellSouth applied a projected utilization factor to its investment to calculate its proposed physical collocation charges, and the Public Staff argued that the adjustment is not appropriate. The question is whether the prices charged for physical collocation using wire cages should reflect the actual amount of collocation space used or the total amount of collocation space whether used or not.

The Commission agrees with the Public Staff that it is inappropriate to apply a projected utilization factor which has the effect of requiring collocation customers to pay both for the wire cage facilities they use and for facilities they do not use. Therefore, the Commission finds it appropriate to adopt BellSouth's proposed charges for physical collocation using wire cages without the projected utilization adjustment.

IT IS, THEREFORE, ORDERED that the following TELRIC-based charges for physical collocation using wire cages are hereby approved for BellSouth:

Physical Collocation - welded wire cage

Initial 100 square feet	$102.76
Additional 50 square feet	$ 10.44

ISSUED BY ORDER OF THE COMMISSION.

This the _5th_ day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bc110399.01

DOCKET NO. P-100, SUB 133f
DOCKET NO. P-7, SUB 871

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 133f In the Matter of Lifeline and Link-Up Service Pursuant to Section 254 of the Telecommunications Act of 1996 DOCKET NO. P-7, SUB 871 In the Matter of Carol J. Raymond, 114 Atwood Terrace, Stedman, North Carolina 28391 Complainant, v. Carolina Telephone and Telegraph Company, Respondent	ORDER EXPANDING ELIGIBILITY CRITERIA TO INCLUDE MEDICAID, LIHEAP, AND FEDERAL PUBLIC HOUSING ASSISTANCE

BY THE COMMISSION: On November 3, 1998, Carol J. Raymond of Stedman, North Carolina filed a Complaint against Carolina Telephone and Telegraph Company (Carolina) on behalf of her son, Stephen Bried. Mr. Bried, who is now 32, was mugged 6 years ago and is now a quadriplegic in a nursing home with no use of his body below his upper chest. She states that his expenses are all paid by the State through Medicaid and Medicare, with only a small amount left over for personal expenses. The telephone is virtually his only link to the outside world.

In October, Mr. Bried was moved to a nursing home in Washington, North Carolina, which is in Carolina's service territory. Carolina indicated that the monthly bill for service would be approximately $24.00. Mrs. Raymond inquired about the availability of a discount for handicapped persons and was informed by Carolina that a Lifeline discount was available to recipients of SSI, Food Stamps, or Work First. Mr. Bried does not qualify for Lifeline. Mrs. Raymond feels this amounts to discrimination against the handicapped.

On November 24, 1998, Carolina filed an Answer. Carolina explained the eligibility criteria that the Commission has set up for the Lifeline discount and that Mr. Bried does not qualify for it. Carolina has also been unable to identify any other plan that it offers that would provide significant savings to Mr. Bried. Carolina stated that it is constrained by G.S. 62-140, which prevents a utility from providing service under rates and terms at variance with the utility's tariff. Carolina also suggested that, should the Commission conclude that it should reevaluate its eligibility criteria for Lifeline, it should do so within the context of a generic proceeding.

There have been subsequent supplemental filings in this docket. Complainant has continued to argue that the handicapped in general should be included within the Lifeline eligibility criteria. Carolina has stated that it does not oppose the expansion of the existing eligibility criteria for Lifeline service to include Medicaid recipients, noting that participation in Medicaid is one of the several possible eligibility criteria cited in the Federal Communications Commission's (FCC's) Universal Service Order (USO). The Commission has established Docket No. P-100, Sub 133f to deal with Lifeline and Link-Up issues and it is the appropriate vehicle to deal with such issues.

On March 2, 1999, the Public Staff filed a Notice of Intervention and Motion to Hold Matter in Abeyance in Docket No. P-7, Sub 871, in which it asked that the Raymond complaint be held in abeyance pending an investigation to expand the eligibility criteria for Lifeline. The Public Staff also simultaneously filed in Docket No. P-100, Sub 133f a Motion to Expand Eligibility Criteria to add Medicaid, federal public housing assistance (also known as Section 8), and Low Income Home Energy Assistance (LIHEAP) as further eligibility criteria. The Public Staff noted the relatively low current participation in the Lifeline program and argued that expanding the criteria would reach consumers who are already eligible as well as other low-income consumers for whom Lifeline and Link-Up are intended. The Public Staff recommended that the Commission enter an Order proposing to add the above eligibility criteria to Lifeline and Link-Up and to solicit comments from all parties on this proposal, including information concerning any net increase in the number of consumers who would be eligible for Lifeline service.

On March 9, 1999, the Commission issued an Order Concerning Expansion of Lifeline/Link-Up Eligibility Criteria and Holding Complaint in Abeyance.

The Commission observed that the Raymond case certainly represents a case for compassionate consideration. At the same time, Carolina is surely right when it states that the eligibility criteria in existence today are SSI, Food Stamps, and Work First, and Mr. Bried unfortunately does not fall under them. Carolina is also correct when it says that it cannot give a customer special consideration in this regard.

The Commission noted that North Carolina has actively participated in the Lifeline program from its early days in the mid-1980s. The intrastate portion of the Lifeline program is financed through a tax credit set out in G.S. 105-130.39 for corporations providing local telephone service for such purposes. Thus, it is important to remember that any expansion in eligibility criteria will have an effect on the amount of tax revenue collected by the State and therefore on the State budget. The latest expansion in eligibility was on November 5, 1997, to add Food Stamps to the eligibility criteria for Lifeline to comply with the FCC's mandate that the eligibility criteria for Lifeline and Link-Up be the same. In Paragraph 375 of the USO, the FCC set out a "default Lifeline eligibility standard" for states not providing matching support which consists of participation in Medicaid, Food Stamps, SSI, federal public housing assistance (or Section 8), or LIHEAP. It was the FCC's view that the "goal of increasing low-income subscribership will best be met if the qualifications to receive Lifeline assistance are based solely on income or factors directly related to income." (USO, Paragraph 373). However, it should be noted that, since North Carolina does provide matching support, it is not required to provide Lifeline according to all of the above-named FCC criteria.

In light of all this, the Commission concluded that the Raymond docket should be held in abeyance pending the completion of a generic investigation in Docket No. P-100, Sub 133f to consider whether or not the eligibility criteria for Lifeline and Link-Up should be expanded as recommended by the Public Staff.

The Commission stated that the Public Staff had recognized the importance of gathering information concerning any net increase in the number of consumers who would be eligible for Lifeline service under the expanded criteria. This is important not only in and of itself but in order to determine what the net fiscal impact of such a change will be on the State budget. The Commission believed that the Public Staff, an agency of State Government, was better situated to coordinate with other branches of government to obtain accurate information regarding the number of potential recipients and the consequent impact on the State budget.

Accordingly, the Commission concluded that a two-stage process was appropriate. First, the Commission requested the Public Staff to provide a Report including its best approximation of the net increase in the number of consumers who would be eligible to receive the Lifeline and Link-Up programs as a result of the implementation of its proposal and the consequent net fiscal impact on the State budget. Second, once the Public Staff filed its Report, other parties would have the opportunity to file comments regarding the Public Staff proposal and Report.

Public Staff Report

On May 14, 1999, the Public Staff filed its Report. In its Report, the Public Staff estimated that approximately 200,000 additional consumers would potentially be eligible for the Lifeline/Link-Up programs if eligibility criteria are expanded to include participation in the Medicaid, Section 8, and LIHEAP programs in addition to the SSI, Work First, and Food Stamp programs. Based on experience under the existing program criteria, the Public Staff estimated that approximately 50,000 of the 200,000 potential additional consumers would participate in the Lifeline/Link-Up programs.

Thus, adding the three new programs would essentially double the participation in the Lifeline/Link-Up programs.

The Public Staff's estimate was developed from information received from administrators of the three additional programs and from the North Carolina Justice and Community Development Center (NCJCDC), including some information for determining the degree of overlapping eligibility among all six programs.

The estimate was developed based on the following most current information available:

1. Enrollment in the Medicaid program is currently 825,000 individuals, including all those eligible for SSI and Work First (AFDC), infants and children, pregnant women, refugees and aliens, Medicare catastrophic, and foster care. The Public Staff estimates that, after accounting for overlapping eligibility and excluding children, approximately 150,000 individuals on Medicaid would be newly eligible for the Lifeline/Link-Up programs. Since support provided by these programs applies only to the eligible subscriber to telephone service in a household, the Public Staff estimates that the 150,000 potentially eligible Medicaid individuals would at most represent 125,000 eligible households.

2. Enrollment in LIHEAP is currently 116,000 households. However, since a vast majority of LIHEAP participants also qualify for food stamps, the Public Staff estimated 100% overlapping eligibility for LIHEAP recipients.

3. Enrollment in the federal housing assistance program is currently 160,000 households. However, it is estimated that approximately 36% of those households are recipients of SSI and Work First (AFDC) assistance, leaving approximately 100,000 households as new eligibles for the Lifeline/Link-Up programs.

4. The Medicaid and Section 8 programs combined would result in approximately 225,000 individuals who would be newly eligible for the Lifeline/Link-Up programs. While some overlapping eligibility has been determined, it is difficult to account for all overlapping eligibility among all six programs. Consequently, the Public Staff believes that a reasonable estimate of the unaccounted for overlapping eligibility is 25,000, leaving 200,000 as the best approximation of the net increase in the number of consumers who would be eligible to receive Lifeline/Link-Up support if the Medicaid, LIHEAP, and Section 8 programs were added as eligibility criteria. The Public Staff further estimates that approximately 50,000 of the 200,000 potential additional consumers would enroll in the Lifeline/Link-Up programs based on current participation experience with the existing eligibility criteria.

Based on these estimates, the Public Staff recommended that the Commission expand the eligibility criteria for the Lifeline/Link-Up programs by adding the Medicaid, LIHEAP, and Section 8 programs.

Comments

On May 27, 1999, Carolina and Central Telephone Company filed Comments stating that they did not oppose the Public Staff's recommendation that the Commission expand the eligibility criteria for Lifeline/Link-Up by adding the Medicaid, LIHEAP, and Section 8 programs. Carolina and Central noted that under the current Lifeline program, the local exchange companies are reimbursed through the Federal Universal Service Support Mechanism and by the state through the tax credit of $3.50 per Lifeline customer per month. If there are an additional 50,000 participants as the Public Staff estimates, then the approximate annual cost to the taxpayers would be approximately $2.1 million. With respect to implementation, Carolina and Central said that they anticipated that there would be additional administrative problems, especially with respect to Section 8 which is administered through several government agencies. Given the present salience of Year 2000 (Y2K) issues, Carolina and Central recommended that the expansion of Lifeline/Link-Up be implemented no earlier than the Spring of 2000.

On June 1, 1999, the Attorney General filed Comments in support of the Public Staff's recommendation. The Attorney General stated that modifying the eligibility criteria would put North Carolina in step with other states which have chosen to expand the eligibility criteria, such as Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, Mississippi, and Tennessee. It would also be consistent with the FCC's Report and Order concerning Lifeline.

On June 1, 1999, GTE South Incorporated (GTE) filed comments endorsing the inclusion of additional eligibility criteria as proposed by the Public Staff. GTE also believed that the Public Staff's estimate of the increased Lifeline and Link-up customers and costs was reasonable.

On June 1, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed comments in which it did not oppose the expansion of the Lifeline/Link-Up programs as proposed by the Public Staff. However, BellSouth insisted that it would need one year's prepatory time in which to effectively implement the eligibility criteria. Accordingly, BellSouth requested that the Commission order the expansion of eligibility criteria no earlier than April 2000. BellSouth cited as reasons for this request the large resources that are being devoted to Y2K compliance and the necessity for software changes to its computer network.

On June 1, 1999, the NCJCDC filed comments endorsing the proposed eligibility expansion but pressing the need for additional action beyond this. The NCJCDC characterized the Public Staff's estimate of 50,000 additional customers as possibly being optimistic. It felt that more must be done to increase participation in the Lifeline/Link-Up programs. The NCJCDC suggested that the Commission should order the relevant parties to this docket to come together with the objective of formulating new strategies for improving Lifeline/Link-Up enrollment, with a target of expanding program participation in North Carolina to 50% of all eligible households by June 2001. The parties should submit a report to the Commission by October 1, 1999, outlining their strategies for achieving this objective.

Public Staff Reply to Comments

On July 2, 1999, the Public Staff filed a Reply to Comments made by the parties. The Public Staff noted that, while all the parties supported expansion of the Lifeline/Link-Up eligibility criteria, BellSouth and Carolina/Central recommended that the new criteria not be implemented until April of 2000 so as not to interfere with the companies' Y2K efforts. The Public Staff stated that it had discussed this recommendation with all the commenting parties, and there was agreement to go forward now with the addition of Medicaid to the eligibility criteria, while delaying the addition of LIHEAP and Section 8 until next year. The Public Staff requested that the Commission take its reply into consideration in reaching a decision on the proposal to expand eligibility criteria.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concurs with the parties that the expansion of the Lifeline/Link-Up eligibility criteria to include Medicaid, LIHEAP, and Section 8 is in the public interest and should be adopted. However, in light of the Public Staff's Reply Comments, the Commission concludes that, while Medicaid should be included as an eligibility criterion immediately, LIHEAP and Section 8 should not become effective as eligibility criteria until April 3, 2000. In order to increase participation in the Lifeline/Link-Up programs, the Commission directs that interested parties to continue with their task force to formulate strategies to significantly increase participation in the Lifeline/Link-Up programs and to submit a report to the Commission by no later than December 31, 1999.

The Commission notes that, including Medicaid immediately, should render the Raymond complaint case moot. Carolina is requested to take such administrative measures as are necessary to expedite Mr. Raymond's receiving of this benefit as soon as practicable.

Lastly, Rule R9-6(c)(2), concerning the Link-Up Carolina program, should be rewritten to read:

> (2) In order to be eligible for assistance, a residential subscriber must be a current recipient of Supplemental Security Income, Food Stamps, Medicaid, Low Income Home Energy Assistance Program (LIHEAP), federal public housing assistance (Section 8), or a current participant in Work First or Temporary Assistance for Needy Families; provided, however, that LIHEAP and federal public housing assistance (Section 8) shall not become effective as eligibility criteria herein until April 3, 2000.

IT IS, THEREFORE, ORDERED as follows:

1. That the Lifeline/Link-Up eligibility criteria be expanded to include Medicaid, LIHEAP, and federal public housing assistance (Section 8); provided, however, that LIHEAP and federal public housing assistance (Section 8) shall not become effective as eligibility criteria until April 3, 2000.

2. That Rule R9-6(c)(2) be rewritten as set out in Conclusions above.

3. That the Lifeline/Link-Up task force continue to formulate strategies to significantly increase participation in the Lifeline/Link-Up programs and submit a report to the Commission on this topic by no later than December 31, 1999.

4. That Carolina be requested to take such administrative measures as are necessary to expedite Mr. Raymond's receiving the Lifeline benefit as soon as practicable.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of July, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz071299.01

DOCKET NO. P-100, SUB 133f
DOCKET NO. P-7, SUB 871

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 133f In the Matter of Lifeline and Link-Up Service Pursuant to Section 254 of the Telecommunications Act of 1996 DOCKET NO. P-7, SUB 871 In the Matter of Carol J. Raymond, 114 Atwood Terrace, Stedman, North Carolina 28391 Complainant, v. Carolina Telephone and Telegraph Company, Respondent	ERRATA ORDER

BY THE CHAIR: On July 27, 1999, the Commission issued in the above dockets an Order Expanding Eligibility Criteria to Include Medicaid, LIHEAP, and Federal Public Housing Assistance (Section 8). The Order should have included a provision for affected carriers providing Lifeline/Link-

Up services to submit appropriate tariff/price list changes to reflect the expansion of the Lifeline/Link-Up eligibility criteria.

Accordingly, the Chair concludes that all appropriate tariff/price list changes to include the expansion of the Lifeline/Link-Up eligibility criteria shall be submitted by all affected carriers by August 15, 1999, to become effective retroactive to August 1, 1999. The changes shall add the three new eligible programs to the appropriate tariff/price list sections with the provision that the LIHEAP and Section 8 programs shall not become effective as eligibility criteria until April 3, 2000.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE CHAIR.
This the 30th day of July, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

mz072999.01

DOCKET NO. P-100, SUB 137

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Area Code Relief for North Carolina's 704/910/919 Numbering Plan Areas	)))	ORDER GRANTING MOTION FOR CLARIFICATION

BY THE COMMISSION: On January 28, 1999, the Commission issued a Post-Conference Order which outlined the Commission's conclusions following the November 23, 1998 Technical Conference to examine potential number conservation measures that could be implemented in North Carolina. In the Order, the Commission asked parties to prepare and file rate center consolidation studies. The Commission also requested the members of the North Carolina Industry Task Force (Task Force), which was created by an August 20, 1997 Commission Order, to provide leadership in the carriers' efforts to provide detailed analyses of rate center consolidation.

On February 17, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed a Motion for Clarification of the Commission's January 28, 1999 Order. Specifically, BellSouth requested clarifications on the part of the Commission's Order which reads:

> That the parties should complete and file within 90 days detailed rate center consolidation studies which include information concerning the financial impact, calling scope impact, E911 impact, operations support systems (OSS) impact, and billing impact of each potential

rate center consolidation for each numbering plan area (NPA) in which the party has two or more rate centers.

BellSouth requested clarification on the approach parties should take in determining rate center consolidation options, along with clarification of the presentation of the financial impact, calling scope impact, and billing impact of each potential rate center consolidation plan submitted.

BellSouth proposed in its Motion that the Commission clarify that parties should file two specific rate center consolidation alternatives. First, BellSouth recommended that the Commission direct parties to prepare and file a rate center consolidation study that consolidates the party's rate centers to one rate center. BellSouth specified that the study should be limited to local access transport area (LATA), NPA, and incumbent local exchange company (ILEC) territorial boundaries and follow three specific guidelines (as detailed in the Motion). Additionally, BellSouth proposed that the Commission clarify that parties should also prepare a second rate center consolidation alternative which reduces the number of rate centers within the same LATA, NPA, and ILEC territorial boundary by a minimum of 30% and follow five specific guidelines (as detailed in the Motion). Therefore, BellSouth proposed that the Commission clarify that parties should file two specific rate center consolidation alternatives as detailed in BellSouth's Motion.

BellSouth further proposed that the Commission clarify that parties should identify the financial impact of their rate center consolidation plans by service segment (i.e. basic local, expanded local, toll, foreign exchange, etc.) in order to identify where shifts in revenue originated.

For presenting the calling scope impact of a rate center consolidation plan, BellSouth recommended that the Commission clarify that the calling scope impact should include any change in the basic local, expanded local and intraLATA toll calling areas for each exchange affected by the rate center consolidation plan.

Additionally, BellSouth proposed that the Commission clarify how billing impacts should be presented. BellSouth maintained that it interprets "billing impact" to include any probable rate changes that may be required for specific types of services. BellSouth also believes "billing impact" should include changes in the appearance or format of customer billing that may be required as a result of the consolidation. Therefore, BellSouth proposed that the Commission clarify that "billing impact" includes probable rate changes and bill format changes that may be required as a result of a rate center consolidation plan.

Further, BellSouth recommended that the Commission request parties to provide a 24-month forecast of number requirements for each rate center in North Carolina. BellSouth believes that this information is necessary for the Commission to gauge the effectiveness of each rate center consolidation plan by projecting the future NXX demand, by rate center, under each option evaluated.

Finally, BellSouth stated that the Task Force will be calling an industry meeting within the next few weeks to provide direction to parties as requested by the Commission in its January 28, 1999 Order. However, BellSouth maintained that in order to provide ample time for the industry to meet and formulate plans in response to the Commission's Order, the Commission should grant the parties a 60 day extension of time to file the rate center consolidation studies.

The Commission believes that the Motion for Clarification filed by BellSouth includes recommendations that, if adopted by the Commission, could greatly increase the detail, comparability and usefulness of the requested rate center consolidation studies to be filed with the Commission. The Commission believes that the objective of receiving the rate center consolidation studies is to receive the very best possible information on which the Commission can base a decision whether to adopt any specific rate center consolidation plan(s). Therefore, the Commission finds it appropriate to grant BellSouth's Motion for Clarification in its entirety and also grant the requested extension of time for the parties to file the rate center consolidation studies.

The Commission does note that the guidelines proposed by BellSouth for the filing of rate center consolidation studies will limit the scope of potential rate center consolidation plans (i.e. not considering plans that cross LATA, NPA or ILEC territorial boundaries), however, the Commission believes that BellSouth's proposal is reasonable as a *starting point* for examining potential rate center consolidations in North Carolina. Additionally, the Commission could order at some point in the future that rate center consolidation studies between LATAs, NPAs, and ILEC territorial boundaries be prepared and filed if such information were necessary. Finally, the Commission notes that BellSouth outlined two specific rate center consolidation alternatives that it would recommend the Commission order parties to file. However, the Commission also encourages parties to file additional rate center consolidation studies as they see fit in addition to the two specific rate center consolidation alternatives.

Finally, the Commission notes that although there has been significant participation on the Task Force, not all carriers have been involved. The Commission's August 20, 1997 Order specifies that the Task Force should file quarterly reports with the Commission which include number utilization information. Since not all carriers are represented on the Task Force, utilization data has not been received by all carriers. Therefore, the Commission requests that all carriers that have NXX codes in North Carolina complete and file quarterly number utilization information in the format shown on Attachment A to this Order. The Commission further directs the Task Force to attempt to obtain number utilization information from all carriers for filing with the Commission and to file reports with the Commission, as necessary, of carriers that do not provide such number utilization data. Number utilization information is necessary for the Commission to determine the fill levels of the NXX codes issued in North Carolina.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

1. That the Commission grants BellSouth's Motion for Clarification in its entirety in order to ensure that the Commission receives the most detailed and useful rate center consolidation studies.

2. That the Commission grants the requested 60 day extension of time for parties to file rate center consolidation studies, to and including June 28, 1999.

3. That all carriers that have NXX codes in North Carolina complete and file quarterly utilization information in the format shown on Attachment A.

4. That the Task Force should attempt to obtain number utilization information from all carriers for filing with the Commission and that the Task Force should file reports with the Commission, as necessary, of carriers that do not provide such number utilization data.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of March, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bc030199.01

Attachment A

NUMBER UTILIZATION REPORT

Company Name: ____________________
For the Quarter Ended: ____________________

NPA	NXX	Numbers Utilized	Numbers Available	Utilization	Date NXX Opened
919	715	10,000	0	100%	XX/XX/XX

DOCKET NO. P-100, SUB 137

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

<table>
<tr><td>In the Matter of
Area Code Relief for North Carolina's 704/910/919
Numbering Plan Areas</td><td>)
)
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)</td><td>ORDER REVISING
NUMBER UTILIZATION
REPORTING
REQUIREMENTS</td></tr>
</table>

BY THE CHAIR: On August 20, 1997, the Commission issued an Order addressing area code relief for the North Carolina 704/910/919 area codes. The Order required that an Industry Task Force on number conservation be convened, and that the Task Force file quarterly reports with the Commission which include number utilization information. On March 2, 1999, the Commission issued another Order in this docket that, among other things, addressed the required filing of number utilization data. The Commission noted that, although there has been significant participation on the Industry Task Force, not all carriers have been involved. Since not all carriers are represented on the Task Force, utilization data had not been received from all carriers. In the March 2, 1999 Order, the Commission requested that all carriers that have NXX codes in North Carolina complete and file quarterly utilization information in a specified format. The format was shown in an attachment to the March 2 Order. The Commission directed the Task Force to attempt to obtain number utilization information from all carriers for filing with the Commission and to file reports with the Commission, as necessary, of carriers that do not provide such number utilization data. The Commission noted that number utilization information is necessary for the Commission to determine the fill levels of the NXX codes in North Carolina.

Since the March 2, 1999 Order, the Commission has received utilization data from a fair number of carriers, both through the Task Force and, in some cases, through the carriers filing separate utilization data themselves. The information is helpful in terms of the Commission being better able to discern utilization levels within NXX codes in North Carolina area codes. However, the Commission finds there is good cause to further revise the number utilization data filing requirements so that carriers file the data in more detail. Specifically, the Commission through this Order is requiring that NXX code holders in North Carolina continue to file utilization data on a quarterly basis, but that they break the information down further, by rate center and by thousands-blocks. This more detailed information will help the Commission analyze the potential benefits of number conservation measures, such as number pooling, as they become available. Further, it will assist the Commission in determining where such measures may be most helpful in slowing NXX code exhaust. Carriers are requested to file the information in the format shown in Attachment A to this Order, beginning with the fourth quarter of 1999. Carriers are encouraged also to file the data in electronic form if possible, in Lotus 1-2-3, Release 5 for Windows.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE CHAIR.
This the 4th day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Attachment A

NUMBER UTILIZATION REPORT

Company Name:__________________
For the Quarter Ended:______________

NPA	**NXX**	**Rate Center**	**Date NXX Opened**
919	715	ABC	XX/XX/XX

Total Numbers Available: 0
Total Percent Utilization: 100%

Block	Numbers Utilized	Numbers Available	% Utilization
0000-0999	1,000	0	100%
1000-1999	1,000	0	100%
2000-2999	1,000	0	100%
3000-3999	1,000	0	100%
4000-4999	1,000	0	100%
5000-5999	1,000	0	100%
6000-6999	1,000	0	100%
7000-7999	1,000	0	100%
8000-8999	1,000	0	100%
9000-9999	1,000	0	100%

DOCKET NO. P-100, SUB 137a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Area Code Relief for North Carolina's 704) ORDER APPROVING
Numbering Plan Area) OVERLAY OPTION TO
) PROVIDE AREA CODE RELIEF

BY THE COMMISSION: In this Order, the Commission will address the issue of area code relief for North Carolina area code 704.

BACKGROUND

An area code is a necessary part of routing calls to their proper destination. When an area code is combined with the second three digits of the telephone number (called the NXX code or Central Office code), a "geographic address" is formed that is used to route calls through the public switched telephone network. The first six digits "tell" the call generally where to go, and the final four digits identify the specific individual customer. For example, the main telephone number of the North Carolina Utilities Commission is 919-733-4249. 919 is the area code, 733 is the NXX code or Central Office code, and 4249 is the line number identifying the specific customer receiving the call. North Carolina currently has six area codes assigned to specific geographic areas of the state.

Area code exhaust occurs when nearly all of the NXX codes in a given area code have been assigned to telecommunications service providers, even if individual line numbers within the NXX codes have not been assigned to customers. Typically there are 792 NXX codes available for assignment to telephone companies in an area code. Each NXX code has approximately 10,000 line numbers available for assignment to individual customers. Service providers must have the NXX codes assigned to them because the combination of the area code and the NXX code is used to route calls through the public switched telephone network in the North American Numbering Plan (NANP). Some companies also use the NXX code for billing purposes. NXX codes are associated with particular geographic areas, or "rate centers," in an area code. Telephone companies base charges for calls on the distance between the rate center where a call originates and the rate center where the call terminates. These companies must obtain an NXX code in each of the identified geographic areas or "rate centers" in a particular area where they wish to provide service. In the past, local telephone service in any given area was provided by one monopoly carrier, such as BellSouth, Carolina Telephone & Telegraph Company, or GTE, and the requirement that the telephone company obtain an NXX code for each rate center in an area where it provided service did not strain the supply of NXX codes. Now, however, with the advent of competition in the local telephone service market, there can be several telephone companies providing service in a given area, and each one must obtain an NXX code for each rate center in that area. This change has caused a shortage in the supply of NXX codes.

When almost all of the NXX codes in an area code are assigned to telephone companies, a new area code must be implemented. New area codes usually are implemented in one of two ways. First, they can be implemented through a geographic split, in which the geographic area using an existing area code is split into two parts, and roughly half of the telephone customers continue to be served through the existing area code and half must change to a new area code. Second, new area codes can be implemented through an area code overlay, in which the new area code covers the same geographic area as an existing code, but new customers in that area will be assigned to the new, or overlayed, area code. The Federal Communications Commission (FCC) has required that there be ten-digit dialing between and within area codes in the geographic area covered by an area code overlay. This means that every local call, even if it is a call to a customer with the same area code as the caller, must be dialed with ten digits.

GENERAL ORDERS - TELECOMMUNICATIONS

AREA CODE 704

On January 27, 1999, Lockheed Martin IMS, in its role as the North American Numbering Plan Administrator (NANPA), filed with the Commission an industry recommendation for relieving area code 704 in North Carolina. The industry held a meeting in Charlotte on December 1, 1998, where participants considered several relief alternatives to furnish relief before exhaust of 704, including a distributed overlay, a concentrated growth overlay, and four different geographic splits. More specifically, the participants considered the following alternatives:

Alternative 1 -- Distributed overlay placed over the entire 704 area code.

Alternative 2 -- Concentrated growth overlay with Area A consisting of Mecklenburg, Gaston, Lincoln, and Cleveland Counties exchanges. Area B would include all remaining exchanges in the 704 area code region.

Alternative 3 -- Geographic split with Area A including the Charlotte, Davidson, Huntersville, Pineville and Matthews exchanges. Area B would include the remaining 704 area code region.

Alternative 4 -- Geographic split with Area A including the Charlotte, Davidson, Huntersville, Matthews, Bessemer City, Stanley, Mount Holly, Lowell, Pineville, Gastonia, South Crowders Creek, and Belmont exchanges. Area B would include all remaining exchanges in the 704 area code region.

Alternative 5 -- Geographic split with Area A including the Charlotte, Davidson, Huntersville, Matthews, Goose Creek, Indian Trail, Hemby Bridge, New Salem, Monroe, Wingate, Marshville, Waxhaw, Pineville, and Alton exchanges. Area B would include all remaining exchanges in the 704 area code region.

Alternative 6 -- Geographic split with Area A including the Charlotte, Davidson, Huntersville, Matthews, Harrisburg, Concord, Mount Pleasant, Pineville, and Locust exchanges. Area B would include all remaining exchanges in the 704 area code region.

The industry participants reached unanimous consensus to recommend to the Commission the distributed overlay over the entire 704 geographic area as the most suitable relief plan for the 704 area code. This option would "overlay" a new area code over the 704 geographic area and use the existing 704 boundary lines. Existing customers would retain the 704 area code, and would not have to change their numbers. As telephone numbers in the 704 area code are used, new customers from all industry segments would be assigned telephone numbers from the new area code.

Industry participants also reached consensus to recommend a ten-digit dialing plan, consistent with the FCC regulation requiring ten-digit dialing between and within the old area code and the new overlay code. There was also consensus to recommend the elimination of all "protected codes," which are codes that are either: (1) unassigned in order to maintain seven-digit dialing between locations in two different area codes, such as in cross-boundary extended local calling routes and cross-boundary Extended Area Service (EAS) routes; or (2) assigned in a manner that avoids potential code conflicts, meaning that they must be strategically assigned in areas outside of the seven-digit calling scope. The NANPA stated that the industry requested the Commission to determine if the overlay relief alternative best suits the needs of the 704 geographic area and to issue an Order that either conveys concurrence or directs the industry to implement some other relief method.

The Commission solicited and received comments and held public and evidentiary hearings on the question of relief for area code 704. The hearings were held on the evening of April 19 and the morning of April 20, 1999, at the Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, North Carolina. As discussed below, the large majority of the commenters from the industry supported an overlay, including an industry group filing together as the Joint Petitioners.[1] The Joint Petitioners were represented at the public hearing held to consider the question of area code relief for 704, but no other industry participants appeared. Seven witnesses from the public testified at the hearing. The majority were small business owners who also supported an overlay. The Commission has received approximately 25 letters from members of the public, with the large majority favoring a geographic split, primarily because of the ten-digit dialing required when an overlay is implemented.

On May 12, 1999, the Commission issued an Order requesting further comments in this docket. Specifically, the Commission asked for responses to specific questions pertaining to the geographic split alternatives. The Commission stressed that, in seeking these additional comments, it did not suggest that it had concluded that a geographic split is, in fact, the better option for relief of area code 704. The Commission sought the information simply to make certain that it was fully informed about each relief alternative and its consequences during the decision-making process. Additional comments on the geographic split alternatives were received on June 2, 1999.

On April 16, 1999, NANPA declared the 704 area code to be in "jeopardy," meaning that, in the absence of NXX code rationing, the supply of available NXX codes would exhaust before relief could be implemented. A jeopardy rationing plan is currently in place.

<u>SUMMARY OF COMMENTS</u>

The Joint Petitioners. As previously stated, the Joint Petitioners favor the distributed overlay relief option. The Joint Petitioners state that geographic splits place an "imbalanced hardship" on customers and service providers by only requiring approximately one half of the relief plan area to undergo conversion to a new area code. One half of the customers must change their area code. The Joint Petitioners note that business customers can incur significant costs as a result of telephone number changes. According to the Joint Petitioners, splits also place an imbalanced burden on telecommunications companies because the companies serving the geographic area that is receiving the new area code incur a disproportionate amount of implementation costs. Further, splits create

[1] The Joint Petitioners include: ALLTEL Carolina, Inc.; ALLTEL Communications, Inc.; BellSouth Carolinas PCS, L.P. d/b/a BellSouth Mobility DCS; BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company; Concord Telephone Company; GTE South Incorporated; Time Warner Telecom; US LEC of North Carolina, Inc. and Sprint Communications Company, L.P.

community of interest problems because communities that share common interests are separated by new area code boundaries. The Joint Petitioners assert that any geographic split of 704 would likely create a boundary that would disrupt some community relationships.

The Joint Petitioners further state that splits do not use numbering resources as efficiently as overlays because splits depend on the accuracy of telephone number forecasts, which are highly speculative. Those forecasts are even less reliable in today's competitive market because new entrants can enter the market and impose high demands for numbers that were not accounted for in initial forecasts. If the forecasts are not accurate, one segment of a relief plan area that is being split can exhaust ahead of other segments. The Joint Petitioners concede that geographic splits offer the benefit of preservation of seven-digit local dialing, and state that, in the past, this benefit has outweighed the negative factors associated with geographic splits. However, in this instance, in order to maintain local seven-digit dialing under any of the proposed geographic split alternatives, a significant number of NXX codes would have to be protected, which decreases the effectiveness of the relief.

In contrast, the Joint Petitioners state that overlays can be implemented without requiring any telephone number changes, and all customers in the relief plan area are treated equally. In the Joint Petitioners' view, distributed overlays use numbers as efficiently as possible because each carrier in the relief area will have access to a new supply of numbers. There is no reliance on forecasts to draw an arbitrary line that governs the availability of numbers in the relief area. The Joint Petitioners further state that distributed overlays are competitively neutral because they require all service providers in the relief area to participate in the implementation of area code relief and bear a fair share of conversion costs. Distributed overlays prevent county and community geographic divisions that occur with geographic splits.

It is the Joint Petitioners' position that concentrated growth overlays are less efficient and create many of the same problems as geographic splits, because they establish an area code boundary based on speculative forecasts, and numbers are not available to the entire relief area unless the overlay is expanded at a later time. The Joint Petitioners assert that, even though number changes are not required, as with geographic splits, concentrated growth overlays are not competitively neutral. Subscribers who are receiving the new overlay must convert to ten-digit dialing, while those in the remaining relief area are not subject to any changes in dialing patterns and do not experience implementation costs. The Joint Petitioners acknowledge the disadvantage of ten-digit dialing that comes with an overlay, but state that the ten-digit dialing mandate provides a means of transitioning all inter-NPA calls to ten digits, which will eliminate the need to protect codes and will provide a more efficient and accurate means of assigning NXX codes.

In their Reply Comments, the Joint Petitioners state that an increase in ten-digit dialing for all customers in the relief area is inevitable *whether the chosen relief plan is an overlay or a geographic split* (emphasis added). The Joint Petitioners assert that overlays are more competitively neutral than geographic splits because all service providers in the relief area must participate in implementation of the relief plan and incur a fair share of the costs. In the Joint Petitioners' view, an overlay is less costly for business customers. Business customers must make changes for speed dialing, fax machines, and computer software to recognize ten-digit dialing for local calls, but these costs are relatively minor compared to the costs businesses incur as a result of a geographic split, which would require business customers in the new area code to make changes to telecommunications equipment and computer software, and also to change stationery, business cards, and advertising material.

In response to some letters from members of the public suggesting that there be a separate area code for wireless services or other technologies, the Joint Petitioners state that the FCC has explicitly prohibited service-specific or technology-specific area code overlays. The Joint Petitioners also respond to some suggestions that the Commission order implementation of several area codes to relieve 704, effectively splitting 704 into three or four area codes. The Joint Petitioners state that such an arrangement would further fractionalize communities and counties and leave a mixture of seven-digit and ten-digit dialing, within customers' basic and expanded local calling areas, that is more confusing than dialing ten digits for all local calls.

Town of Pineville. The Town of Pineville, which provides local exchange service in the Pineville, North Carolina exchange under the name Pineville Telephone Company, supports the recommendation for an overlay over the entire geographic area currently served by the 704 area code.

Bell Atlantic Mobile. Bell Atlantic Mobile (BAM) also supports an overlay, stating that the overlay spares customers forced number changes. BAM adds that future relief, if necessary, can be added easily once an overlay is implemented. In BAM's view, overlays are also fair to wireless customers, who are burdened uniquely by a geographic split. The telephone number of each cellular telephone customer is programmed or coded into the customer's individual telephone. When a cellular customer's telephone number or area code is changed the telephone unit must be reprogrammed manually. Customers incur inconvenience having to travel to their service provider's service centers. BAM alleges that it costs approximately $40 to reprogram each telephone. Overlays entail no reprogramming. BAM notes that, in 1997, this Commission recognized the unique burdens that cellular customers face, and ordered limited grandfathering of wireless customers. In BAM's view, if the Commission orders a split, it should also order wireless grandfathering.

Regarding the ten-digit dialing requirement for overlays, BAM states that ten-digit dialing is already routine for North Carolina customers who call within the state. If 704 were split, the frequency of ten-digit dialing would increase because the group of numbers that customers could dial using seven digits would shrink. BAM states that speed dialing and automatic dialing can ease the transition to ten-digit dialing.

BAM argues that an overlay will also allow more flexibility to assign numbering resources once number conservation measures are adopted. If numbering resources in 704 were freed through number conservation measures, they could be used anywhere throughout the current 704 area code. If a split is implemented, customers who have had their area code changed will not have access to any 704 numbers that conservation may release.

BAM agrees with the Joint Petitioners that a geographic split lacks the longevity of an overlay, because there is no assurance that the projected lives of splits will last as long as forecasts suggest. With an overlay, the supply of numbers is available without regard to the rate of usage in any particular part of the 704 area code.

ICG. ICG supports an area code split instead of an overlay. ICG notes that a geographic split allows the retention of seven-digit local dialing. It is ICG's position that the ten-digit dialing associated with an overlay represents longer-term confusion and inconvenience. Further, ICG states, the overlay is anticompetitive because it allows incumbent local exchange carriers to retain telephone numbers in the existing area code while new market entrants will be assigned numbers in the new area code. Competing local providers will suffer a disadvantage of having unfamiliar numbers.

AT&T. In Reply Comments, AT&T states that it does not oppose the industry recommendation for area code relief for the 704 area code, but it believes that geographic splits are also a competitively neutral area code relief option and should not be dismissed in all cases.

The Public Staff. In Reply Comments, the Public Staff states that it generally agrees with the industry's evaluation of the alternative measures for preventing number exhaust in the 704 area code. However, the Public Staff does not specifically make a recommendation on the plan endorsed by the industry, saying that it needed more public comment on the impact of a distributed overlay before doing so. The Public Staff urges the Commission to pay particular attention to the need to convert all EAS and expanded local calling routes that originate and terminate in the overlay area from seven-digit to ten-digit dialing in both directions. The Public Staff states that all of the NXXs in the current 704 area code that can be reached from other area codes by dialing seven digits will have to be protected in the new overlay area code if the existing seven-digit dialing is continued for these routes. This would amount to 320 of the new area code's 792 usable NXX codes. The Public Staff points out that some of these routes are interstate, and some are intrastate. The Public Staff further notes that code protection or conversion of existing routes to ten-digit dialing would also be necessary if a geographic split is chosen as the relief mechanism.

Several parties also filed comments in response to the Commission's Order seeking additional information on the geographic split alternatives.

BellSouth Telecommunications, Inc., GTE South Inc., and Time Warner Telecom (The Joint Commenters). The Joint Commenters state that North Carolina counties are organized into seven regional partnerships for economic development. In this and previous area code relief proceedings, some county governments have opposed geographic split plans that would result in multiple area codes in a county. The Carolinas Partnership consists of 12 counties within the current 704 Numbering Plan Area (NPA): Iredell, Rowan, Cabarrus, Stanly, Anson, Union, Mecklenburg, Gaston, and Cleveland. Catawba, Alexander, and Lincoln counties are each currently split between area codes 704 and 828. According to the joint commenters, implementing any of the four geographic split alternatives would further erode the use of a common area code for counties in the Carolinas Partnership. Under Alternatives #3 and #5, six counties would have two area codes. Under Alternative #4, six counties would have two area codes and one county would have three area codes. Under Alternative 6, seven counties would have two area codes.

The Joint Commenters state that, if the Commission determines that a split should be implemented, they prefer Alternative 3. They note that Alternative 3 concentrates the new number supply in Charlotte, Davidson, Huntersville, Matthews and Pineville, where approximately 49% of all NXX codes in the 704 area code have been assigned. Over 61% of the access lines in the 704 area code for BellSouth, GTE, and Time Warner are currently assigned in these five exchanges of

Mecklenburg County. The Joint Commenters expect demand for telecommunications services to grow at an escalating rate in Mecklenburg County, and for there to be increased activity by CLPs and wireless providers. Therefore, they argue, it is prudent to allocate a higher percentage of new NXX codes to Mecklenburg County than current demand reflects. Alternative 3 would make approximately 51% of the new codes available to this area. Alternative 4 would only make 40% of the new codes available in Area A, Alternative 5 would make 48% available in Area A, and Alternative 6 would make 45% available in Area A.

The Joint Commenters state that Alternatives 4, 5, and 6 all assume that greater demand for new NXX codes will occur in Area B than in Area A, since each makes more codes available in Area B than in Area A. The Joint Commenters acknowledge that, while it is difficult to forecast where any boundary should be drawn to make optimum use of the new number supply, the percentage of CLP and wireless codes assigned in and around Charlotte supports the assumption (which has been played out in other areas of the country) that competitive entry usually begins in urban areas and only spreads to rural areas when some acceptable level of penetration has been realized. The Joint Commenters also prefer Alternative 3 for so-called "political" reasons. They note that Alternative 3 limits Area A to Mecklenburg County, with only small sections of the Matthews and Davidson exchanges bleeding over into adjacent counties. Alternatives 4, 5, and 6 each include the dominant portion of one additional county. Choosing one of those options, the Joint Commenters argue, will bring opposition from other adjacent counties, since all counties adjacent to Mecklenburg have business and community related arguments as to why they should not be excluded from being in the same area code as Mecklenburg County.

The Joint Commenters included detailed information on how many NXX codes would have to be protected under each geographic split alternative to maintain current seven-digit dialing arrangements. The Joint Commenters state that code protection under any relief plan will place severe constraints on the efficient use of numbering resources. The summary is as follows: (1) Alternative 3--769 protected codes; (2) Alternative 4--756 protected codes; (3) Alternative 5--726 protected codes; and (4) Alternative 6--822 protected codes.

AT&T. AT&T states that it also continues to support the overlay option for relieving 704. For any of the geographic split options, it supports the Charlotte area retaining the 704 area code. This would provide the area with the most access lines retaining the current area code and would retain the association of the 704 area code with Charlotte, which would create the least disruption for the majority of customers. AT&T contends that this is critical to AT&T and, in particular, to its wireless operations, because the majority of AT&T's wireless telephone numbers are served from rate centers in the Charlotte area. If Charlotte did not retain 704, a substantial number of wireless customers would be forced to have their telephones reprogrammed. AT&T also supports the "grandfathering" of existing 704 numbers for wireless customers outside the new 704 area code boundary.

AT&T also encourages the Commission to reduce the number of currently protected NXX codes as much as possible and to minimize the number of codes that would be protected in connection with the implementation of any split.

AT&T states that, if the Commission chooses a geographic split, it urges the Commission to consider the actual projected lives for each area and the relative time to exhaust between the two areas. AT&T states that it is appropriate that the projected life of an area that retains its current code, and therefore does not require number changes, should be shorter. Then, customers who are required to change their telephone numbers do not have to do it again before those customers that were not required to change under the previous relief plan. Using this criterion alone, AT&T states, Alternatives 4 and 5 are preferable to Alternatives 3 and 6, and Alternative 5 is slightly preferable to Alternative 4. However, AT&T states that, given the fact that these are only projections, the difference between all of the alternatives is not great enough to eliminate any of these options from consideration based strictly on the projected lives.

Pineville Telephone Company. Pineville states that if a geographic split is implemented, it would prefer Alternative 5. Pineville prefers Alternative 5 over the other split options because Alternative 5 would keep Pineville in the same area code as that portion of the greater Charlotte area where Pineville residents have the most significant community of interest. Pineville is primarily interested in remaining in the same area code as the municipalities of Charlotte and Matthews. Pineville's second choice for a geographic split is Alternative 3. Pineville reiterates that it prefers an overlay above all split options.

ALLTEL Carolina, Inc. ALLTEL states that it continues to recommend that an overlay be implemented rather than a geographic split. If the Commission does determine that a geographic split should be implemented, ALLTEL prefers Alternative 5. Under that option, ALLTEL has fewer extended area service (EAS) routes that would require ten-digit dialing as compared to Alternatives 3, 4, and 6. ALLTEL states that all geographic splits also place an imbalanced burden on telecommunications companies, because the companies serving the geographic area receiving the new area code will incur a disproportionate amount of the costs of implementation.

ALLTEL states that, to maintain current seven-digit inter-NPA dialing, the following numbers of NXX codes would have to be "protected" for each alternative: (1) Alternative 3--24 NXX codes; (2) Alternative 4--29 NXX codes; (3) Alternative 5--23 NXX codes; and (4) Alternative 6--23 NXX codes. If protected codes were eliminated, the following numbers of calling routes would be converted from seven-digit to ten-digit dialing: (1) Alternative 3--51 routes; (2) Alternative 4--97 routes; (3) Alternative 5--204 routes; and (4) Alternative 6--122 routes.

US LEC. Considering all of the geographic split alternatives, US LEC prefers Alternative 5.

Teleglobe USA Inc. Teleglobe is not currently providing local service in North Carolina and has no comment regarding potential geographic splits.

CONCLUSIONS

After carefully considering all of the relevant factors and the comments and reply comments submitted in this proceeding, the Commission concludes that a distributed overlay should be implemented to relieve area code 704. This is a difficult decision, and one which the Commission makes very carefully and with high expectations of the industry that has so emphatically supported an overlay. In the Commission's view, there are disadvantages and inconveniences associated with both a geographic split and with an overlay, and the Commission has the difficult task of attempting to discern what relief method will be least inconvenient and burdensome for consumers while providing the most significant and long-lasting relief for the area code.[1] The overlay is certainly not an ideal option, primarily because of the FCC requirement that all local calls must be dialed with ten digits when an overlay is implemented. However, the primary benefit of the overlay is that it does spare all current customers in the 704 territory from the inconvenience and expense of changing their current telephone numbers.

Moreover, while there are many uncertainties in addressing area code relief, the overlay appears to have an advantage because it makes NXX codes from the new overlay area code available throughout the territory currently served by 704. As some commenters note, successful implementation of the overlay is less dependent on forecasts, and trying to determine where increased demand for numbers will occur. The Joint Petitioners state in their comments that a distributed overlay uses numbering resources as efficiently as possible because each carrier in the relief area has access to the complete supply of new numbers. There is no need to draw a line that determines where new numbers will be available.[2] Because it is difficult to predict where there will be the most demand for numbers, it is difficult to determine where to set the boundary for a geographic split to make the most efficient use of the numbers. With a geographic split, additional area code relief could be necessary soon for some citizens, if there is significantly higher demand for numbers on one side of the split than on the other. Several citizens who wrote letters to the Commission opposing the overlay were under the impression that if a geographic split were implemented, no additional relief would be necessary for a considerable time to come, but that may not necessarily be the case. The Commission certainly is interested in having the chosen area code relief method last as long as possible for all of the citizens in the current 704 area code, and it appears that the overlay is the better choice from that perspective.

The main factor that would weigh in favor of a geographic split is the preservation of seven-digit dialing. However, that advantage may not be significant here. The record developed in this proceeding indicates that ten-digit dialing will be increased significantly for customers in the current 704 area code, whether a geographic split or an overlay is implemented. The Joint Petitioners note that, if protected NXX codes are eliminated to assure more efficient use of numbering resources, as we believe appropriate, ten-digit dialing will increase, and all local calls made outside of a person's home area code will require ten-digit dialing. According to the Joint Petitioners, if geographic split Alternative 3 were implemented, it would require customers in the Charlotte exchange, where 41% of the current 704 area code central offices are located, to dial ten digits for almost 70% of their basic local calls and 100% of their expanded local calls. The Joint Petitioners state that the other split alternatives that the industry evaluated would impact current seven-digit dialed calling areas similarly. Geographic split Alternative 4 would require customers in the Charlotte exchange to dial ten digits for 50% of their basic local calls and 91% of their expanded local calls. Alternative 5 would require

[1] Other states are facing the same dilemma. Twelve states currently employ or have plans pending to implement overlays. Those twelve states are Illinois, Maryland, Michigan, Virginia, Oregon, California, Florida, New York, Texas, Colorado, Georgia and Pennsylvania.

[2] See Comments of Joint Petitioners, p. 7.

the same customers to dial ten digits for 50% of their basic local calls and 86% of their expanded local calls. Finally, Alternative 6 would require them to dial ten digits for 56% of their calls within the basic local calling area and 96% of their calls within the expanded local calling area.[1]

The Commission further concludes that the practice of "protecting," or not assigning, certain NXX codes in order to preserve current seven-digit inter-NPA dialing must cease. As the record reflects, under any of the relief alternatives, protecting codes would result in serious inefficiency in the use of numbering resources, and would in all likelihood drive the new area code into exhaust much more quickly than it would otherwise exhaust. To maximize the amount of numbering resources available throughout the geographic territory currently served by the 704 area code, North Carolina service providers are required to eliminate protected codes for current seven-digit inter-NPA dialing arrangements between 704 and other area codes. As recommended by the Joint Petitioners, the conversion should include EAS and expanded local calling routes within and between area codes in the overlay area, and also EAS and expanded local routes between area codes in the overlay area (704 and the new overlay area code) and area codes outside of the overlay area.[2]

The Commission is extremely concerned that North Carolina citizens who will be impacted by the overlay receive effective and timely information about all aspects of the overlay, but particularly the ten-digit dialing that will be required for all local calls. The phenomenon of ten-digit dialing for local calls has been increasing as new area codes have come into being. However, this overlay undoubtedly represents a significant change for our consumers. Though we heard little feedback from the public on the proposal, we expect to hear more about the implementation. Because this will be the first overlay in North Carolina, customer education must begin as soon as possible so that the transition to ten-digit dialing is smooth. Service providers in the 704 area shall make every effort to ensure that the transition to the overlay is not disruptive for consumers. All telecommunications carriers in 704 are required to provide extensive customer education on the overlay, and particularly on the need to dial ten digits for all local calls. Service providers are requested to use any and all available forms of media to disseminate information regarding the change to ten-digit local dialing, well in advance of the mandatory date for such dialing. Those media include, but are not limited to, television, radio, billboards, the Internet, newspaper publications, and bill inserts. Further, after mandatory ten-digit dialing begins, the carriers are requested to provide recorded announcements instructing callers that they need to dial ten digits when they dial seven digits. Service providers should develop customer education methods that are innovative, creative, and far-reaching. The customer education effort should be undertaken by all providers of telecommunications services who currently hold or are planning to obtain NXX codes in the current

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[1] See Reply Comments of Joint Petitioners, pp. 2-3.

[2] The Commission notes that there are currently seven-digit inter-NPA dialing arrangements in place between area code 704 and certain locations in South Carolina served by area codes 803 and 864. On May 10, 1999, the Chair received a communication from Commissioner H. Clay Carruth of the South Carolina Public Service Commission, in whose District the relevant South Carolina territories are located. Commissioner Carruth stated that he was prepared to support a decision by the North Carolina Commission to eliminate protected codes for EAS that originate or terminate in the 704 area code.

704 area code. All telecommunications service providers who are parties to this docket and operate in the current 704 area code are required to participate.

The Commission recognizes that implementation of a new area code could be impacted by Year 2000 (Y2K). The Commission issued an Order on June 25, 1999, establishing a regulatory moratorium leading up to, during and immediately following the millennium transition. The Commission has ordered that the stabilization period will be from November 1, 1999, through February 1, 2000. No non-emergency modifications to a local exchange carrier's or interexchange carrier's network and information technology systems will be imposed during the regulatory moratorium. Telecommunications service providers operating in the 704 territory are directed, if necessary, to adjust the current NXX code rationing procedures to reflect any delay in implementation of the new area code due to the regulatory moratorium.

On or before 45 days after the release of this Order, an "Implementation Report" should be filed in this docket for informational purposes. All telecommunications service providers who are parties to this docket shall be responsible for generating the Implementation Report, and the Commission strongly encourages all current holders of NXX codes, and service providers planning to obtain NXX codes, in the current 704 area code to participate. The filing should describe the scope, methods, and estimated costs of the companies' customer education efforts. It should describe the overlay implementation, including the length of the permissive dialing period, and should discuss fully the service providers' plan for elimination of protected NXX codes. It should describe any adjustments that have to be made in implementation plans to account for the Y2K moratorium. It should provide complete information on any other implementation issues. The Commission requests that the implementation plan allow for as long a permissive dialing period as possible, to allow consumers sufficient time to adjust to dialing ten digits for all local calls. The filing should include a calendar of all implementation and customer education activities, up to and including the introduction of the first number with the new area code. The filing should also include drafts of any bill inserts that the companies intend to provide to their customers explaining the overlay and its impacts on customers. Finally, the filing should include the name of one or more persons that the Commission can contact with questions about the Implementation Report, particularly about customer education activities.

The parties are free to manage the production of the Implementation Report as they see fit. The Commission is aware that the NANPA will be facilitating an implementation meeting within 30 days of the receipt of this Order, and suggests that the implementation meeting provides a logical forum for coordination of the effort required to generate the Implementation Report the Commission is requiring. We request the Public Staff to participate in that meeting to represent the using and consuming public.

IT IS, THEREFORE, ORDERED as follows:

1. That a distributed overlay is hereby adopted to provide relief for the current 704 area code in North Carolina.

2. That the practice of "protecting," or not assigning, certain NXX codes in order to preserve current seven-digit inter-NPA dialing shall cease.

3. On or before 45 days after the release of this Order, an "Implementation Report" should be filed in this docket for informational purposes, as described above.

Issued BY ORDER OF THE COMMISSION.
This the 15th day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg091499.04

Commissioner Judy Hunt dissents.

DOCKET NO. P-100, SUB 142

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Proposed Assignment of N11 Dialing Code	)))))	ORDER ALLOWING USE OF 211 AS AN INFORMATION AND REFERRAL NUMBER BY UNITED WAY OF NORTH CAROLINA

BY THE COMMISSION: On June 23, 1999, the North Carolina Utilities Commission (NCUC or the Commission) received a letter from The Honorable Governor James B. Hunt, Jr. requesting that the Commission consider designating the "211" abbreviated dialing code for use as an information and referral number in North Carolina. The Governor stated that such a system would enable North Carolinians to more easily obtain information on available services and volunteer opportunities. He further noted that the United Way of North Carolina is interested in having a 211 system implemented in North Carolina, and has offered to work with state and local government entities and other information providers in creating a system to serve the people of North Carolina.

Service codes such as 211, which are commonly called N11 codes, are used to provide three-digit dialing access to special services. Although the Federal Communications Commission (FCC) has jurisdiction over the North American Numbering Plan, including N11 codes, it has, so far, only recognized 311, 711, and 911 as nationally assigned. In some states, N11 codes that are not assigned nationally may be assigned locally, provided that these local assignments can be withdrawn promptly if a national assignment is made. The United Way also has a petition pending with the FCC requesting that 211 be designated nationally for use solely as an information and referral number. The FCC has taken no action on that petition at this time.

On February 18, 1994, this Commission issued an Order in Docket No. P-100, Sub 119, denying all requests and petitions that the Commission assign N11 codes or that the Commission order any local exchange carrier to assign N11 codes for "commercial information services." The

Commission concluded that the public interest would not be served by making N11 codes available for "commercial pay-per-call information services."

In an Order issued on July 29, 1999, the Commission sought comment on the proposal that the Commission designate 211 for use as an information and referral number in North Carolina. Parties were requested to address in their comments how the current proposal differs from those the Commission considered in the 1994 proceeding, and whether the concerns the Commission expressed in that proceeding regarding N11 assignments remain valid. Comments were received on August 30, 1999, and Reply Comments were received on September 30, 1999.

Comments

The 211 Collaborative.[1] The 211 Collaborative urges the NCUC to designate the 211 abbreviated dialing code for use as an information and referral number for use by the public to access services providing free information and referrals regarding community service organizations. The 211 Collaborative states that there is a demonstrated need for an easy to remember and easy to use dialing code that will enable persons in need to be directed to available community resources. According to the 211 Collaborative, assigning 211 to such services will provide an important adjunct to the codes that have already been assigned to address public needs.

The 211 Collaborative concedes that N11 dialing codes are limited, and states that it is critical that such a finite public resource be allocated to the highest and best possible use. The 211 Collaborative states that there are many urgent human needs not addressed by 911. According to the 211 Collaborative, Information and Referral (I&R) organizations currently providing community resource services on a local basis are presented daily with requests for assistance from people facing threats to life, health, and mental well-being. It states that a call summary prepared by Atlanta's United Way 211 for 1997 indicates that, of the calls received, approximately 7% percent involved immediate shelter needs, 20% involved rental/mortgage assistance needs, 16% involved utility issues, and 9% involved food. The remaining calls presented issues of counseling, medical aid, prescription assistance, physical and sexual abuse, and potential suicide. The 211 Collaborative states that less urgent, but no less important, are situations involving persons needing child care solutions, aging and hospice services, adolescent activities, educational programs, support groups, legal assistance, child and spousal abuse counseling, substance abuse programs, and other services.

According to the 211 Collaborative, I&R organizations across the country connect callers to the information or assistance they need. What is missing, the 211 Collaborative argues, is a uniform approach for efficiently bringing together those in need with those willing to help. In the 211 Collaborative's view, this gap would be filled by assignment of 211 statewide for use by referral services. The 211 Collaborative notes that the FCC has set 311 aside for access to "non-emergency police services," but argues that there remains a strong need for a universal access point for individuals seeking answers to critical needs not appropriately addressed by calling the police. The 211 Collaborative further states that confusion among many toll-free numbers, and the margin for

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[1] The 211 Collaborative consists of the United Way of North Carolina, North Carolina Alliance of Information and Referral Services (AIRS), Triangle United Way, United Way of Greensboro, United Way of Asheville, and the United Way of the Central Carolinas.

error in dialing more digits, create obstacles to their use, especially in urgent situations. Further, a plain local telephone number for community information and referral is difficult to distinguish from the thousands of other local business and human service numbers. The 211 Collaborative also asserts that the proposed use of 211 would alleviate congestion on 911. Personnel staffing 911 centers frequently receive calls regarding problems they have neither the time nor the expertise to address.

The 211 Collaborative states that it anticipates that 211 services will be provided primarily by private, not-for-profit organizations and thus, in most cases, will not rely on governmental funding. In other cases, the private organization and local or state governments may work together to develop and implement 211 as a single access point for available community resources. The 211 Collaborative envisions that each 211 information and referral system will be funded through the local United Way, with additional local, regional, and statewide resources obtained from grants, donations made directly to the system, or product development such as directory on disk or printed information services.

The 211 Collaborative states that the current proposal differs significantly from the proposals considered by the Commission in the 1994 N11 proceeding. The 211 Collaborative notes that, in the 5 1/2 years since the Commission issued its 1994 Order concerning N11 assignment, the FCC has not elected to assert exclusive jurisdiction over N11 assignment. States continue to have the authority to assign N11 codes. Under the current proposal, callers would not pay for calls they would make using the 211 special access code, and no commercial interests are served.

North Carolina Telephone Membership Corporations (NC TMCs).[1] The NC TMCs argue that the 211 proposal would burden smaller systems such as the NC TMCs. In the NC TMCs' view, use of an 800 number could accomplish the same purpose without the additional burden and expense. According to the NC TMCs, the burden would be heavy on sparsely-populated, high-cost areas of service. The NC TMCs join with the comments of the Alliance of North Carolina Independent Telephone Companies in this docket.

The Alliance of North Carolina Independent Telephone Companies (The Alliance). The Alliance states that there are substantial difficulties in the proposed use of the 211 code that render it undesirable. The Alliance states that United Way's goal is achievable through the use of a toll-free number. The Alliance notes that the Commission's jurisdiction over use of an N11 code is subject to preemption by the FCC.

Based on the initial proposal, The Alliance states that it is not clear as to the scope of services that would be made available to North Carolina citizens through the proposed 211 code assignment or what entities would provide those services. Generally, The Alliance believes that the assignment of N11 codes for public use should benefit a large percentage of the population and, if possible, be universally useful. The Alliance also is not sure that the basic benefits of using an N11 abbreviated dialing code, such as ease of dialing the same three numbers anywhere in the geographic region served by the N11 code and the ease of remembering three numbers, would be realized. In contrast to 911 or 411, the use of an N11 accessed information service would require dialing additional digits to receive the desired information, and persons dialing information services would likely have a

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[1] The NC TMCs are composed of Atlantic TMC, Piedmont TMC, Randolph TMC, Skyline TMC, Star TMC, Surry TMC, Tri-county TMC, Wilkes TMC, and Yadkin Valley TMC.

reference telephone number and information menu available to them when they called. The Alliance notes that, in the current docket, it is unclear whether the proposed referral service would have an automated menu (which would require listening to the options and dialing additional digits) or if it would be of such significant priority to users that they would memorize the dialing code. The Alliance states that additional dialing or the need to refer to reference materials in connection with use of the proposed service would diminish or eliminate the benefit of using an abbreviated dialing code to access that service.

Another issue that The Alliance raises is how access, switching, and transmission responsibilities for these calls would be assigned. The Alliance assumes that the proposed service would be provided at one or a limited number of locations in North Carolina. Each call to such a service would require the provision of originating and terminating access, switching and transport service between the point of origin and the point of termination of the call. The Alliance states that, unlike current uses of N11 codes, these activities will span the facilities of every telecommunications provider serving North Carolina residents. Therefore, The Alliance believes that adoption of the N11 proposal would likely require significant efforts by every telecommunications provider in the state to ensure that their systems are capable of working together to properly route 211 calls. The Alliance states that there are too many uncertainties to predict how use of 211 dialing would impact any given telecommunications provider, which raises operational concerns that cannot be resolved without substantially more detail regarding the proposed service and an examination of the technical feasibility of providing 211 direct access.

The Alliance states that, even assuming that the use of 211 abbreviated dialing is desirable, the issue of assignment of cost responsibility for provision of the proposed service remains, and that issue also mitigates against the use of 211 abbreviated dialing for access to the proposed service. The Alliance states that it is unclear as to whether 211 access would be provided at no charge to the customer seeking information and referral or whether such customers or the providers of those services would pay for such access. The Alliance states that significant costs will be incurred both in establishing a system capable of providing statewide direct access to the proposed information service by every telecommunications provider in the state, as well as in receiving and routing calls using this system. The Alliance further argues that, because the population of North Carolina is not distributed evenly throughout the state and the centers that will handle calls under the proposed service will be located in one or only a few locations, the operational burden of handling these calls will not be distributed evenly over all telecommunications companies, but instead will fall disproportionately on just a few companies.

The Alliance states that allowance of cost recovery for providing the proposed 211 access service is necessary from both a legal and a practical standpoint. The Alliance argues that there is no statutory basis for compelling service providers to render 211 direct access service on a statewide basis without compensation, and states that such a system would have constitutional implications, be inconsistent with North Carolina law, and be unlikely to survive judicial challenge. The Alliance states that, legal issues aside, compelling service providers to absorb the costs of providing 211 direct access is a bad idea because it could threaten the efficiency and availability of basic service functions to all customers through the diversion of assets to provisioning 211 access. It would also provide service providers with a positive incentive to neglect 211 service when available assets are taxed because each use of that service constitutes an economic cost to the company. Accordingly, from both a legal and practical standpoint, full cost recovery should be allowed with respect to any implementation of 211 direct access service. It is The Alliance's position that, even if full cost recovery is provided for, establishing such a cost recovery system would be very complicated. Usage of such service would involve functions that are the equivalent of virtually every type of basic telecommunications service currently offered by North Carolina service providers, each of which are governed by different tariffs or price plans, and each type of call is subject to different surcharges and fees. The Alliance states that originating, switching, transporting, and terminating every one of these calls would involve different facilities of different service providers and each would have to be tracked and billed separately. The Alliance states that these factors make designing and implementing a cost recovery system for 211 calls daunting and expensive.

ALLTEL Carolina, Inc. and ALLTEL Communications, Inc. (ALLTEL). ALLTEL notes that a group of nonprofit organizations, including the United Way of America and the Alliance of Information and Referral Systems, has a petition pending before the FCC requesting that 211 be designated for nationwide access to "free information and referral regarding community service and support organizations." ALLTEL recommends that the Commission delay any proceeding on implementing a 211 dialing code on a state level until after the FCC addresses the United Way's petition on a national level, noting that any nationally assigned N11 dialing codes will supersede a state assignment.

National Emergency Number Association (NENA). NENA opposes the implementation of 211 or any other N11 codes. NENA states that its membership is comprised of public safety personnel, local exchange telephone company personnel, and others that are directly associated with providing 911 telephone service and response to 911 calls. NENA states that it and the local exchange telephone companies were instrumental in the Commission's Order in Docket No. P-100, Sub 119 on February 18, 1994, where the Commission denied all requests and petitions for assigning N11 codes. NENA states that, during an emergency situation, people become confused and may dial the wrong number if there are various N11 numbers available. NENA states that, currently, 411 receives calls that should have been 911 calls. NENA asserts that a seven-digit number can be used to accomplish United Way's goal.

North Carolina Payphone Association (NCPA). NCPA opposes the use of the 211 service code as an information and referral number in North Carolina. NCPA states that 211 is currently being used in North Carolina and other states by payphone providers as a customer service and complaint number. Payphone customers dial 211 to report service disruptions and difficulties such as broken payphones and missing directories, and to receive refunds for incomplete calls. NCPA alleges that the payphone industry has expended money and effort to advertise and promote this service as a payphone-specific service and has programmed its payphone equipment to route 211 calls appropriately. Literature, signs, and stickers advertising 211 service have been circulated to inform the public of this service, and public awareness of the 211 system is fairly widespread. It is NCPA's position that changing 211 to an information and referral number would be confusing for customers accustomed to dialing 211 to report payphone service disruptions, and many consumers would continue to dial 211 to attempt to report service disruptions even after such a reassignment had been made.

NCPA alleges that the United Way's N11 proposal also raises unanswered questions, such as: (1) who will pay for this service; (2) whether payphone providers would be required to participate in this service and, if so, whether they will be required to individually program telephones to dial central offices on a city-by-city basis and who will bear this expense; (3) how future requests for N11 service will be handled by the Commission; (4) on what basis the Commission will allocate scarce N11 service numbers to similarly situated applicants in the future; and (5) how the Commission will coordinate its policies with respect to N11 number assignment with the policies of other states to minimize customer confusion over standard N11 calling patterns. In NCPA's view, these practical questions should be balanced against the demonstration of the need for the service, the benefits to be derived from such designation, and availability of the information from other sources such as the Yellow Pages. NCPA's final argument is that Commission action on this proposal would be premature, because of the petition pending at the FCC requesting that 211 be designated nationally for use by the public to access services providing free information and referrals regarding community service organizations.

BellSouth Telecommunications, Inc. (BellSouth). BellSouth supports the assignment of non-designated N11 codes for local commercial use, and specifically supports the assignment of 211 to the United Way of North Carolina.

BellSouth states that N11 service is a local dialing arrangement for delivery of information via voice grade facilities. N11 calls are routed to the serving central office where the call is translated to a seven-digit or ten-digit number designated by the N11 subscriber. According to BellSouth, N11 service can be provided in 1AESS, 5ESS, DMS-100, EWSD, 2BESS, and DMS-10 type offices, and no additional switch facility or ancillary equipment hardware or software requirements are necessary.

BellSouth has made N11 service available as a tariffed, local calling area-based service to information service providers (ISPs) in Georgia, Florida, Louisiana, Tennessee, Alabama, and Mississippi. BellSouth has made N11 codes available under the auspices of the state public service commission in order to ensure non-discriminatory availability and assignment of the resource. BellSouth has made 211 available, and it is currently in use by ISPs, in twelve localities in Florida, Louisiana, and Georgia.

Regarding technical issues, BellSouth alleges that it can assign and activate the 211 code with little technical difficulty because the service is provided using the same network elements which provide local calling. To use the service, the N11 subscriber must obtain a new seven- or ten-digit number, designate an existing non-published seven- or ten-digit number, or change an existing published seven- or ten-digit number to a non-published seven or ten-digit number. The non-published number then serves as the "point-to" number in the transport of the calls for the N11 subscriber. The local calling area of the N11 service subscriber will be the basic local calling area in which it is assigned, as defined by Section A3.5 of the General Subscriber Services Tariff (GSST). The N11 subscriber must be located in the home exchange of the local calling area in which it subscribes to the N11 service. No major technical modifications are needed to provide this service.

In BellSouth's view, it would be appropriate for the Commission to price N11 codes consistent with BellSouth's pricing of such codes in other states. BellSouth's pricing, which is set forth in tariffs filed in its other states, is comprised of a series of elements that generally includes a non-recurring service establishment fee, a per call usage fee (flat fee or per minute of usage) and a minimum usage charge (effective six months after the service is turned up and only applicable if usage drops below a certain point). BellSouth states that, if the N11 subscriber requests monthly reports on the use of the service, BellSouth charges a non-recurring set up fee and a monthly recurring charge for the reports. If the N11 subscriber changes the service (for example, by changing the number to which the calls are terminated), a charge applies to perform the requested change. BellSouth collects the charges from the N11 subscriber. Whether the N11 subscriber chooses to recover them from end-user customers is at the discretion of the subscriber.

It is BellSouth's position that the benefits of making N11 codes available for commercial use outweigh perceived detriments. The availability of three-digit numbers for information services should facilitate the introduction and availability of local information services by making it easier for customers to remember and access those services. Further, BellSouth states that using N11 codes for local purposes does not pose a material detriment to the public interest. N11 code assignments are subject to the condition that the use of such codes can be discontinued should they be needed for a national purpose.

BellSouth argues that the Commission's analysis employed in the 1994 Order on N11 codes is not applicable today. Dialing codes such as N11 have proven to be worthwhile in providing information services to the public. With regard to the Commission's billing and collection concern articulated in 1994, BellSouth states that, as part of its tariff offering, it will record and rate these calls on behalf of the N11 subscriber, and may provide billing on behalf of the subscriber in accordance with the billing and collections services as defined in Section A3.7 of the GSST. The Commission also expressed concern in 1994 regarding public confusion that could result if N11 subscribers are transitioned to other abbreviated dialing codes or to seven-digit numbers. BellSouth alleges that there is no indication that these changes are imminent and points out that, because of United Way's pending petition at the FCC, it is possible that, in the case of 211, no changes would ever occur.

BellSouth states that there are two additional issues that the Commission needs to address. First, it needs to decide which entity will assign the N11 codes. BellSouth proposes that it should continue to be responsible for assigning the codes, and that if there are any problems regarding the assignment, BellSouth can involve the Commission. Pursuant to FCC directives, the assignments will be made on a first come, first served non-discriminatory basis. BellSouth states that it seems unnecessary to require that the Commission be involved in every code request when BellSouth has the experience necessary to allocate codes appropriately. Second, the Commission needs to decide whether N11 codes other than 211 should be opened at this time. BellSouth's comments are applicable to all N11 codes, and BellSouth believes that the benefits that stem from the commercial use of N11 codes will only be multiplied by the use of 511, 711, and 811 in North Carolina.[1]

Carolina Telephone and Telegraph and Central Telephone Company (collectively, Sprint). Sprint does not oppose the concept of assigning the 211 dialing code to a North Carolina community information and referral service, but states some practical concerns. Sprint states that it is unable to meaningfully address the proposal's specific benefits and detriments because so few of its important

[1] As noted above, the FCC has designated 711 nationally for Telecommunications Relay Service (TRS).

details are known. Sprint also notes the petition pending before the FCC regarding 211 assignment, and argues that that is a good reason for being cautious about assignment of 211. Sprint states that significant programming efforts would be required to implement any proposal approved by the Commission, and there is risk that the investment would be lost if the FCC rendered an inconsistent determination.

In Sprint's view, the proposed 211 dialing code assignment is an appealing concept, but it does not have sufficient information regarding plans for such a service in North Carolina to make an informed assessment of the proposal's benefits and costs. Sprint states that proponents should demonstrate their organizational and financial resources to take advantage of a local 211 dialing code assignment before such an assignment is actually made. They should also address which organization would receive the 211 assignment and under what terms and conditions, the manner in which costs would be recovered, and a proposed implementation schedule. Sprint is concerned about being made a party to disputes between charitable organizations regarding the control and use of the dialing code assignment.

Regarding the conclusions reached in the Commission's 1994 Order, Sprint submits that information and referral services calling would better use N11 dialing codes than would commercial pay-per-call services. However, Sprint states, the number of proposed uses for N11 dialing codes exceeds the limited number of such codes. Only 211 and 511 are completely open. Regarding a technical analysis, Sprint states that an information and referral service does not require a 211 dialing code to operate, but that if a 211 code is used, the 211 code must be translated at the switch into a number the local network can understand. Sprint has identified two methods to accomplish this conversion. The first method is for the numbers 2-1-1 to be assigned to specific trunks dedicated to the appropriate local, regional, or statewide calling center. The second method would entail programming the software in the switch to translate the 2-1-1 numbers into the appropriate NPA-NXX-XXXX number. Sprint states that, preferably, this number should be a 1-800 number that could be terminated at a single call center located in the state. Both situations call for nonrecurring programming costs to be incurred at each individual switch. Sprint states that it has 180 exchanges in North Carolina, each with a number of diverse calling plans that will need to be separately addressed during translations. A significant commitment of resources would be required to implement the proposed assignment.

Sprint assumes that callers to the 211 service would not be charged a special fee by the service, and that calls to the 211 dialing code will be billed in the same manner as a 1-800 call or an ordinary local call. Sprint states that the proposal's proponents should confirm these assumptions.

GTE South Incorporated (GTE). GTE states that N11 codes are a scarce national resource, and that they should be used for public interest purposes and should not be assigned without prior FCC approval. There are limited N11 codes and issues will arise over who is eligible for the codes. Selecting a particular organization to be the "benefactor" of these special codes is somewhat problematic from a public policy perspective, GTE argues. A second concern that GTE raises is the potential for public confusion as a result of a number change if the FCC orders the code to be used for a specific purpose on a national basis. GTE notes that the Department of Transportation has requested the use of the 211 code for informational purposes in its proposed "Smart Highways" program. If the FCC issues an order with respect to this code, a transition program would be required to implement new numbers and to educate the public. If the Commission does determine that the proposal to designate 211 as an information and referral number is in the public interest, GTE recommends that an industry-wide process be initiated to analyze the various operational, technical, and expense related issues associated with the implementation of this program.

The Public Staff. The Public Staff recommends that the Commission defer any action pertaining to the assignment of the 211 code until the FCC has ruled on the petitions pending before it pertaining to 211.

Reply Comments

The 211 Collaborative. Regarding the possibility of federal preemption of a local designation of the 211 code, the 211 Collaborative states that it is willing to assume the risk. The 211 Collaborative believes that if a number of states assign 211 for community information and referral services, the FCC would be less likely to preempt such assignments. The Commission should not await a federal mandate from the FCC before taking a progressive step that will benefit the citizens of North Carolina. The 211 Collaborative reiterates that human service resources are vital to many North Carolina citizens and access to those resources should be as easy and convenient as possible. The 211 Collaborative supports GTE's recommendation that an industry-wide process be initiated to analyze the various operational, technical, and expense-related issues associated with the implementation of this program. The 211 Collaborative states that it would willingly participate in such a process.

The Attorney General. The Attorney General supports the United Way's proposal for designating the 211 dialing code for use by the public to access free information and referrals regarding community service organizations. The Attorney General asserts that 211 would provide a consumer-friendly point of access for persons with urgent needs involving shelter, food, and abuse who do not know which organizations to call in order to receive help. The Attorney General notes that the circumstances surrounding Hurricane Floyd provide an example as to why 211 should be designated in such a manner. If 211 had been in place, hurricane victims would have been able to call one short number to obtain help and referrals from a variety of service organizations. The Attorney General states that he understands that 211 service would not rely on government funding and each 211 information and referral system would be funded through the local United Way with additional resources obtained from grants, donations, and product development. The Attorney General further understands that callers would not have to pay for calls made using the 211 access code. The Attorney General argues that, if North Carolina designates 211 for this purpose, the FCC might be encouraged to adopt the United Way's proposal nationally.

The Attorney General does not support use of a toll-free number for information and referrals, stating that is would not be as easy to remember or use, particularly for the elderly. Regarding NCPA's argument that the 211 prefix is currently being used in North Carolina by payphone providers as a customer service and complaint number, the Attorney General submits that public awareness of 211 for use as a payphone service and complaint resource is not widespread among North Carolina consumers and that the use proposed by the United Way would provide a greater benefit to a greater number of citizens.

The Attorney General states that support for the United Way's proposal does not mean that the Attorney General would encourage the Commission to assign non-designated N11 codes for routine commercial use. The Attorney General specifically supports the designation urged by the United Way because the N11 code would be used by non-profit organizations to provide community based services urgently needed by the public.

Carolina Utility Customers Association (CUCA). CUCA does not oppose the assignment of the 211 dialing code to a North Carolina community information and referral service. CUCA is opposed to allocating any of the charges and costs associated with such an assignment and the calls using the assigned dialing code to any party other than the caller or the referral service or any other service provider to whom the call is made (*e.g.*, United Way of North Carolina).

BellSouth. Regarding the possibility of preemption by the FCC, BellSouth agrees that there are situations in which it would behoove the Commission to wait for an FCC decision rather than rendering a decision that would, in all likelihood, be preempted. BellSouth submits, however, that this situation is not one in which the Commission should wait. The United Way recognizes the fact that the FCC may preempt any decision that this Commission might make with respect to 211, but is willing to accept the risk. BellSouth states that FCC preemption also should not pose a risk to telecommunications providers in the state. BellSouth envisions the telecommunications providers recovering all of their costs incurred in providing the N11 service as BellSouth does pursuant to its tariff. Thus, it is the United Way that will incur the costs to implement the service, and the United Way takes the risk if that service is preempted. Nor is BellSouth persuaded by arguments that if the service is implemented and then withdrawn at the FCC's request, customer confusion will result. BellSouth states that such risk is minimized because inherent in United Way's willingness to incur the risk associated with FCC preemption seems to be a willingness to remedy any issues that arise from the preemption. If United Way's proposed service proves successful, it seems likely that if the FCC preempts the 211 designation, United Way will find another means by which to provide the service and will use the means necessary to inform its customer base about that change.

BellSouth also responds to arguments that the Commission should not designate the 211 abbreviated dialing code because such designation may impose costs on the telecommunications provider. BellSouth agrees that designation of the 211 abbreviated dialing code should not result in unrecoverable costs to telecommunications providers. However, as BellSouth understands the means by which the service would be provisioned, cost recovery should not be a concern because all of the costs incurred by the provider would be recovered from United Way or another N11 code subscriber. BellSouth reiterates that it has made N11 service available as a tariffed, local calling area-based service to information service providers in Georgia, Florida, Louisiana, Tennessee, Alabama, and Mississippi. BellSouth states that, if the Commission designates the 211 code to United Way, the Commission should price it consistent with BellSouth's pricing of such codes in other states. The telecommunications provider collects its charges from the N11 subscriber whether or not the N11 subscriber chooses to charge its customers for the service. Regarding billing and collection, BellSouth, as part of its tariff offering, will record and rate calls on behalf of the N11 subscriber, and may provide billing on behalf of the subscriber in accordance with the billing and collections services as defined in Section A37 of BellSouth's GSST. BellSouth asserts that its pricing structure for N11 service should alleviate any concerns on the part of the various providers in this docket about incurring costs to provision the service to United Way.

BellSouth asserts that the benefits of making N11 codes available for commercial use outweigh any perceived detriments. Further, BellSouth argues that the designation of 211 to United Way will not pose a detriment to the public interest by diminishing a scarce resource. Any assignment of an N11 code will be subject to the condition that the use will be discontinued if it is assigned for a national purpose. Therefore, North Carolina will receive the benefit of the use of the N11 code, for whatever time period the code is available, without the risk that it will impair a limited resource. BellSouth does not believe that a toll-free number would be as effective as a three-digit N11 code as an information and referral number. BellSouth states that the likelihood that toll-free, eleven-digit numbers will be forgotten or misdialed is high. A three-digit number for information services should facilitate the introduction and availability of local information services by making it easier for customers to remember and access those services.

BellSouth states that the NCPA's contention that the 211 abbreviated dialing code should not be assigned to United Way because payphone providers are using 211 as a customer service and complaint number should not dissuade the Commission from designating 211 to United Way. BellSouth states that N11 numbers can be designated differently for payphones and for non-coin telephones. The Commission can designate 211 for United Way for use on non-payphone telephones without interrupting the use of 211 by the payphone providers. BellSouth states that its N11 tariff offering specifically exempts payphones from the offering. Therefore, BellSouth argues that the NCPA's concerns should not be relevant to the Commission's decision.

BellSouth responds to The Alliance's comment that a critical issue is how access, switching, and transmission responsibilities for these calls would be assigned. BellSouth states that N11 calls are routed to serving central office where the call is translated to a seven- or ten-digit number designated by the N11 subscriber. No additional switch facility or ancillary equipment hardware or software requirements are necessary to provide N11 service. The local calling area of the N11 service subscriber will be the basic local calling area in which it is defined. No major technical modifications are needed to provide this service. BellSouth envisions that United Way, or any other N11 subscriber, would purchase N11 service from the appropriate telecommunications provider in each local calling area in which the N11 subscriber wished to provision the service. Like 911 or 411 calls, each incumbent local provider will handle the calls for its serving area. Thus, designation of 211 will not require "significant efforts by every telecommunications service provider in the state."

In response to NENA's concern that this designation of 211 would cause confusion among the citizens of North Carolina in an emergency situation, BellSouth states that its experience in Atlanta, Georgia belies any contention that multiple N11 codes will jeopardize the effectiveness of 911. In Atlanta, both the 211 code and the 411 code are being used for commercial purposes, and, to BellSouth's knowledge, the use of these codes has not resulted in any harm to the effectiveness of 911.

BellSouth requests that the Commission: (1) assign the 211 code to the United Way of North Carolina; (2) open the additional N11 codes of 511, 711, and 811; and (3) place the responsibility for assigning N11 codes on BellSouth.

Whereupon, the NCUC makes the following

CONCLUSIONS

The Commission agrees that the "211" code should be designated for use as an information and referral number in North Carolina, as specified in the proposals of the 211 Collaborative and BellSouth. United Way of North Carolina shall be designated the holder of 211 for use in North Carolina, and can implement the abbreviated dialing code through its local offices as it sees fit. The comments of some parties, particularly the 211 Collaborative, are persuasive in their description of what types of information and referral services could be provided with the 211 abbreviated dialing code. Further, the Commission agrees with the Attorney General that, during the recent upheaval caused by Hurricane Floyd, citizens in the hardest-hit areas of the state would have been well-served by an abbreviated dialing code for information and referral services. The record demonstrates that the proposed use of the 211 dialing code has the potential to benefit many North Carolina citizens by increasing awareness of non-emergency, but nevertheless vital, services.

The Commission shares the concern, expressed by some commenters, regarding the possibility of a local 211 assignment being upset by a later inconsistent designation for 211 by the FCC. However, given the potential benefits of the designation, and the willingness of the 211 Collaborative to assume the risk of a later inconsistent designation, the Commission is persuaded to move forward on a local designation of 211. The Commission stresses that, should this assignment be preempted by a conflicting designation by the FCC, it would be the Commission's hope that the N11 subscriber, United Way, would take steps to alleviate public confusion and provide alternative access to information and referral services. Indeed, it seems unlikely that the United Way of North Carolina could do otherwise.

The Commission further believes that BellSouth's proposed structuring of the 211 service is reasonable. Specifically, the incumbent local exchange carrier in each local calling area should make the service available as a tariffed, local calling area-based service. Those incumbent local exchange carriers that are subject to our jurisdiction are required to implement this service. Those incumbent local exchange carriers that are not subject to our jurisdiction are requested to do so. BellSouth describes its proposed pricing mechanism, which it has used in other states and is set forth in tariffs filed in those other states. As noted above, the pricing mechanism includes a series of elements including a non-recurring service establishment fee, a per-call usage fee, and a minimum usage charge. There are additional charges if the N11 subscriber requests monthly reports on the use of the service, or if the N11 subscriber changes the service. BellSouth collects the charges from the N11 subscriber (in this case, United Way), and the N11 subscriber chooses whether to recover them from end-user customers. The Commission orders that a similar pricing mechanism be developed for the 211 service in North Carolina, and that the relevant tariffs be filed with the Commission and with the Public Staff within 60 days of the date of this Order.

The Commission also finds that BellSouth has adequately responded to concerns by other commenters about technical difficulties associated with the proposed use of the 211 code. The Commission is persuaded by BellSouth's arguments that it is technically possible for carriers to provide this abbreviated dialing service in a manner that imposes little additional technical requirements on telecommunications carriers, using the same network elements which provide local calling. As described by BellSouth, in other states where BellSouth offers this service, N11 calls are routed to the serving central office where the call is translated to a seven- or ten-digit number designated by the N11 subscriber. BellSouth states that no additional switch facility or ancillary equipment hardware or software requirements are necessary to provide N11 service. The local calling area of the N11 service subscriber will be the basic local calling area in which it is defined. The Commission agrees that the United Way should purchase N11 service from the appropriate telecommunications provider in each local calling area in which the United Way wishes to provision the service, and each incumbent local provider will handle the calls for its serving area.

Regarding the issues raised by THE NCPA and the use of 211 by payphone service providers, the Commission finds that BellSouth has proposed a reasonable compromise. The designation in this Order of 211 for use by the United Way of North Carolina shall apply only for use on non-payphone telephones. Current uses of 211 by payphone providers can continue uninterrupted. BellSouth notes that, in other states, its N11 tariff offering specifically exempts payphones from the offering. The Commission requests that payphone providers remain apprised of the process of United Way's implementation of 211 as an abbreviated dialing code as an information and referral number. If necessary, payphone providers should increase customer education and advertising on pay telephones so that, once the 211 information and referral number is in place, users of pay telephones will not try to dial 211 for information on services and volunteer opportunities.

The Commission is persuaded that steps can be taken to reduce any confusion on the part of North Carolina citizens regarding 911, which is the proper abbreviated dialing code to call in an emergency. The Commission requests the United Way to involve and educate the emergency public safety personnel, local exchange telephone company personnel, and others that provide 911 telephone service and response to 911 calls regarding 211 implementation.

The Commission declines at this time to make any determinations regarding other N11 codes. The Governor's proposal was specific and involved only one code, 211. The record built in this proceeding primarily pertains to the 211 code and its proposed use as an information and referral number. The Commission continues to recognize the scarcity of N11 codes. They should only be put to uses that will benefit a high number of North Carolina citizens. If and when it is necessary, the Commission will consider specific proposed uses of other N11 codes.

The Commission supports GTE's recommendation that an industry-wide process be initiated to analyze any operational, technical, and expense-related issues associated with the implementation of the 211 abbreviated dialing code service, and appreciates the 211 Collaborative's willingness to participate in such a process. At this time, the Commission will not mandate the formation of an Industry Task Force or Working Group to address 211 issues, because it seems that, as proposed by BellSouth, the implementation of the service should be fairly straightforward. However, the Commission strongly encourages industry members to work together and communicate with one another to resolve any implementation issues that may arise. By this Order, the Commission is requiring that the incumbent local providers subject to our jurisdiction submit reports to the Commission regarding their progress in implementing the 211 service within 60 days of the date of this Order. Because of the important potential benefits afforded by the 211 service, the Commission requests the carriers to move as quickly as possible in implementing this service.

IT IS, THEREFORE, ORDERED as follows:

1. The 211 abbreviated dialing code is designated for use as an information and referral number in North Carolina, as specified in the proposals of the 211 Collaborative and BellSouth. The United Way of North Carolina shall be designated the holder of 211 for use in North Carolina.

2. The incumbent local exchange carrier in each local calling area shall make the 211 service available as a tariffed, local calling area-based service. The relevant tariffs shall be filed with the Commission and the Public Staff within 60 days of the date of this Order.

3. The United Way should purchase N11 service from the appropriate telecommunications provider in each local calling area in which the United Way wishes to provision the service, and each incumbent local provider will handle the calls for its serving area.

4. The designation in this Order of 211 for use by the United Way of North Carolina shall apply only for use on non-payphone service provider telephones.

5. The incumbent local providers shall submit reports to the Commission regarding their progress in implementing the 211 service within 60 days from the date of this Order.

6. That the Chief Clerk shall mail a copy of this Order to all local exchange telephone companies, all telephone membership corporations, all interexchange carriers, all companies with applications for authority to operate as intrastate, local or long distance carriers, the Alliance of North Carolina Independent Telephone Companies, the North Carolina Payphone Association, the Carolina Utility Customers Association, Inc., the Carolina Industrial Group for Fair Utility Rates, the Public Staff, and the Attorney General.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

RG111899.03

DOCKET NO. P-100, SUB 144

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of BellSouth Telecommunications, Inc., Petition for a Generic Proceeding Concerning Inter-Carrier Compensation for ISP Traffic	)))	ORDER DENYING PETITION FOR GENERIC PROCEEDING

BY THE COMMISSION: On October 13, 1999, BellSouth Telecommunications, Inc. (BellSouth), filed a Petition to Establish a General Proceeding to consider an interim inter-carrier compensation mechanism for traffic delivered to Internet service providers (ISPs). BellSouth argued that, although the Federal Communications Commission (FCC) intends to adopt rules regarding such compensation, it is unclear when the FCC will do so. In the meantime, the issue of what compensation should be paid for ISP-bound traffic continues to be a matter of dispute between local exchange carriers and competing local providers (CLPs). Since this is a matter of industry-wide significance, the Commission should address the issue in a generic proceeding rather than on a case-by-case basis in individual arbitrations. Specifically, BellSouth asked the Commission to grant its Petition to establish a generic proceeding to consider an interim inter-carrier compensation mechanism for ISP-bound traffic and that the ISP compensation issue raised in pending arbitrations be decided in the context of the generic proceeding.

BellSouth cited as precedent the Commission's decision in Docket No. P-582, Sub 6, concerning ICG Telecom Group, Inc.'s (ICG's), arbitration with BellSouth where it was ruled that certain issues related to unbundled network elements (UNEs) should not be considered within that docket--or, by extension, any other arbitration docket--but should rather be considered in the context of Docket No. P-100, Sub 133d.[1] The Commission cited the risk of variant results and the fact that the status of UNEs was in flux. The same reasoning applies here. BellSouth also emphasized the necessity of proper incentives in the design of compensation mechanisms and argued that these do not exist at the present time where there is considerable imbalance between what BellSouth is expected to pay and what BellSouth receives in reciprocal compensation for non-ISP traffic. The FCC itself has recognized the need for economic efficiency and rational pricing policies in this area. BellSouth also warned that making decisions on reciprocal compensation through arbitrations creates a "pick and choose" problem, where other CLPs can choose the results of one arbitration; and thus the effects of one decision can multiply into the future.

Public Staff Response

On October 21, 1999, the Public Staff filed a Response to Petition to Establish General Proceeding. After noting the recent history of the ISP compensation issue at the Commission, the Public Staff opined that the compensation mechanism applicable to ISP-bound traffic under existing agreements may have resulted in distortions which are inconsistent with the goals of the Telecommunications Act of 1996 (TA96). The Public Staff stated its belief that a proper resolution of this issue with respect to new or renegotiated interconnection agreements will require additional information beyond that already presented in Docket Nos. P-582, Sub 6, and P-500, Sub 10. Citing the magnitude of billings under the current compensation mechanism, the controverted nature of this issue, and uncertainty as to when the FCC will adopt final rules (which will likely be prospective), the Public Staff stated its agreement with BellSouth that a general proceeding should be held to consider an interim mechanism. In the meantime, the Public Staff recommended that the Commission establish an interim reciprocal compensation mechanism rate for ISP-bound traffic in the ICG/BellSouth and the DeltaCom/BellSouth arbitrations based on a holding time of 20 minutes (the proposal originally

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[1]A similar decision was reached in Docket No. P-500, Sub 10, concerning UNE issues in the arbitration between ITC^DeltaCom Communications, Inc. (DeltaCom), and BellSouth.

presented by ICG in its arbitration) and BellSouth's estimated volume of ISP-bound traffic, subject to true-up pending the outcome of the general proceeding.

ICG Response

On October 27, 1999, ICG Telecom Group, Inc. (ICG) filed its Response to BellSouth's Petition for a Generic Proceeding. ICG stated that the Commission should deny BellSouth's petition for a generic proceeding for several reasons.

First, ICG contended that deferring a decision in the arbitration proceedings now pending (Docket No. P-582, Sub 6, ICG/BellSouth and Docket No. P-500, Sub 10, ITC^DeltaCom/BellSouth) on the ISP compensation issue would be highly prejudicial to ICG and to other CLPs and would be detrimental to North Carolina consumers. There is no reason to delay resolution of the issue in any pending arbitration, particularly so in ICG's case given the eleventh-hour nature of BellSouth's Petition. Such a deferral would merely extend indefinitely the current period of uncertainly regarding reciprocal compensation and would deprive ICG of its statutory entitlement to have arbitration issues resolved within the time specified in the Act. If BellSouth were going to raise the issue of a generic proceeding, it should have done so at the outset of the arbitration proceedings, but it did not do so. On the contrary, BellSouth witness Varner testified that there was no reason for the Commission even to address the issue until the FCC had adopted a federal rule.

ICG distinguished this issue from the unbundled network element issue which the Commission did put into a generic docket. That decision came at the beginning of the arbitration when the parties had expended little time or expense on litigating the issue. Moreover, the deferral was to an already existing and ongoing docket. The Commission can easily address the issue of variant results by requiring that if a generic proceeding is initiated, the outcome will be applied prospectively to existing interconnection agreements. Alternatively, the Commission could order that the result of the ICG arbitration would be controlling in other arbitrations, unless a party can demonstrate good cause otherwise. BellSouth has already had two opportunities to present its viewpoint on reciprocal compensation at the two arbitrations; it should not be entitled to a third.

Finally, ICG maintained that resolution of the ICG arbitration need not be delayed even if the Commission believes a generic proceeding is warranted by the simple expedient of having a change of law section included in their Interconnection Agreement giving explicit recognition that the terms of the Agreement will be modified prospectively by the outcome of the generic proceeding. With respect to the Public Staff's proposal, ICG conceded that it has merit but does not go far enough. The Public Staff has proposed an alternative compensation mechanism similar to that offered by ICG in response to the Commission's call for proposals with the important difference that the Public Staff would apply the rate derived by the ICG proposal only to ISP-bound calls. This results in two rates--one for regular calls and one for ISP-bound calls--and there would be a true-up once a permanent rate is established. This is unnecessarily complex. By contrast, ICG proposed a single rate for all traffic, utilizing a conservative assumption regarding call length (20 minutes) to avoid the need to engage in the time-consuming analysis of actual call patterns or questionable methods of estimating traffic patterns. This would eliminate the need for a true-up once a permanent rate is established in the wake of the FCC's consideration of the issue.

Carolina, Central and Sprint Comments

On November 15, 1999, Carolina Telephone and Telegraph Company, Central Telephone Company, and Sprint Communications Company, L.P. (collectively, Sprint) filed comments in response to BellSouth's Petition. Sprint opposed the generic proceeding because the Commission has already addressed and ruled upon the fundamental issue raised by the Petition in several prior orders–namely, how should ISP traffic be treated for the purposes of reciprocal compensation? The most recent expression of the Commission's viewpoint is to be found in Docket No. P-582, Sub 6 (ICG/BellSouth) where the Commission instituted an interim inter-carrier compensation mechanism for those companies and noted several factors that made developing an alternative rate impractical.

WHEREUPON, the Commission reaches the following

CONCLUSION

After careful consideration, the Commission concludes that it should deny BellSouth's Petition to establish a generic proceeding to consider an interim inter-carrier compensation mechanism for dial-up ISP traffic.

The first reason for denying BellSouth's Petition is that establishing a generic docket at this time would be a substantial misallocation of the Commission's and the parties' resources. The second reason is that the Commission believes that it has already established an appropriate template for an interim inter-carrier compensation mechanism by its decision in Docket No. P-582, Sub 6 involving the ICG/BellSouth arbitration.

The misallocation of resources would occur because the FCC, having declared ISP traffic to be primarily interstate, has undertaken subsequent proceedings with a view toward providing guidance as to how such traffic should be compensated. Anything the Commission does now must therefore conform to what the FCC ultimately chooses to do. This subject is a highly contested one, and it does not appear to be judicially efficient to conduct a major generic docket while awaiting the FCC decision, simply to have to do it all over again once the FCC has rendered a decision. As noted in the ICG/BellSouth Recommended Arbitration Order, we must take into account the "complexity of the task of arriving at a separate interim rate for ISP traffic, the uncertainly as to the substance of the FCC's future decision, and the relative shortness of time in which any interim proposal would be in effect" in making this decision. In light of these parameters, the better course would be to await the results of the FCC decision.

The second reason for waiting on a generic docket is that the Commission already has an interim inter-carrier compensation mechanism, based on UNE rates and subject to true-up pursuant to Commission implementation of the FCC decision, that it established in Docket No. P-582, Sub 6.[1]

[1]The interim inter-carrier compensation level is at the same rate as and tracks precisely the rate for reciprocal compensation for local traffic. However, in deference to the FCC's ruling that such dial-up ISP traffic is not local, the Commission was careful not to continue to denominate such traffic as local, although it shares the same rate as reciprocal compensation for local traffic. That is why compensation for ISP traffic is called an "interim inter-carrier compensation mechanism" rather than "reciprocal compensation."

Since the compensation mechanism is based ultimately on the final UNE rates, it is likely to be more cost-based. Since it is subject to true-up, it is to a certain extent as though the ultimate FCC decision already applies. While the Commission acknowledged that this approach may not be perfect, it does appear to be the one that does the least harm to the companies and to the public interest in a competitive marketplace without prejudging the issue while we await further enlightenment from the FCC.[1]

Finally, although the Commission believes that instituting a generic proceeding on an interim inter-carrier compensation mechanism for ISP traffic would not be the best and wisest course of action at the present time, the Commission does believe that there is a strong likelihood that such a proceeding to arrive at a final inter-carrier compensation mechanism for ISP traffic would be a very good idea after the FCC has ruled and will be receptive to this when the time is ripe.

IT IS, THEREFORE, ORDERED that BellSouth's October 13, 1999, Petition to Establish a General Proceeding in this docket be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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[1] Under the general procedures adopted by the Commission for use in arbitration proceedings, interested parties such as BellSouth and the Public Staff may, if they choose to do so, file objections to the interim inter-carrier compensation mechanism adopted by the three-member Commission Hearing Panel in Docket No. P-582, Sub 6. Those objections would then be considered by the Full Commission and the Full Commission would have the discretion to address the issue of the appropriate interim inter-carrier compensation mechanism for ISP traffic and decide to either affirm or change the decision contained in the BellSouth/ICG Recommended Arbitration Order. The availability of this procedure further mitigates against initiation of a generic proceeding by the Commission.

DOCKET NO. R-100, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision/Repeal of Certain Rules Pertaining to	)	ORDER AMENDING
Railroads in the Rules and Regulations of the	)	RULES AND
North Carolina Utilities Commission	)	REGULATIONS

BY THE COMMISSION: On September 4, 1998, the General Assembly of North Carolina ratified House Bill 1094 which repealed obsolete or preempted provisions of the General Statutes affecting railroads, recodified certain railroad statutes, and made conforming and clarifying changes. 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 <u>Chapter 1, Practice and Procedure</u>, <u>Chapter 2, Motor Carriers</u>, <u>Chapter 3, Railroads</u>, and <u>Chapter 4, Filing of Transportation Tariffs</u>.

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, Chapter 3, 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, Chapter 3, and Chapter 4 be, and the same are hereby, revised/repealed in accordance with Appendix A attached hereto and make a part hereof, effective upon the date of this Order.

2. That a copy of this Order shall be mailed by the Chief Clerk to all railroads formerly regulated by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the _9th_ day of March, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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APPENDIX A

Rule R1-14. Repealed

Rule 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, and common carriers by water. Where prescribed by the forms furnished or approved by the Commission, such public utilities shall make such annual reports in accordance with the classification of such utility as prescribed by the instructions for said forms; to wit, Class A, Class B, or Class C utility companies, or other classifications, for the respective utility services. All operating data, financial statistics, and other accounting and financial information required for said form shall be furnished in accordance with the respective Uniform System of Accounts prescribed for the said respective utility services, unless otherwise specifically provided by the Commission. The Chief Clerk shall, immediately upon the filing of any annual report, transmit the same to the Public Staff for analysis and approval.

(f) Motor carriers will be in compliance with the provisions of this rule insofar as it requires separations or allocations provided they separately show in their respective annual reports the gross revenue and total operating revenue deductions for intrastate operations in North Carolina, the resulting intrastate operating ratio before and after taxes for North Carolina, and the underlying basis for all related allocations or separations in sufficient detail to permit analysis by the Commission.

Rule R2-25. Assignment of identification numbers.

(d) Repealed.

Rule R2-35. Interchange by motor freight carriers of intrastate traffic.

(b) All common carriers of property by motor vehicle operating in intrastate commerce in North Carolina, whether regular route or irregular route common carrier, *may* establish through routes and joint rates and interchange intrastate traffic with any and all common carriers of property by motor vehicle, express, or water, with respect to traffic which either originates at or is destined to points in North Carolina, such interchange of traffic to be made pursuant to agreements between the participating carriers therein, and notice of, and the effectiveness of said agreements shall be given by the making of appropriate publication in the carrier's tariffs.

GENERAL ORDERS - RAILROAD

Chapter 3. Railroads.

Rules R3-1. through R3-10. Repealed

Rule R4-12. Uniform rates, procedure for approval of joint rate agreements among carriers.

(a) (3) Whether applicant and each carrier on whose behalf the application is filed is a carrier by motor vehicle, or water, or pipe-line company.

DOCKET NO. E-2, SUB 733

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Power & Light Company for a Certificate of Public Convenience and Necessity to Construct Approximately 800 MW of Combustion Turbine Capacity in Rowan County, North Carolina, and Approximately 800 MW of Combustion Turbine Capacity in Richmond County, North Carolina	)	ORDER GRANTING CERTIFICATES

HEARD: Thursday, August 12, 1999, at 9:30 a.m., in the Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Jo Anne Sanford, Presiding, and Commissioners Robert V. Owens, Jr. and J. Richard Conder

APPEARANCES:

For Carolina Power & Light Company

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Deputy General Counsel
Post Office Box 1551
Raleigh, North Carolina 27602-1551

For Carolina Utilities Customers Association, Inc.

James P. West, West Law Offices, P.C., Suite 1735, 934 Fayetteville Street Mall, Raleigh, North Carolina 27601

For Piedmont Natural Gas Corporation

James H. Jeffries IV, Amos Jeffries & Robinson L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For the Using and Consuming Public

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

Leonard G. Green, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629

For the Carolina Industrial Group for Fair Utility Rates

Ralph McDonald, Bailey & Dixon, L.L.P., 2500 Two Hanover Square, Post Office Box 1351, Raleigh, North Carolina 27602-1351

BY THE COMMISSION: On November 17, 1998 pursuant to Commission Rule R8-61, Carolina Power & Light Company filed its Preliminary Plans to Construct 1000 MW of Combustion Turbine Generating Capacity in Rowan County.

On January 12, 1999, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene. By order dated January 21, 1999, the Commission allowed CUCA to intervene.

On February 17, 1999, CP&L filed its Amended Preliminary Plans to Construct approximately 800 MW of Combustion Turbine Generating Capacity in Rowan County and approximately 800 MW of Combustion Turbine Generating Capacity in Richmond County.

On March 19, 1999, CP&L filed its Application for Certificates of Public Convenience and Necessity to Construct Five, 160 MW (a total of 800 MW) Combustion Turbine Generators in Rowan County, North Carolina and Five, 160 MW (a total of 800 MW) Combustion Turbine Generators in Richmond County, North Carolina.

On March 25, 1999, Carolina Industrial Group for Fair Utility Rates (CIGFUR) filed a Petition to Intervene. By order dated March 30, 1999, the Commission allowed CIGFUR to intervene.

On June 8, 1999, the Commission issued an order requiring publication of notice and scheduling hearings on July 7, 1999 for public witnesses in the cities of Salisbury and Rockingham, North Carolina and an evidentiary hearing for August 12, 1999 in Raleigh, North Carolina. The notices were duly published.

The hearings for public witnesses were held as scheduled on July 7, 1999.

On July 9, 1999, Piedmont Natural Gas Company (Piedmont) filed a Petition to Intervene. By order dated July 14, 1999, the Commission allowed Piedmont to intervene. On July 16, 1999, the Public Works Commission of the City of Fayetteville (PWC) filed a Petition to Intervene. By order dated July 28, 1999, the Commission allowed PWC to intervene. On July 20, 1999, Transcontinental Gas Pipe Line Corporation (Transco) filed a Petition to Intervene. By order dated July 27, 1999, the Commission allowed Transco to intervene. On July 22, 1999, the Attorney General filed its Notice of Intervention.

On July 27, 1999, Piedmont filed a letter of their decision not to file testimony at this time.

On July 27, 1999, the Public Staff filed a Motion for Extension of Time to File their testimony, until July 30, 1999. On July 28, 1999, the Public Staff's Motion was granted. On July 30, 1999, the Public Staff filed the Joint Testimony of Michael C. Maness, John Robert Hinton and Thomas S. Lam.

The evidentiary hearing was held on August 12, 1999, as scheduled. CP&L presented the testimony of Verne B. Ingersoll, II. The Public Staff presented the joint testimony of Michael C. Maness, John R. Hington, and Thomas Lam. No other witnesses were presented.

Based on the foregoing, all the evidence admitted during the hearing and the entire record of this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. CP&L is a public utility subject to the jurisdiction of the Commission.

2. CP&L is required to secure and maintain adequate and reliable resources to meet the anticipated demand for electricity in its assigned service territory.

3. CP&L's most recent demand and energy forecasts indicate that unless CP&L adds approximately 1600 MW of peaking capacity to its system by the summer of 2003, its capacity margin will fall to a negative 1.4 percent and CP&L will not be able to reliably meets its customers' electricity needs.

4. CP&L's need for additional generating capacity is caused by both normal load growth within its assigned service territories in North and South Carolina as well as certain contractual commitments made by CP&L to provide wholesale power to the North Carolina Electric Membership Corporation and the South Carolina Public Service Authority, also known as Santee Cooper, with reliability equivalent to that provided to CP&L's retail customers.

5. It is reasonable and appropriate to issue Certificates of Public Convenience and Necessity for the construction of the electric generating facility additions proposed by CP&L in Richmond and Rowan Counties. The rate making treatment to be afforded these resources will be addressed in subsequent proceedings when CP&L seeks cost recovery of these facilities.

6. CP&L should fully consider the wholesale market for future generation resource additions that will be used in whole or in part to serve retail customers, whether by a formal request for proposals or other measures that ensure a complete evaluation of the market.

7. CP&L shall ensure that its retail electric customers will not be disadvantaged in any manner, either from a quality of service or rate perspective, as a result of CP&L's participation in the wholesale power market.

8. CP&L and Piedmont Natural Gas Company should negotiate the rates, terms and conditions with respect to the delivery of natural gas to the Rowan County facility.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding is essentially informational, procedural, and jurisdictional in nature and is not controversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

This finding of fact is based upon G.S. §§ 62-32, 62-42 and 62-110.1 and Commission Rule R8-60. These statues and rule require electrical utilities, such as CP&L, to secure and maintain adequate resources to meet the anticipated demand for electricity in their assigned territories.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 & 4

These findings are based on the forecasts contained in CP&L's most recent Integrated Resource Plan, CP&L's Application for Certificate of Public Convenience and Necessity (the Application) filed on March 19, 1999, the testimony of CP&L witness Verne B. Ingersoll, II, and the testimony of Public Staff witnesses Michael C. Maness, John R. Hinton and Thomas S. Lam.

CP&L witness Ingersoll explained that all utilities require a margin of generating capacity above the capacity used to serve expected load in order to assure reliable service. Generating equipment requires periodic outages to perform maintenance, refuel nuclear plants and repair failed equipment. At any given time during the year, some plants will be out of service and unavailable for these reasons. Adequate reserves must be available to provide for this unavailable capacity and for higher than projected peak demand due to forecast uncertainty and abnormal weather. In addition, some capacity must be available as operating reserves to maintain the balance between supply and demand on a moment to moment basis. To provide an adequate margin of generating capacity, CP&L uses a target capacity margin of 13% to determine the need for generating additions. Capacity margin is defined as a utility's total generating capability minus peak demand divided by total generating capability. Mr. Ingersoll explained that reliability analyses show that for CP&L, a target capacity margin of 13% is appropriate for scheduling generating capacity additions and will provide reasonable assurances that CP&L will have sufficient capacity to meet its customers' needs. No other party challenged CP&L's targeted planning capacity margin of 13%.

According to CP&L's Application, the total generating capability of CP&L's existing electric system is 11,701 MW. For the period 1993 through 1998, CP&L's summer peak load grew by almost 1200 MW to a summer peak demand of 10,759 MW. For the 1993-1998 time period, load growth averaged 234 MW per year. CP&L's projections (based on normal weather) for the period 1998 to the year 2003 show summer peak demand will grow by an average of approximately 414 MW a year to a summer peak demand in the year 2003 of over 12,831 MW. Planned power purchases and generation additions previously approved by the Commission will raise CP&L's generating capability by the summer of 2002 to 12,816 MW (only 323 MW more than CP&L's projected peak demand). CP&L's generating capability then drops to 12,653 MW in 2003 upon the expiration of certain power purchases.

CP&L witness Ingersoll explained that the 414 MW average annual projected increase in CP&L's summer peak demand is driven by both normal load growth within CP&L's assigned territory as well as new firm long-term wholesale contracts CP&L has entered into with Santee Cooper and the North Carolina Electric Membership Corporation (NCEMC) to provide 650 MW of peaking capacity by the summer of 2001. Approximately 284 MW of the 414 MW annual increase is attributable to normal load growth. The remaining 130 MW is driven by CP&L's commitments to Santee Cooper and NCEMC.

CP&L's revised Rule R8-61 filing explained that in the Southeastern Electrical Reliability Council's 1998 Reliability Assessment, it found that capacity margins would fall below 10% for the Southeast region by the year 2000 unless additional generating capacity was built. These lower capacity margins in the Southeast and other events throughout the nation, including the Midwest during the summer of 1998, demonstrate that the rapid economic growth in the Southeast and corresponding rapid growth in electric demand require that new electric generating capacity be constructed in this region. No other party to this proceeding challenged CP&L's forecasts.

As demonstrated by Table 3-3 of CP&L's Revised Rule R8-61 Preliminary Plans for Construction, unless CP&L adds additional generating capacity, its capacity margin will fall to 5.2% in the year 2001, 2.5% in the year 2002, and a negative 1.4% in the year 2003. None of the parties to this proceeding challenged CP&L's projections and calculations in this area.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 & 6

These findings are based upon CP&L's Application, the testimony of CP&L witness Ingersoll and the testimony of the Public Staff panel of witnesses. Mr. Ingersoll testified that with regard to the construction of peaking capacity, simple cycle combustion turbines are the most cost effective resource. As explained in CP&L's Revised Rule R8-61 Filing, combustion turbines are the most economical and reliable peaking resource available. The analysis described in Chapter 5 of CP&L's 1995 IRP shows that for peaking capacity purposes combustion turbines retain a total cost advantage over other resources. No other party challenged the cost effectiveness of combustion turbines for supplying peaking generation.

To increase CP&L's capacity margin to an appropriate level, CP&L witness Ingersoll and the Public Staff witnesses explained that CP&L proposes to construct five 160 MW dual fueled combustion turbine generators at a site located in Rowan County, North Carolina approximately nine miles west of Salisbury on U. S. Route 70 and five 160 MW dual fueled combustion turbine generators at a site in Richmond County on the east side of State Road 177 near the intersection of State Route 1990, approximately three miles south of the town of Hamlet. These turbines will be primarily fueled by natural gas, however they will be capable of running on fuel oil if natural gas is not available during certain times of the year. CP&L proposes to install the five units totaling approximately 800 MW at the Rowan County site to be operational by the summer of 2001. With regard to the Richmond County site, CP&L plans to install two units totaling 320 MW to be operational by the summer of 2001. An additional three units, totaling approximately 480 MW, will be installed and in operation by the summer of 2002, bringing the total at the Richmond site to five units with a combined rating of approximately 800 MW. Both the Richmond and Rowan County sites will be operational as peaking resources and are expected to run about 1000 hours per year.

Mr. Ingersoll explained that there were five key factors CP&L considered in selecting these sites. They were: (1) the availability of adequate natural gas; (2) the proximity to adequate electrical transmission facilities; (3) the ability to obtain air permits for the facilities; (4) the availability of adequate water; and (5) the receptiveness of the local community to the facility. Both the Rowan and Richmond sites meet all of these criteria. In particular, these projects will be welcomed by the local community, as indicated by the resolutions passed by the local governmental agencies in Richmond and Rowan Counties which were submitted as exhibits (Ingersoll Exhibit No. 2) into evidence. No other parties challenged the sites selected and proposed by CP&L.

The addition of the generating capacity proposed by CP&L will increase its capacity margin to 12.8% for the year 2001, 13.3% for 2002, and 10% for 2003. No other party challenged CP&L's projections regarding the ability of these generators to meet CP&L's generation resource requirements.

The Public Staff panel testified that the Public Staff does not oppose the granting of the certificates requested by CP&L in this proceeding, given CP&L's overall reserve margin, the commitments it has made to serve native and certain off-system load, and the necessity to have new capacity operational by the summer of 2001. However, the Public Staff panel also testified that the Public Staff is concerned about what it perceives as CP&L's apparent step away from explicit consideration of the wholesale market as a source of future generating capacity.

The Public Staff panel testified that there are benefits that can be obtained by looking to the wholesale market for generation resources, using as examples the certificate recently issued to an independent power producer to construct a generation facility to provide power to Duke Power Company and the contract recently signed by CP&L with an independent power producer for 500 MW of capacity. Based on these potential benefits, the Public Staff testified that it believes that utilities regulated by the Commission should make every effort to look to the wholesale market as a possible source of capacity and energy to serve their customers.

The Public Staff panel further testified that utilities should be aware that the Commission expects them to consider the wholesale market for system capacity needs. However, the Public Staff indicated that the short time frame between a certificate application and the necessary commencement of construction of a generation facility makes it virtually impossible for the Commission to require a utility to explore alternatives to a facility for which a certificate has already been requested. Therefore, the Public Staff recommended that the Commission include in its order in this docket a requirement that CP&L fully consider the wholesale market for future increments of retail capacity needs, whether by formal request for proposals (RFP) or other measures that ensure a complete evaluation of the market.

CP&L witness Ingersoll explained that CP&L had surveyed the wholesale power market through four RFPs since 1996, with the most recent being a RFP for 800 MW issued in April of 1997. This RFP was for peaking capacity intended to meet load growth for the years 2000 and 2001. Mr. Ingersoll further explained that CP&L had received 11 responses to this solicitation. CP&L had accepted three bids, however, two of these bidders, representing approximately 500 MW, subsequently withdrew their bids and declined to go forward with their commitments. This placed CP&L in a difficult position because CP&L had been relying upon these purchases to meet customer demand for electricity and CP&L did not have time to conduct additional solicitations. Fortunately, CP&L was able to reopen negotiations with the remaining bidder and increase the capacity of its bid, and on December 2, 1998 a contract was signed for approximately 500 MW. CP&L was able to replace most of the remaining shortfall by constructing approximately 300 MW of new generating capacity itself, the costs of which were comparable to the withdrawn bid prices. Mr. Ingersoll explained that this experience provided CP&L with a thorough knowledge of the market price of peaking capacity and energy, and, from a reliability perspective, emphasized the importance of owning generation.

Mr. Ingersoll then explained that CP&L had not decided whether it would use an RFP to select its next resource addition. He further explained that CP&L believes that direct, one-on-one negotiations with potential suppliers of new capacity and/or energy produces more timely, more consistent and better results than RFPs. Witness Ingersoll then testified that CP&L understands that the Public Staff prefers the use of RFPs and that as a result, CP&L tries to strike a balance between the use of RFPs and one-on-one negotiations with suppliers.

It was CP&L's position that its experience in the wholesale market as a result of its 1997 RFP and CP&L's expertise and experience in negotiating directly with combustion turbine vendors ensures that the combustion turbines CP&L seeks to construct as a result of this proceeding are equivalent to or better than those that would have been procured through a formal request for proposals.

The Commission has carefully considered the evidence presented by CP&L and the Public Staff on both the need for the facilities under construction in this docket and the appropriate utilization of the wholesale market as a potential source of new capacity. Based on the evidence presented, the Commission concludes that it is reasonable and appropriate to issue certificates of public convenience and necessity for the construction of the electric generating facility additions proposed by CP&L in Richmond and Rowan Counties. Consistent with Commission practice, the rate making treatment to be afforded these facilities will be addressed when CP&L seeks cost recovery of these assets. The Commission fully supports and concurs in the Public Staff's concern that the electric utilities of this State must properly assess the capabilities of the wholesale market when making resource additions that will be used to serve CP&L's retail customers. The Commission is of the opinion that there continue to be benefits potentially available to electric utilities from looking to the wholesale market for generation resources, and that utilities regulated by the Commission should make every effort to do so for possible sources of capacity and energy to serve their retail customers. Therefore, the Commission concludes that CP&L should fully consider the wholesale market for future generation resource additions that will be used in whole or in part to serve retail customers, whether by formal RFP or other measures that ensure a complete evaluation of the market.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding is found in the testimony of the Public Staff witness panel and the laws and case law governing the construction of new electric generation facilities in North Carolina. The Public Staff panel testified that in this proceeding, CP&L has revised its generation additions plan to accelerate the construction of generation facilities over the period 2001-2007, as well as to increase the total megawatts projected to be installed over the same period. In its 1998 Integrated Resource Plan (IRP), CP&L had indicated that it planned to add 1500 MW of combustion turbine (CT) capacity in the 2002-2007 period; the accelerated construction schedule filed by CP&L in this proceeding reflects instead the addition of 1600 MW of CT capacity in the 2001-2002 period. This 1600 MW of capacity represents the units for which CP&L seeks certificates in this proceeding. CP&L has also increased its planned combined cycle generation additions from 1200 MW over the 2004-2007 period to 2000 MW over the 2003-2006 period.

The Public Staff panel testified that as a result of this acceleration and additional capacity, CP&L expects to have an average of 978 additional MW available to it to serve load in each year from 2001 through 2007 that it did not plan to have at the time of its 1998 IRP filing. Some of these additional megawatts will be used to increase CP&L's reserve margin; some will be used to serve additional load growth now expected on the CP&L system; however, the panel testified that the majority (on average approximately 64%) of the additional megawatts available as a result of the acceleration and capacity additions will be required for new off-system loads that CP&L has contractually agreed to serve. Therefore, the Public Staff panel testified, it is these new off-system sales that are for the most part responsible for CP&L choosing to file an application at this time for certificates of public convenience and necessity, as opposed to at a later date.

The Public Staff panel testified that the new off-system contract sales that are for the most part driving CP&L's filing consist of new power sales agreements with Santee Cooper and NCEMC. During the 2001-2003 period, CP&L is committed to supply 200 MW of off-system capacity to Santee Cooper and 450 MW to NCEMC. This entire 650 MW will be provided to serve load that is not on the CP&L system. The Public Staff panel stated that the term "system" has historically been understood to refer to the retail customers in CP&L's franchised territory and the wholesale customers that were located within the area over which CP&L had control of the transmission lines and that historically had been served by CP&L under requirements contracts. Prior to signing contracts in 1998 to serve this new off-system load, CP&L was under no obligation to serve or pursue it.

The Public Staff panel also testified that CP&L has agreed to serve the new Santee Cooper and NCEMC load at a priority level equivalent to that provided to CP&L's native load customers. It is said that because of this priority level, CP&L has included this off-system load in its calculation of the total load which it is obligated to supply and for which it is required to provide reserves. According to the panel, this is the first time that CP&L has given an equivalent-to-native-load priority of generation service to a customer outside of its control area.

The Public Staff panel testified that the Public Staff was concerned about the construction of capacity on CP&L's system to serve off-system load. It noted that a large part of the additional resources added to CP&L's generation addition plan in this filing, as compared to the 1998 IRP, will not contribute to the reserves available to support CP&L's system load, at least through the year 2003. Additionally, it said that nothing would prevent CP&L from signing similar contracts to serve off-system load in the future, possibly necessitating the addition of more generating capacity that would not contribute to system reserves, Furthermore, the panel testified, if CP&L's system load does not continue to increase, as a result of an inability to renew or replace wholesale sales contacts that will expire by 2010, the construction of capacity specifically to serve off-system contract sales may increase the risk of excess capacity.

The Public Staff panel testified that the Public Staff is also concerned about the priority of service provided to Santee Cooper and NCEMC. The panel testified that as a result of this arrangement, CP&L would not interrupt NCEMC and Santee Cooper at any time sooner than it would interrupt its retail customers. The panel testified that it is questionable whether such an arrangement is reasonable; they stated that in a regulated environment, CP&L's primary obligation should be to those captive customers whom it has an obligation to serve; those customers' service reliability should not be compromised by service provided to off-system customers.

The Public Staff panel expressed its overall concern that there are currently no Commission rules or guidelines in place to address specific situations in which (1) a utility desires to enter into a contract to serve off-system load at native load priority and/or (2) a utility or other applicant seeks a certificate to construct generation capacity to serve such off-system load. As a result, the Public Staff made two recommendations.

First, it recommended that the Commission expressly indicate in its order in this docket that approval of the requested certificates should not be taken as any indication or evidence that the Commission would approve the inclusion of the facilities' costs in rate base or operating expenses for rate making purposes. It said the eventual determination of the appropriate rate making or other regulatory treatment of costs and revenues related to these facilities should instead be made when appropriate and/or necessitated by the regulatory process, and in a manner that ensures that such treatment is in the best interest of the North Carolina retail customers.

Second, the Public Staff recommended that the Commission institute a generic docket to consider how the concerns it has expressed will be taken into account under Commission Rules R8-60 and R8-61 (resource planning and generation certification). Given the development of the wholesale market, the Public Staff believes it is likely that the Commission will be faced with situations in the future when it will be determining whether it is appropriate to issue certificates for generating plants in North Carolina that will be intended to operate entirely or primarily to serve wholesale load on a merchant basis. The Public Staff indicated that it will be important at that time for the Commission to have rules or guidelines in place to guide the parties through the certification process and apply appropriate criteria and standards for evaluating such applications.

Regarding the Public Staff's first concern, CP&L responded that it will not allow its retail electric customers to be disadvantaged in any manner, either from a quality of service or rate perspective, as a result of its participation in the wholesale power market. CP&L also responded that rate making treatment to be afforded new generation facilities should be addressed in subsequent proceedings when CP&L seeks cost recovery of these facilities.

Regarding the Public Staff's second concern over CP&L seeking certificates of public convenience and necessity to construct generation facilities that will be used, in whole or in part, to serve customers outside CP&L's control area, and the granting of equivalent-to-native-load priority to off-system customers, CP&L responded that the standards and principles the Commission must apply when ruling upon a certificate of public convenience and necessity to construct new generation in this State are set forth in G.S. 62-82 and 62-110.1. CP&L said these statutes require the Commission to find that the public convenience and necessity requires, or will require, the new generation facility prior to granting the applicant a certificate to construct the facility. CP&L cited the Commission's order issued April 23, 1992, in Docket No. SP-91, in which the Commission discussed at length G.S. 62-110.1, the Commission's rules regarding the construction of new generation and the applicable case law. In the April 1992 order, the Commission explained that:

ELECTRICITY - CERTIFICATES

G.S. 62-110.1(a) provides

". . . no public utility or other person shall begin the construction of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility be for furnishing the service already being rendered, without first obtaining from the Commission a certificate that public convenience requires, or will require, such construction."

The statute applies not only to public utilities, but also to "other person[s]." The purpose of the statute is to prevent the overbuilding of electric generating capacity. The North Carolina Court of Appeals has stated the following:

"This regulatory statute was enacted in 1965 to help curb overexpansion of generating facilities beyond the needs of the service area. To this end, the General Assembly used the term "public convenience and necessity" to define the standard to be applied by the Utilities Commission to proposed facilities. In reviewing the Commission's application of the standard in other regulatory actions, the Court has held that public convenience and necessity is based on an "element of public need for the proposed service." State ex rel. Utilities Comm'n v. Carolina Tel & Tel. Co., 267 N.C. 257, 270, 148 S.E. 2d 100, 110 (1966); see also State ex rel. Utilities Comm'n v. Southern Coach Co., 19 N.C. App. 597, 199 S.E. 2d 731 (1973), cert. den., 284 N.C. 623, 201 S.E. 2d 693 (1974); State ex rel. Utilities Commission v. Queen City Coach Co., 4 N.C. App. 116, 166 S.E. 2d 441 (1969). Moreover in 1975, an "act to establish an expansion policy for electric utility plants in North Carolina, to promote greater efficiency in the use of all existing plants, and to reduce electricity costs by requiring greater conservation of electricity" was enacted by the General Assembly, 1975 Sess. Laws Ch. 780. This act, codified as G.S. 62-110.1(c)-(f), directs the Utilities Commission to consider the present and future needs for power in the area, the extent, size, mix and location of the utility's plants, arrangements for pooling or purchasing power, and the construction costs of the project before granting a certificate of public convenience and necessity for a new facility. From these statutes and the case law, it is clear that the purpose of requiring a certificate of public convenience and necessity before a generating facility can be built is to prevent costly overbuilding. Environmental concerns were generally left to other regulatory agencies, except as they affect the cost and efficiency of the proposed generating facility."

State ex rel. Utilities Commission v. High Rock Lake, 37 N.C. App. 138, 140-141, 246 S.E. 2nd 787, cert. denied, 295 N.C. 646, 248 S.E. 2nd 257 (1978). In another context, the North Carolina Supreme Court has held that in order to show public convenience and necessity, the applicant must demonstrate a "definite public need" for the facility in question. State ex rel. Utilities Commission v. Two-Way Radio Services, Inc., 272 N.C. 591, 158 S.E. 2nd 855, (1968); State ex rel. Utilities Commission v. Carolina Tel. & Tel. Company, 267 N.C. 257, 148 S.E. 2nd 100 (1966). More recently, in 1987, the General Assembly enacted G.S. 62-2(3a) to require "least cost" planning and to encourage "use of the entire spectrum of demand-side options . . . as additional sources of energy supply and/or energy demand reductions."

What must an applicant allege and prove in order to show a definite public need for a proposed electric generating facility? The Commission has previously addressed the filing requirements for a public utility and a "qualifying facility," but these requirements are not appropriate for an independent power producer (IPP).

If the applicant is a public utility, Commission Rules R8-56 through R8-61 control. These rules require least cost integrated resource planning by our State's electric utilities and provide for detailed long-range load forecasts, analyses of current generating capability, evaluation of demand-side and supply-side resource options, and other data. Rule R8-61(d) provides that in filing an application for a certificate pursuant to G.S. 62-110.1(a), a utility shall include its most recent least cost integrated resource plan, any proposed updates to the plan, and testimony specifically indicating how the proposed facility conforms to the plan. The Commission must consider load forecasts "in acting upon any petition by <u>any utility</u> for construction." G.S. 62-110(c) (emphasis added).

CP&L pointed out that in addition to the standards described above in the Commission's April 23, 1992 Order, G.S. 62-110.1 also requires the Commission to consider the overall electricity needs of the State of North Carolina as well as the area served by the utility and the region when ruling upon an application for a certificate of public convenience and necessity. Subsection (c) states:

> In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission, its proposals as to the <u>future needs for electricity to serve the people of the State or the area served by such utility</u>, and in so far as practicable each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing <u>a plan for the future requirements of electricity for North Carolina or this region</u>. (emphasis added)

The Commission recognizes and supports the Court of Appeal's and the Public Staff's concern regarding the overbuilding of excess electric generation capacity, regardless of the identity of the entity seeking a certificate. When the applicant is a public utility seeking to construct generation facilities to serve retail customers, the Commission will ensure that the utility's resource plans and forecasts fully justify the generation facility in question.

The Commission has carefully considered the testimony of the Public Staff concerning the construction of generation capacity on utility systems to serve off-system load and the granting of equivalent-to-native-load priority to off-system customers. The Commission recognizes that as the electric utility industry evolves and as competition increases, the Commission is likely to be faced with new situations relating to the construction of generating capacity in North Carolina, including the proposed construction by utilities or independent power producers of capacity intended to sell power into the competitive marketplace on a merchant basis. Nevertheless, the Commission concludes that the appropriate forum for a generic consideration of such issues would be a separate docket initiated by the full Commission rather than the docket herein.

The Commission also concludes that CP&L shall ensure that its retail electric customers will not be disadvantaged in any manner, either from a quality of service or rate perspective, as a result of CP&L's participation in the wholesale power market. Finally, the Commission is of the opinion that Finding of Fact No. 5 should adequately address the Public Staff's concerns regarding cost treatment of these generation facilities in future rate proceedings and future rate treatment that ensures the best interests of retail customers.

The Attorney General did not oppose the application herein, provided the requested certificates include three conditions: (1) that issuance of the certificates shall not be interpreted as an indication that the costs of the facilities will be included in rate base for future rate proceedings; (2) that CP&L will ensure that its retail customers are not disadvantaged as a result of CP&L's wholesale market activities; and (3) that CP&L shall give full consideration to the wholesale market for all future increments of new retail capacity. The Commission is of the opinion that Findings of Fact Nos. 5 through 7 should adequately address the Attorney General's three conditions.

CUCA recommended that the Commission make any approval of the certificates herein subject to three conditions: (1) that CP&L's exclusive right to sell electric generation in its service territory be revoked; (2) that CP&L's Rowan County CTs be connected directly to Transco at reasonable prices and terms; and (3) that recovery of stranded costs associated with the new 1600 MW capacity and related Duke wheeling charges be prohibited.

The Commission is of the opinion that CUCA's first condition should be rejected for purposes of this proceeding. The Commission will address outside of this docket whether or not to initiate a generic proceeding to consider utility owned plants constructed to serve off-system loads, which is the issue CUCA seeks to address with its first condition. The Commission is also of the opinion that Finding of Fact No. 8 adequately addresses gas purchases from Piedmont rather than from Transco, and notes that Finding of Fact No. 8 is unopposed by the Public Staff or the Attorney General. Therefore, CUCA's second condition should be rejected. And finally, the Commission is of the opinion that Finding of Fact No. 5 regarding cost recovery of these generating facilities being determined in future rate proceedings should also adequately address stranded cost issues. Therefore, CUCA's third condition should be rejected.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is found in the testimony of CP&L witness Ingersoll. The Rowan County facility will be constructed within Piedmont Natural Gas Company's service territory. It is apparent from Piedmont's Petition to Intervene as well as its letter dated July 27, 1999 that it wishes to provide the gas transportation services necessary to deliver natural gas from the Transcontinental Natural Gas Company pipeline that passes through Rowan County to the new generating facility site. Based upon the testimony of CP&L witness Ingersoll and Piedmont's letter of July 27, 1999, it is apparent that CP&L and Piedmont are actively engaged in discussions with regard to the provision of natural gas transportation services. The Commission urges the parties to continue their negotiations. In order to ensure that this project can proceed expeditiously, the

Commission believes it appropriate to establish procedures for concluding negotiations within a reasonable time and resolving any remaining disputes. To that end, within one month from the date of this Order, CP&L and Piedmont shall file with the Commission either (1) a mutually satisfactory agreement on the rates, terms and conditions of service by Piedmont to CP&L's new Rowan County facility or (2) a report on the status of their negotiations including, under seal, each party's last best offer, in which event the Commission will determine the disputed contract terms.

IT IS, THEREFORE, ORDERED as follows:

1. That Certificates of Public Convenience and Necessity should be issued to CP&L for the construction of a nominally rated 800 MW simple cycle electric generating facility consisting of five combustion turbine generators at the Richmond County site, and a nominally rated 800 MW simple cycle electric generating facility consisting of five combustion turbine generators at the Rowan County site, and the same is attached hereto as Appendices A and B.

2. That CP&L and Piedmont shall continue to negotiate as to the rates, terms and conditions with respect to the delivery of natural gas service to the Rowan County site by Piedmont, and within one month from the date of this Order, Piedmont and CP&L shall file with the Commission either (1) a mutually satisfactory agreement on the rates, terms and conditions of service by Piedmont to the Rowan County site or (2) a report on the status of their negotiations, including, under seal, each party's last best offer, in which event the Commission will determine the disputed contract terms.

3. That CP&L shall fully consider the wholesale market for future generation resource additions that will be used in whole or in part to serve retail customers whether by formal RFP or other measures that ensure a complete evaluation of the market.

4. CP&L shall ensure that its retail electric customers will not be disadvantaged in any manner, either from a quality of service or rate perspective, as a result of its participation in the wholesale power market.

ISSUED BY THE ORDER OF THE COMMISSION.
This the 2nd day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

jp110299.01

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 733

Carolina Power & Light Company
411 Fayetteville Street Mall
Raleigh, North Carolina 27602

is issued this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. 62-110.1

authorizing construction and operation
of approximately 800 MW of combustion
turbine generating capacity

located approximately 3 miles south of the Town of Hamlet
near the intersection of State Road 177 and State Route 1990
in Richmond County, North Carolina

subject to the reporting requirements of G.S. 62-110.1(f) and all other orders, rules, regulations and conditions now or hereafter lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION

This the 2nd day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 733

Carolina Power & Light Company
411 Fayetteville Street Mall
Raleigh, North Carolina 27602

is issued this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. 62-110.1

authorizing construction and operation
of approximately 800 MW of combustion
turbine generating capacity

located approximately 9 miles west of Salisbury on U.S. Route 70
in Rowan County, North Carolina

subject to the reporting requirements of G.S. 62-110.1(f) and all other orders, rules, regulations and conditions now or hereafter lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION

This the 2nd day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

ELECTRICITY - CERTIFICATES

DOCKET NO. E-2, SUB 749

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for a Certificate of Environmental Compatibility and Public Convenience and Necessity To Construct Approximately 1.75 miles of 230 kV Transmission Line in Lee County, North Carolina	)	ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY

BY THE COMMISSION: On June 4, 1999, Carolina Power & Light Company (CP&L) filed an application to construct 1.75 miles of 230 kV transmission tap line in Lee County, North Carolina. The line will extend from a point on CP&L's existing Cape Fear - Rockingham 230 kV transmission line approximately 0.2 miles south of US Highway 1 to a new 230 kV substation on US Highway 421 approximately 1.5 miles north of US Highway 1. The proposed tap line will feed a new substation that will be constructed to provide for future anticipated load growth in the Sanford area and to ensure continued reliable electric service. CP&L has budgeted $735,000 for construction of the transmission tap line.

CP&L evaluated possible alternative routes to determine the best overall location. The proposed route was chosen because it will have lower construction and maintenance costs, is shorter, and has less impact on the environment and on existing development in the area.

A detailed environmental report has been filed with the application. This report satisfies the requirements of G.S. 62-102 and Commission Rule R8-62.

Federal and state licenses, permits, and exemptions required for the construction and operation of the transmission line have been obtained.

The Commission issued an Order on June 10, 1999, requiring publication of a public notice and scheduling a hearing in Sanford subject to cancellation if no significant protests were received subsequent to the public notice. On August 31, 1999, CP&L filed an Affidavit of Publication of the notice.

On September 14, 1999, CP&L filed a motion requesting that the hearing be canceled and that the case be decided on the basis of the filed record. CP&L stated that as of the September 13, 1999, deadline for intervention, no one had petitioned to intervene, protested, or otherwise shown any interest in appearing and/or submitting testimony or evidence in this docket.

On September 17, 1999, the Commission issued an Order canceling the hearing.

ELECTRICITY - CERTIFICATES

The Public Staff presented this matter at the Regular Commission Conference on September 27, 1999, and recommended that the Commission grant the certificate for the construction of the subject 230 kV transmission line tap located in Lee County, North Carolina.

WHEREUPON, after careful consideration, the Commission finds good cause to grant the certificate.

IT IS, THEREFORE, ORDERED that CP&L is granted a Certificate of Environmental Compatibility and Public Convenience and Necessity, attached as Appendix A, for the construction of the subject 230 kV transmission line tap located in Lee County, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

mz092799.04

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 749

Know All Men by These Presents, that

CAROLINA POWER & LIGHT COMPANY

IS HEREBY ISSUED THIS

CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO G.S. 62-102

to construct approximately 1.75 miles of
230 kV transmission line tap to feed a new substation
in Sanford

to be located in

Lee County, North Carolina

subject to receipt of all federal and state permits as required by existing and future regulations prior to beginning construction subject to all other 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 _29th_ day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. E-7, SUB 654

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Corporation for a Certificate of Environmental Compatibility and Public Convenience and Necessity Pursuant to G.S. 62-101 and G.S. 62-102 to Relocate a Segment of the Belews Creek-Pleasant Garden 230 kV Transmission Line in Guilford County	))))))	ORDER ISSUING CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY AND WAIVING PUBLIC NOTICE AND HEARING

BY THE COMMISSION: On August 2, 1999, Duke Energy Corporation (Duke) filed an application pursuant to G.S. 62-101 and 62-102 for a Certificate of Environmental Compatibility and Public Convenience and Necessity to relocate a segment of the Belews Creek-Pleasant Garden 230 kV transmission line in Guilford County, North Carolina, and a motion to waive the notice and hearing requirements of G.S. 62-102 and 62-104. Duke did not pre-file the completed application and the waiver request with the Public Staff according to Commission Rule R8-62(k). The Public Staff requested supporting documentation which was supplied by fax on September 28, 1999.

The relocation has been requested by the North Carolina Department of Transportation (NCDOT) to resolve a highway conflict involving the future Interstate 85 Greensboro Bypass. To accomplish the relocation, Duke must remove approximately 2,250 feet of the existing Belews Creek to Pleasant Garden 230 kV transmission line and reconnect it by constructing approximately 2,375 feet of new 230 kV transmission line. This project is located in Guilford County at US Highway No. 421 and NC Highway No. 42, approximately 10 miles south of Greensboro. The line segment to be relocated is entirely on the property owned by the NCDOT, the party requesting the relocation. The total cost for the relocation is estimated to be $735,000 and will be borne by the NCDOT.

A detailed environmental report has been filed with the application. This report satisfies the requirements of G.S. 62-102 and Commission Rule R8-62. Environmental and land use impacts of the project were minimized by designing the shortest practical relocation required to resolve the highway conflict. Transmission line visibility will be minimal and limited to an area already impacted by existing transmission facilities.

Federal and state licenses, permits and exemptions required for the construction and operation of the transmission line have been obtained.

North Carolina G.S. 62-101(d)(1) authorizes the Commission to waive the notice and hearing requirements of G.S. 62-102 and 62-104 when the Commission finds that the owners of the land to be crossed by the proposed transmission line do not object to such waiver and either of the following conditions exists:

a. The transmission line is less than one mile long.

b. The transmission line is for the purpose of relocating an existing transmission line segment to resolve a highway or other public project conflict.

The transmission line is for the purpose of relocating an existing transmission line segment to resolve a NCDOT highway project conflict, is on land owned by NCDOT, the party requesting the relocation, and is less than one mile long.

The Public Staff presented this matter at the Commission's Staff Conference on October 4, 1999.

Based on the foregoing, and the recommendations of the Public Staff, the Commission finds and concludes that the notice and hearing requirements of G.S. 62-102 and G.S. 62-104 should be waived as allowed by G.S. 62-101(d)(1) and a Certificate of Environmental Compatibility and Public Convenience and Necessity for the relocation of a segment of the Belews Creek-Pleasant Garden 230 kV transmission line in Guilford County, North Carolina, at US Highway No. 421 and NC Highway No. 42, approximately 10 miles south of Greensboro should be issued.

IT IS, THEREFORE, ORDERED as follows:

1. Pursuant to G.S. 62-101, the requirement for publication of notice and hearing should be, and the same hereby is, waived.

2. Pursuant to G.S. 62-102, a Certificate of Environmental Compatibility and Public Convenience and Necessity, which is attached hereto as Appendix A, should be, and the same hereby is, issued.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

mz100499.03

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 654

Known to All Men by These Presents, That

Duke Energy Corporation

is hereby issued this

CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO G.S. 62-102

to relocate a segment of the Belews Creek-Pleasant Garden
230 kV transmission line approximately 2,375 feet in length
at US Highway No. 421 and NC Highway No. 42
to resolve a highway conflict involving the
Interstate 85 Greensboro Bypass

to be located in

Guilford, North Carolina

subject to receipt of all federal and state permits
as required by existing and future regulations prior to beginning
construction subject to all 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 5th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

DOCKET NO. E-2, SUB 740
DOCKET NO. G-21, SUB 377

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Carolina Power & Light Company	)	
and North Carolina Natural Gas Corporation to	)	ORDER APPROVING
Engage in a Business Combination Transaction	)	MERGER AND
and to Allow Carolina Power & Light Company to	)	ISSUANCE OF SECURITIES
Issue Securities in Connection With Such	)	
Transaction	)	

HEARD: Wednesday, May 12, 1999, at 7:00 p.m., in the Old Cumberland County Courthouse, Fayetteville, North Carolina

Thursday, May 13, 1999, at 7:00 p.m., Judicial Building, Wilmington, North Carolina

Tuesday, May 18, 1999, at 9:30 a.m., Dobbs Building, Raleigh, North Carolina

BEFORE: Commissioner William R. Pittman, Presiding, Chair Jo Anne Sanford, and Commissioners Ralph A. Hunt, Judy Hunt, J. Richard Conder, Robert V. Owens, Jr., and Robert K. Koger

APPEARANCES:

For Carolina Power & Light Company:

Len S. Anthony, Deputy General Counsel, and Bentina D. Chisolm, Associate General Counsel, Post Office Box 1551, Raleigh, North Carolina 27602-1551

For North Carolina Natural Gas Corporation:

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

For the Public Staff:

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

For the Attorney General:

Leonard G. Green, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

For North Carolina Eastern Municipal Power Agency:

Nancy Essex, Poyner & Spruill, Post Office Box 10096, Raleigh, North Carolina 27607

For Transcontinental Gas Pipe Line Corporation:

Samuel M. Taylor and John C. Cooke, Womble, Carlyle, Sandridge & Rice, Post Office Box 831, Raleigh, North Carolina 27602

For the Greenville Utilities Commission and the Cities of Rocky Mount, Wilson, and Monroe:

Allyson K. Duncan, Kilpatrick Stockton, L.L.C., 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For Southeastern Gas & Power, Inc.:

Charles Francis, Wood & Francis, P.L.L.C., Post Office Box 164, Raleigh, North Carolina 27602

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

Ralph McDonald, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602

BY THE COMMISSION: On January 11, 1999, pursuant to G.S. 62-111 and 62-161 and Commission Rule R1-16, Carolina Power & Light Company (CP&L) and North Carolina Natural Gas Corporation (NCNG) filed an application for authorization to engage in a business combination transaction and, in connection with that transaction, to allow CP&L to issue up to 9,000,000 shares of common stock without par value. The purpose of CP&L's proposed issuance of additional shares is to enable it to acquire NCNG by issuing CP&L stock for each outstanding share of NCNG common stock at the effective time of the transaction. As a result of the transaction, NCNG shareholders would become shareholders of CP&L, and CP&L would become the sole shareholder of NCNG. NCNG would become a wholly-owned subsidiary of CP&L at closing and would continue to own all of its pre-acquisition assets and liabilities.

On January 15, 1999, Carolina Industrial Group for Fair Utility Rates (CIGFUR II) filed a Petition to Intervene, which was allowed by Order dated January 21, 1999. On January 22, 1999, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene, which was allowed by Order dated January 26, 1999. CUCA did not appear at the hearings.

On February 5, 1999, the Commission issued its Order scheduling public hearings, requiring the prefiling of testimony, allowing the filing of petitions to intervene, and requiring CP&L and NCNG to give public notice of their joint application and of the scheduled hearings. Notice was properly given by CP&L and NCNG.

ELECTRICITY - MERGERS

On February 8, 1999, CP&L filed the Direct Testimony and Exhibits of Bonnie V. Hancock, and NCNG filed the Direct Testimony and Exhibits of Calvin B. Wells.

On February 23, 1999, the Public Works Commission of the City of Fayetteville (PWC) filed a Petition to Intervene, which was allowed by Order dated March 16, 1999. On April 13, 1999, the Attorney General filed a Notice of Intervention.

On April 14, 1999, the North Carolina Eastern Municipal Power Agency (NCEMPA), Southeastern Gas & Power, Inc. (SG&P), Transcontinental Gas Pipe Line Corporation (Transco) and the Greenville Utilities Commission and Cities of Rocky Mount, Wilson and Monroe filed Petitions to Intervene. On April 16, 1999, CP&L filed a Response in Opposition to Transco's Petition to Intervene. On April 23, 1999, Transco filed its Response to CP&L's Opposition to its Petition to Intervene and Motion to Strike. By Order dated April 27, 1999, the Commission allowed Transco and the others who filed on April 14, 1999, to intervene. On April 27, 1999, CP&L filed a Motion for Reconsideration of the Commission's Order allowing Transco's intervention. On May 4, 1999, the Commission issued its Order Denying Reconsideration.

On May 3, 1999, CP&L and NCNG filed a Motion to Amend their Application, to reflect a change in the accounting method to accomplish the transaction, from a pooling of interests to the purchase method.

On May 4, 1999, CP&L filed the Revised Direct Testimony of Bonnie V. Hancock, NCEMPA filed the Pre-Filed Testimony and Exhibits of William F. Waston, SG&P filed the Direct Testimony of Ralph W. Johnson, and Transco filed the Pre-Filed Direct Testimony and Exhibits of Frank J. Ferazzi.

On May 7, 1999, the Public Staff filed the Joint Testimony and Exhibits of Elise Cox, Jeffrey L. Davis, Thomas W. Farmer, Jr., James G. Hoard and Dennis J. Nightingale. On May 12, 1999, CP&L filed the Rebuttal Testimony of Bonnie V. Hancock.

Also on May 12, 1999, a public hearing was held in Fayetteville, North Carolina. On May 13, 1999, a public hearing was held in Wilmington, North Carolina. No public witnesses appeared at either hearing.

On May 17, 1999, Transco filed its Motion for Leave to Amend the Pre-Filed Direct Testimony of Frank J. Ferazzi.

On May 18, 1999, prior to the hearing in Raleigh, CP&L, NCNG and the Public Staff filed a Joint Stipulation setting forth conditions intended to protect CP&L and NCNG ratepayers from adverse effects of the merger. Also prior to the hearing, CIGFUR II filed its Statement of Position.

On May 18, 1999, the evidentiary hearing in this proceeding was held as scheduled. CP&L and NCNG presented the testimony and exhibits of Bonnie V. Hancock and Calvin B. Wells as a panel; the Public Staff presented the testimony and exhibits of Elise Cox, Jeffrey L. Davis, Thomas W. Farmer, Jr., James G. Hoard and Dennis J. Nightingale as a panel; Transco presented the testimony and exhibits of Frank J. Ferazzi; SG&P presented the testimony of Ralph W. Johnson; and NCEMPA presented the testimony and exhibits of William F. Watson.

Based on the foregoing and all of the parties' testimony and exhibits received into evidence and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. CP&L is an electric public utility company under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. CP&L is engaged in the business of generating, transmitting, distributing and selling electric power in its assigned territory in North and South Carolina.

2. NCNG is a local distribution natural gas public utility incorporated in Delaware and authorized to do business in North Carolina and subject to the jurisdiction of the North Carolina Utilities Commission. NCNG provides natural gas, propane and natural gas transportation services in south-central and eastern North Carolina.

3. CP&L and NCNG seek authority from the Commission to engage in a business combination transaction and, in connection with that transaction, to allow CP&L to issue up to 9,000,000 shares of common stock without par value, the purpose of which is to enable CP&L to acquire NCNG by issuing CP&L stock for each outstanding share of NCNG common stock at the effective time of the transaction. As a result, NCNG shareholders would become shareholders of CP&L, and CP&L would become the sole shareholder of NCNG. NCNG would become a wholly-owned subsidiary of CP&L at closing and would continue to own all of its pre-acquisition assets and liabilities.

4. The known, expected and potential benefits of the merger are at least as great as the known, expected and potential costs and risks.

5. The Regulatory Conditions and Code of Conduct ordered herein and the commitments made by CP&L and NCNG at the hearing and noted in this Order are adequate to protect the retail customers of CP&L and NCNG and competitors of CP&L's and NCNG's affiliates against currently foreseeable potential risks and costs associated with the merger.

6. It is not necessary or appropriate at this time to require annual evidentiary hearings to investigate the continuing adequacy of the Code of Conduct and Regulatory Conditions adopted by the Commission in this Order or to determine whether NCNG and CP&L are properly complying with the Code of Conduct and Regulatory Conditions. The reporting requirements established by the Code of Conduct and Regulatory Conditions, the standard review and scrutiny of utility operations conducted by the Public Staff and the Commission, and the ability of any party with standing to petition the Commission to require CP&L and NCNG to comply with the Code of Conduct and Regulatory Conditions or to modify the Code of Conduct and the Regulatory Conditions are adequate to ensure that the customers of the utilities and the competitors of CP&L's and NCNG's affiliates are properly protected and all interested parties have an opportunity to be heard with regard to any concerns they may have.

7. Any party with standing may at any time challenge any cost allocations and any of the Regulatory Conditions and Code of Conduct that are adopted by the Commission for use in its retail North Carolina operations.

8. CP&L and NCNG acknowledge that the Commission may modify the Code of Conduct and the Regulatory Conditions consistent with the public interest.

9. SG&P's request that the Commission require NCNG to make its interstate pipeline capacity available to all shippers is not relevant to a determination of whether the merger of CP&L and NCNG is in the public interest.

10. The proposed merger of CP&L and NCNG is justified by the public convenience and necessity, is for a lawful purpose, is compatible with the public interest, and is consistent with the proper performance of CP&L's and NCNG's service to their customers. The proposed merger will not impair the utilities' ability to provide adequate and reliable service to their customers at just and reasonable rates, and it satisfies the requirements of G.S. 62-111 and G.S. 62-161.

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

These findings of fact are essentially informational, procedural and jurisdictional in nature and are not in dispute. The description of the proposed merger is based on the application filed herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

This finding is based on the testimony of CP&L witness Hancock, NCNG witness Wells and the Public Staff panel.

CP&L witness Hancock testified that CP&L's service territory is projected to experience substantial load growth over the next ten years. For the period 1998 through 2003, summer peak demand is projected to grow by an average of approximately 250 MW a year. This growth will require the construction of a substantial amount of new electric generating facilities. Ms. Hancock testified that natural gas has become the fuel of choice for electric generation due to improvements in the efficiency of gas-fired generators as well as environmental reasons. As a result, CP&L anticipates constructing a substantial amount of new gas-fired electric generating facilities. Ms. Hancock also testified that this increase in the demand for electricity will cause CP&L to operate its existing natural gas-fired generators a greater percentage of the time. Thus, over the next several years, CP&L anticipates a significant increase in the consumption of natural gas in order to meet its electricity customers' needs. Ms. Hancock testified that the critical and growing need for natural gas to fuel generation dictates that CP&L acquire natural gas procurement, transportation, and pipeline construction skills. She then testified that by merging with NCNG, CP&L would acquire experience and skills in these important areas. Such expertise in natural gas procurement and transportation will help lower CP&L's fuel costs, which will benefit CP&L and its customers.

Ms. Hancock testified that another benefit of the merger is related to the construction of intrastate natural gas transmission lines. She testified that when constructing a new electric generating facility, the plant site must be in reasonably close proximity to adequate natural gas transmission lines.

By merging with NCNG, CP&L will have greater input into the expansion of natural gas transmission lines in eastern North Carolina. By coordinating CP&L's need for gas to fuel electric generation with NCNG's requirements, the optimal size and type of pipe can be installed at the optimal location. CP&L and NCNG can also plan the expansion of their respective facilities to best serve the needs of eastern North Carolina. Ms. Hancock further elaborated upon the impact the merger would have upon the expansion of the availability of natural gas in NCNG's territory. She testified that NCNG has traditionally followed an expansion methodology based on the economics of the proposed expansion. If the projected revenues from an expansion project, based on current NCNG gas rates, were not sufficient to cover the costs of a project, the project was not undertaken (unless supplemental funds such as expansion funds were available). This methodology resulted in NCNG having the lowest rates in North Carolina, but also limited the expansion of the availability of natural gas in NCNG's territory. Ms. Hancock testified that while CP&L agrees that, in general, only economic projects should be implemented (to do otherwise would cause existing customers' rates to increase), the merger should improve the economics of many expansion projects. Both CP&L witness Hancock and NCNG witness Wells testified that CP&L is a much larger company than NCNG with stronger leveraging ability. This will improve the cost/benefit results of expansion projects. They further testified that, in general, future natural gas expansion projects are more likely to be built because the combined entity will realize economic benefits from the sale of both electricity and natural gas. CP&L assured the Commission that in evaluating expansion projects NCNG would not treat CP&L customers any differently from electric cooperative and municipal electric customers.

Ms. Hancock and Mr. Wells testified that a third benefit of the merger relates to the expansion of natural gas lines. From NCNG's perspective, large electric generating units act as "anchor tenants." Such "anchor tenants" create the economic justification to support the expansion of natural gas lines. By merging with NCNG and locating as many of the electric generating facilities as possible in NCNG's service territory, CP&L can maximize the benefits of this new construction for not only the combined entity and its customers, but also for the State of North Carolina. These benefits include the following: (1) the natural gas transportation revenues associated with the transportation of gas to the new electric generating facilities will be kept within the State and provide NCNG with significant additional revenues to help keep its rates the lowest in the State, (2) the generation of significant property tax revenues resulting from CP&L's investment in capital intensive electric generators within the State, and (3) the economic growth that traditionally results from the availability of natural gas. Ms. Hancock emphasized the fact that natural gas availability tends to enhance economic development. She testified that in 1997, approximately 97% of new plant investment occurred in counties that have gas availability and the average per capita income, based on 1995 data, in counties with gas availability was $19,500 compared to $16,700 for counties without gas availability.

Ms. Hancock testified that the final significant benefit of the merger was that CP&L would now have the ability to offer electricity and natural gas to most of its non-residential electric customers. This will allow the combined company to be in a position to meet all of their customers' energy needs.

NCEMPA and SG&P suggest that some or all of these benefits could be realized absent the merger. Witness Hancock answered that, by allowing CP&L and NCNG to work together to construct the optimally sized natural gas lines and to combine the benefit of siting electric generation as anchor load to support gas pipeline expansion, thus keeping all property taxes and gas transportation revenues in the State, the merger produces benefits that would not otherwise exist. She further stated that, after the merger, both companies will be working toward a common purpose for the benefit of their service territories, rather than CP&L having a narrow focus on electricity and NCNG having a narrow focus on gas, and that the combined company will have a bigger picture that will result in better decisions for all customers and for the State.

The Public Staff witnesses recommended approval of the merger if sufficient conditions are imposed to ensure (1) that the transaction will have no adverse impact on the rates and service of CP&L's and NCNG's ratepayers, (2) that CP&L's and NCNG's ratepayers are as protected as possible from harm, and (3) that those ratepayers will receive their appropriate share of any benefits resulting from the merger. As discussed below, the Public Staff believes that its proposed Code of Conduct and Regulatory Conditions satisfy these concerns. Through the Regulatory Conditions, the Public Staff sought to ensure that the benefits described by CP&L and NCNG will in fact occur. For example, Regulatory Condition 17 requires that no less than $7.5 million of pre-tax income related to the transportation services to be provided by NCNG to new gas-fired electric generation will be reflected in the determination of NCNG's revenue requirement in any rate case occurring before November 1, 2003. Condition 26 requires CP&L to use its best efforts to promote the expansion of gas service and economic development in North Carolina by siting gas-fired electric generating plants on NCNG's system provided such siting is in the overall best interest of CP&L's electric customers. Conditions 19 and 20 require CP&L and NCNG to take steps designed to implement and further their commitment to providing superior service to their customers.

The Commission finds that the known, expected and potential benefits of the merger to the State of North Carolina and particularly to NCNG's and CP&L's customers are at least as great as the known, expected and potential costs and risks. These potential benefits include ensuring an adequate, reliable and cost-effective supply of natural gas to CP&L to generate electricity for its customers; the increased expansion of gas facilities in NCNG's territory; economic development in eastern North Carolina; and the increase in property taxes and new jobs that may result from the location of new electric generating facilities in eastern North Carolina. These benefits, in conjunction with the protections provided by the Code of Conduct, Regulatory Conditions and other commitments discussed and ordered below, justify the Commission's conclusion that the merger is in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 - 9

The evidence supporting these findings of fact is found in the testimony of CP&L witness Hancock, NCNG witness Wells, the Public Staff panel, NCEMPA witness Watson, SG&P witness Johnson, and Transco witness Ferazzi.

To address concerns regarding potential consequences of the merger, the Public Staff, CP&L, and NCNG developed a comprehensive Code of Conduct and a set of Regulatory Conditions, which the Attorney General accepted with a few changes. The Public Staff panel testified that these Regulatory Conditions and Code of Conduct are intended to protect NCNG's and CP&L's customers from (1) all direct and indirect costs of the merger, (2) potential adverse effects on CP&L's and NCNG's cost of capital, (3) potential deterioration in CP&L's and NCNG's quality of service and increases in rates, (4) the potential for CP&L and NCNG to unreasonably favor their affiliates, (5) any potential harm to competition between gas and electric service, (6) the potential for NCNG to discriminate against other gas customers in favor of CP&L, (7) the potential for discrimination by NCNG against non-affiliated electric generators, and (8) potential bias in electric generation siting.

More specifically, the Regulatory Conditions require all direct and indirect costs associated with the merger to be excluded from CP&L's and NCNG's utility accounts, and also to be excluded from utility costs for all purposes that affect CP&L's retail electric rates and NCNG's natural gas rates. In future rate cases, the Regulatory Conditions require appropriate adjustments to be made to CP&L's and NCNG's test year expenses, capital structure, and cost rates for capital to remove any potential adverse impacts of the merger for ratemaking purposes. In addition, to ensure that their customers obtain as much benefit as practical from the merger, the Regulatory Conditions prohibit either utility from seeking rate increases for designated periods, except for normal fuel charge and gas cost adjustments and certain other limited reasons. One exception to the rate increase prohibition for NCNG relates to cost increases caused by major gas pipeline projects. However, because the merger is, in large part, premised upon the benefit to NCNG of additional transportation revenues resulting from the construction of future CP&L natural gas-fired generating plants in NCNG's territory, the gas expansion exception to the prohibition on rate increases is linked to the benefits from electric generation. As mentioned earlier, if NCNG seeks a rate increase to cover the costs of gas pipeline projects, it must incorporate at least $7.5 million of pre-tax income from new gas-fired generation in the determination of its revenue requirement. The Regulatory Conditions also require NCNG and CP&L to file annually their current ten-year plan for new or expanded gas pipeline facilities, including details regarding CP&L's electric generation plans and the pipeline routing. This condition establishes a process for greater Commission involvement in, and increased opportunities for customer input in, the planning process for the expansion of new gas pipeline facilities. The Regulatory Conditions also require a notice of intent to be filed with the Commission if CP&L, NCNG, or an affiliate plans to begin the construction of natural gas facilities, including a pipeline, to serve an electric generating plant. This filing will help prevent the potential for discrimination against independent power producers and other suppliers of electric generation and in favor of CP&L. In order to provide NCNG with a strong incentive to oppose the bypass of its distribution and transmission facilities by customers seeking to connect directly to interstate pipelines in which CP&L, NCNG, or an affiliate has an economic interest, and to eliminate any economic advantage that CP&L, NCNG or their affiliates may realize from such bypass, the Regulatory Conditions disallow any recovery by NCNG from its customers of any margins lost as a result of bypass by an interstate gas pipeline in which CP&L or any affiliate has an ownership interest. In order to eliminate the potential for bias by CP&L in the siting of future electric generation for the benefit of NCNG or one of their affiliates, to the detriment of CP&L's retail customers, the Regulatory Conditions require CP&L to determine the appropriate self-built or purchased power resources on the basis of the benefits and costs to CP&L's electric customers.

The Code of Conduct is equally comprehensive. The Code of Conduct will govern the relationships between and among CP&L, NCNG, their affiliates, and their non-public utility operations. It is intended to prevent CP&L's and NCNG's affiliated and non-public utility operations from profiting at the expense of CP&L's and NCNG's ratepayers and to prevent cross-subsidization between and among CP&L's and NCNG's regulated and non-regulated customers. More specifically, it prohibits CP&L and NCNG from showing any preference to customers of their affiliates or requests for service from affiliates and customers of their non-public utility operations as compared to non-affiliated entities and their customers. It prohibits cross-subsidies involving either or both CP&L and NCNG and one or more of their affiliates and one or more of their non-public utility operations. It requires CP&L, NCNG and their affiliates to operate independently, except for certain shared services, and to maintain separate books and records. All costs associated with such shared services are to be allocated in accordance with a detailed cost allocation manual to be developed and submitted to the Commission by December of 1999. To ensure that CP&L's and NCNG's customers are never disadvantaged by transactions between and among these public utilities and their affiliates, the Code of Conduct establishes rules for transfer pricing. For untariffed goods and services provided by CP&L or NCNG to an affiliate or non-public utility operation, the transfer price must be the higher of market value or fully distributed costs. For goods and services provided by an affiliate or non-public utility operation to CP&L or NCNG, the transfer price must be the lower of market value or the affiliate's or non-public utility operation's fully distributed costs. This pricing mechanism ensures that when the public utility sells a product to an affiliate, it always gets the highest price possible, while purchases by the public utility from an affiliate are always accomplished at the lowest price possible. With the exception of gas supply and transportation services, transactions between CP&L and NCNG for untariffed goods and services must be priced at the lower of fully distributed costs or market value. For gas sales and transportation service transactions between CP&L and NCNG, NCNG must provide service to CP&L at the same prices and terms that are made available to other similarly situated customers. This last provision ensures that NCNG does not grant CP&L any preference with regard to gas sales or transportation service. With regard to natural gas marketing standards, the Code of Conduct requires NCNG to treat all similarly situated shippers in the same manner regardless of whether they are affiliated with NCNG and it establishes numerous safeguards to ensure that NCNG's gas marketing function does not achieve any advantage over any other non-affiliated gas marketer with regard to the provision of gas sales or transportation services by NCNG. Finally, the Code of Conduct addresses numerous other issues regarding the relationships between and among CP&L, NCNG, their affiliates and non-public utility operations, including but not limited to, joint marketing, joint purchases, the sharing of logos, intangible benefits, joint billing and complaint resolution.

To ensure that natural gas and electricity continue to compete aggressively for those end uses that may be served by either fuel, CP&L made a number of commitments. These included commitments that (1) there will be separate sales persons responsible for selling gas and electricity after the merger, (2) CP&L and NCNG will maintain separate books and specialized field personnel, (3) in the residential market CP&L will prepare a brochure that will be provided to all new residential customers that identifies the energy end uses that can be served by both gas and electricity, (4) unless the electric generation business is deregulated, CP&L will not seek to make any material changes to its Commission approved line extension plan and NCNG will not seek to make any material changes to its Commission approved regulations regarding the extension of gas mains and gas service lines for three years, and (5) NCNG and CP&L will not seek to change or eliminate an existing incentive program approved pursuant to G.S. 62-140(c) without Commission approval. These commitments, in conjunction with the facts that (1) CP&L and NCNG are both fully regulated by the Commission and (2) in the industrial gas market there are numerous gas suppliers marketing gas to customers in CP&L's assigned territory, ensure that gas and electricity will continue to compete vigorously with each other after the merger.

The Public Staff panel testified that the Regulatory Conditions, the Code of Conduct and the commitments made by CP&L in its testimony address the Public Staff's concerns about the merger, with the caveat that changes may be needed due to future changes in the market or in the laws governing the provision of public utility services or as a result of the parties' experience with the Code of Conduct and Regulatory Conditions. The Attorney General also indicated that he does not object to the merger and supports the Code of Conduct and Regulatory Conditions. Three other parties -- Transco, NCEMPA and SG&P -- indicated that the Regulatory Conditions, the Code of Conduct and the rebuttal testimony of CP&L eliminated some of their concerns. Still, several parties raised issues associated with the merger, either in their testimony or their post-hearing briefs, and the Commission will now address each of their issues.

For example, NCEMPA asked the Commission to conduct annual hearings on the Code of Conduct and on the cost allocations utilized by CP&L and NCNG in allocating costs between and among their affiliates and non-public utility operations. Their witness Watson testified that this would create a mechanism to address any problems that may arise with application of the Code of Conduct and Regulatory Conditions and to adjust them as necessary. However, Mr. Watson testified that he was not aware of any state conducting such proceedings. Both CP&L witness Hancock and the Public Staff panel testified that such an annual review is not necessary for the concerns of NCEMPA to be addressed. The Public Staff panel pointed out that the Code of Conduct and Regulatory Conditions contain a number of reporting requirements that will allow all interested parties to monitor NCNG's and CP&L's activities. The Public Staff panel acknowledged that the Code of Conduct and Regulatory Conditions are a work in progress, but testified that the "trigger" for a change or review is "not because a year has passed on the calendar." Ms. Hancock testified that the Commission's general oversight abilities as well as its complaint process are more than adequate to address any problems a party may have with the interpretation or application of the Code of Conduct. The Commission agrees. The reporting requirements contained in the Code of Conduct and Regulatory Conditions will provide all interested parties with ample notice of any conduct by CP&L or NCNG that may be of concern, and there are procedures available for any party with an interest to secure Commission review of a utility's activities. Specifically, G.S. 62-73 authorizes any party with an interest to file a complaint against a utility with the Commission. The Commission finds that the complaint procedures, in conjunction with the requirements of the Code of Conduct and Regulatory Conditions and the reporting requirements described above, provide the necessary protection to ensure that CP&L and NCNG properly adhere to the Code of Conduct and Regulatory Conditions and allow for changes to be made in the Code of Conduct and Regulatory Conditions as necessary.

Next, the Commission will address a number of other concerns raised by NCEMPA. The first is a concern that, after the merger, CP&L will have an incentive to pay NCNG an inflated price for gas or transportation services. As a wholesale electricity customer of CP&L, NCEMPA appears to be concerned that CP&L would then attempt to flow through these inflated costs to its wholesale customers. CP&L witness Hancock testified that this concern was not valid because regulatory oversight, NCNG's annual prudency reviews, and the proposed Code of Conduct and Regulatory Conditions ensure that this situation will not occur. If CP&L were to pay NCNG full tariffed rates for either gas or transportation services, when a lower negotiated rate was possible, other parties will have ample opportunity to discover such. Ms. Hancock further testified that the Code of Conduct provides additional safeguards against such conduct. Section II.D.1(d) of the Code of Conduct requires NCNG to provide gas sales and transportation services to CP&L at the same price and on the same terms that are made available to other similarly situated customers. Section II.E.3 provides that if NCNG supplies any gas or transportation services to CP&L to generate electricity, CP&L must file a report with the Commission in its annual fuel charge proceeding demonstrating that the purchase was prudent and the price was reasonable. In addition, NCNG must identify the volumes and prices for deliveries to CP&L facilities in its monthly negotiated loss report. Section II.E.4 of the Code of Conduct requires NCNG to disclose, upon request and on a confidential basis, to non-affiliated electric generators (such as NCEMPA) the gas supply and transportation prices, characteristics, and other terms of service for gas deliveries to CP&L for electric generation. Finally, Ms. Hancock testified that Section II.E.5 provides that all gas supply and transportation arrangements between NCNG and CP&L of more than two months must be filed with the Commission in advance. Thus, she concluded that the Code of Conduct expressly prohibits the type of activity NCEMPA is concerned about and that CP&L and NCNG are required to file reports that would disclose any attempts to engage in such activity. Ms. Hancock also testified that even if NCNG did charge CP&L more than was appropriate for gas sales or transportation services and CP&L was successful in passing along these higher gas or transportation costs to CP&L's retail or wholesale customers, NCNG would be no better off than it otherwise would have been because of NCNG's annual prudency review. As a result, neither CP&L's nor NCNG's earnings would be increased by CP&L or NCNG engaging in this activity. The Commission finds that NCEMPA's concern in this area has been adequately addressed because (1) the Commission has full oversight authority over both CP&L and NCNG, (2) the Commission conducts annual fuel charge proceedings and gas costs prudency reviews in which the prices CP&L pays NCNG for gas and transportation services will be subject to investigation, (3) the Code of Conduct specifically prohibits this activity, and (4) this activity would not produce any additional earnings for either CP&L or NCNG.

NCEMPA's next concern is that CP&L will use its ownership of NCNG to discriminate against entities other than CP&L wishing to construct electric generating facilities connected to NCNG's system. It appears that there are several aspects to this concern. The first relates to the prices NCNG would charge for natural gas and transportation services to an non-affiliated electric generating facility. The second deals with the location and size of new pipeline facilities constructed by NCNG, the point being that NCNG would select a route for such facilities that would increase the costs to the non-affiliated electric generator. NCEMPA acknowledges that the Code of Conduct prohibits discrimination against "similarly situated" shippers and that it defines "similarly situated." Still, NCEMPA fears that NCNG may adopt such a restrictive view of "similarly situated" that no other party constructing an electric generating plant would be "similarly situated" to CP&L. Therefore, NCEMPA proposed that the definition of "similarly situated" be amended to add, "The term shall not be applied in such a manner to effect an unreasonable preference or advantage to CP&L." NCEMPA proposed to amend the "equal treatment" provision of the Code of Conduct and proposed a new provision to read, "In evaluating the feasibility of line extensions, NCNG shall not take into account potential revenues that would be received by CP&L or any other benefit that would flow to CP&L." The Commission concludes, based on its review of witness Hancock's testimony and of the Code of Conduct and Regulatory Conditions, that all of these concerns have been adequately addressed. Ms. Hancock testified that the Code of Conduct ensures that any customer with an electric generating facility wishing to obtain gas or transportation services from NCNG is treated in the same manner as any similarly situated CP&L generator. She cited Section II.A.1 which provides that CP&L and NCNG shall not show any preference to customers of their affiliates, requests for service from affiliates, or customers of their non-public utility operations, as compared to non-affiliated entities and their customers. She also cited Section II.B.1 which requires CP&L and NCNG to process all similar requests for service in the same timely manner, whether requested on behalf of an affiliate, non-public utility operation or non-affiliated entity and which requires both utilities to apply the provisions of their tariffs equally to affiliates, non-public utility operations and non-affiliates. As mentioned earlier, Section II.D.1(d) provides that for gas sales and transportation transactions between CP&L and NCNG, NCNG must provide service to CP&L at the same price and terms that are made available to other similarly situated customers. Section II.E.3 requires CP&L to file a report in its annual fuel charge proceeding demonstrating that its purchases of gas and transportation services from NCNG were prudent and that the price was reasonable and NCNG must identify the volumes and prices for deliveries of gas to CP&L at below tariffed rates in its monthly negotiated loss report to the Commission. Furthermore, Section II.E.4 requires NCNG to disclose on a confidential basis to non-affiliated electric generators on its system the gas supply and transportation prices, characteristics and other terms of service for gas deliveries to CP&L for electric generation. Section II.E.5 requires CP&L to file with the Commission all gas supply and transportation arrangements between NCNG and CP&L of more than two months. Finally, Section II.I requires NCNG to treat similarly situated shippers in the same manner with respect to the delivery of gas on distribution facilities, contract terms, the scheduling of gas supplies, balancing provisions, and the allocations of gas supplies and capacity at city gate stations. This section also requires NCNG to post its criteria for evaluating proposals from shippers on its Internet web site and prohibits NCNG from giving any shipper any form of preference over other similarly situated shippers in matters relating to assignment, release or other transfer of capacity rights on interstate pipeline systems. It appears to the Commission that the Code of Conduct sections described above clearly prohibit any and all types of discrimination by CP&L or NCNG against non-affiliated electric generators and also prohibits any preferences for generation owned by CP&L and connected to the NCNG system. These sections also afford the Commission, the Public Staff and non-affiliated electric generators ample information from which to determine whether any undue preferences or discrimination is occurring. The Commission and non-affiliated electric generators connected to the NCNG system will know the amount that NCNG is charging CP&L for gas and transportation services for electric generating facilities owned by CP&L. This should allow non-affiliated electric generators to determine whether CP&L is being afforded any preferences in the provision, supply or pricing of NCNG-provided gas or transportation services.

Turning to NCEMPA's concern regarding the routing of new pipelines to the disadvantage of non-affiliated electric generators, the Commission finds that the Regulatory Conditions adequately and properly protect against this concern. As mentioned earlier, these Conditions require NCNG and CP&L to file a current ten-year plan for new or expanded gas pipeline facilities with the Commission by October 31, 1999, and annually thereafter. These plans must incorporate details regarding CP&L's electric generation plans and the pipeline routing and specifications required to provide gas and transportation services to each electric generating plant. These filings must also describe each inquiry received from a party interested in locating gas-fired electric generation in North Carolina and report on the status of each inquiry. To the extent customers want to have input into NCNG's pipeline expansion planning process, NCNG is required to develop a process to encourage such input on an ongoing basis. Also as mentioned earlier, neither CP&L, NCNG nor any affiliate may begin the construction of new natural gas facilities, including a pipeline, to serve an electric generating plant without filing a notice of intent with the Commission. Also, any application for a certificate of public convenience and necessity filed with the Commission by CP&L or an affiliate to construct an electric generating facility must incorporate details with respect to the routing of any new or expanded gas pipeline or other facilities required to serve the proposed electric generating plant and details about any proposed pipeline routing and specifications related to any new or expanded natural gas facilities. It appears to the Commission that these conditions will provide all interested parties with both advance notice of any plans by NCNG to construct new gas pipeline facilities and an opportunity to actually provide input into such plans. As a result, any potential electric generator with plans to connect to NCNG's system will have ample notice of NCNG's pipeline construction plans, an opportunity to provide input into such plans, the ability to determine whether the planned pipeline additions could detrimentally impact the projects of non-affiliated electric generators and the ability to seek relief from the Commission in the event its concerns are not addressed by NCNG or CP&L.

Next, NCEMPA notes that while procedures and conditions are set forth in the Code of Conduct for cost allocation and transfer pricing standards for CP&L and NCNG, the Code states that these are provided "as a general guideline." NCEMPA argues that unless the guidelines are mandatory, they provide no assurances of protection. The Commission notes that CP&L witness Hancock was asked about this phrase. Her response is as follows:

> So it's simply to say, this is a general guideline and we will follow these guidelines. There may be a departure from it but that would have to be for different circumstances but it's envisioning that in almost all of the cases these guidelines should apply.... I think if there was a significant departure that we wanted to make from these guidelines that we would probably seek a formal process to do that. If it was one insignificant or small item I don't see us doing that. I see us just working it through the normal review process for all of our affiliate transactions and cost allocations which the Staff, I believe, audits on a fairly regular basis for the utilities in the state.

The Commission believes that this sufficiently explains the phrase, that the phrase does not weaken the Code provisions, and that the phrase should be retained.

Finally, NCEMPA notes that although the utilities have agreed to file a cost allocation manual and annual ten-year plans for new or expanded gas pipeline facilities, no provision has been made for interested parties to comment on these filings or for the Commission to hold a hearing. NCEMPA argues that the filing requirements provide little protection unless there is an opportunity to comment, and NCEMPA requests that the Commission adopt provisions to insure an opportunity to comment when CP&L files its cost allocation manual and when NCNG files its gas line extension plans. The Commission feels that ample opportunity exists for comment without further Commission directive. The cost allocation manual will be a public filing. Regulatory Condition 10 establishes a process for greater Commission involvement in, and increased opportunities for customer input in, the planning process for the expansion of new gas pipeline facilities.

SG&P raised a concern with NCNG's policy with regard to the release of interstate pipeline capacity. SG&P asked the Commission to require NCNG to make available its interstate pipeline capacity to all qualified shippers. CP&L witness Hancock and NCNG witness Wells objected to this request, explaining that NCNG's peak-day demands exceed its interstate pipeline capacity and, therefore, NCNG must retain the sole discretion to determine when and if to release interstate pipeline capacity. Mr. Wells also testified that, through the rate design process, most of NCNG's interstate pipeline capacity costs are assigned to NCNG's residential and commercial customers, not to industrial customers who are SG&P's primary customers. He further testified that when NCNG is in a position to release capacity, 75% of the margin earned from the sale is credited back to all of NCNG's customers, not just a select few. The Commission finds that this issue is not directly relevant to the question of whether the merger of CP&L and NCNG is in the public interest. This issue is more directly related to the Commission's policies and decisions regarding the establishment of gas transportation rates, the Commission's approval of the use of full margin transportation rates, and the return of 75% of the revenues received from the release of interstate capacity to all of the LDC's customers. Whether this capacity release policy should be revised is not appropriately addressed in this proceeding.

SG&P also raised an issue as to consolidated billing. It argued that consolidation of billing services of CP&L and NCNG and any marketing affiliate should be prohibited, but, in the alternative, if consolidated billing is allowed, the combined company should be required, as a condition of merger, to offer such billing services to all marketers, affiliated and non-affiliated, at the same price. The Commission notes that the Code of Conduct does not prohibit consolidated billing, and the Commission is not convinced that it should. As to offering billing services to non-affiliated marketers, CP&L witness Hancock testified as follows:

> A. I'm willing to commit that we would talk to you about whether there were conditions under which we could accomplish that. I mean, I can't say that unless I can say you're willing to absorb the cost of doing that and that there are other things that can be worked out as far as the systems to do that and so forth, but I will commit that we would be willing to work with you to try to do that.
>
> Q. You're willing to commit to work with Southeastern and other unaffiliated marketers to do that on the same pricing terms and conditions as you do for your affiliated marketer?
>
> A. Yes, assuming, you know, whatever the prices or conditions and costs are associated with being able to do that for another marketer.

It clearly appears from this testimony that CP&L has committed to work with non-affiliated marketers regarding consolidated billing, and the Commission so notes and concludes that this sufficiently addresses SG&P's concern for present purposes.

SG&P also argued that in order to offer the utmost protection to customers of the combined company, all cost allocation studies must be available for the scrutiny of all parties in general rate cases. The Commission notes that Regulatory Condition 2 provides, "CP&L will file an affiliate cost allocation manual with the Commission by December 31, 1999. The cost allocation manual shall describe how all direct, indirect, and other costs will be charged to capital projects, nonutility operations and divisions, and subsidiaries." Witness Hancock testified that this would be a public filing, and the Commission again concludes that this addresses SG&P's concern for purposes of this docket.

In a statement of position filed after the hearing, the Greenville Utilities Commission (GUC) and the Cities of Rocky Mount, Wilson and Monroe state that CP&L's witness made several commitments with respect to CP&L's interaction with them on a going-forward basis. Specifically, they argue that CP&L has given (1) a commitment to negotiate with the GUC and the Cities in good faith in attempting to address their concerns with NCNG as their wholesale gas supplier, (2) acknowledgment of the GUC's and the Cities' "ability to complain" should CP&L fail to negotiate in good faith, and (3) assurance to the Commission and the parties that there would be no flow-through of merger-related costs to wholesale customers, as well as no flow-through of merger-related costs to retail customers, of the merged entity. The GUC and the Cities want these commitments included in the Commission's Order. The Commission confirms that CP&L witness Hancock did in fact make such commitments and notes and records these commitments for purposes of this Order approving the merger.

Transco witness Ferazzi focused upon Regulatory Conditions 22 and 25. Specifically, he testified that he was unclear as to how these two Conditions would be interpreted and applied. Regulatory Condition 22 requires CP&L , NCNG and any affiliate to file a notice of intent with the Commission prior to beginning the construction of natural gas facilities that will be used to serve an electric generating plant. The notice must be filed well in advance of construction and the acquisition of rights-of-way, and the application for a certificate of public convenience and necessity to construct the electric generating plant must incorporate the details with respect to the routing of the new or expanded pipeline or facilities. Regulatory Condition 25 requires CP&L and NCNG to utilize competitive solicitation procedures to determine future long-term sources of interstate pipeline capacity and supply. The determination of the appropriate sources of interstate pipeline capacity and supply must be made by CP&L on the basis of the benefits and costs of such sources specifically to CP&L's electric customers. The determination must be made by NCNG on the basis of the benefits and costs of such sources specifically to NCNG's gas customers, including electric generating customers. If a conflict should occur between CP&L's and NCNG's needs, the conflict is to be resolved by the Commission on a case-by-case basis. Transco raised at least three issues with respect to Condition 25 in its post-hearing brief. Transco suggests that a solicitation can only be competitive if CP&L and NCNG are required to provide all potential bidders with substantially similar information concerning the specific nature and extent of the natural gas supply or capacity being sought. In this regard, the Commission notes that CP&L witness Hancock testified, "I think I understand what you're trying to say and I think that would make sense, that you would provide the bidders with the total picture of what's needed both from a CP&L and NCNG side in terms of pipeline capacity." Condition 25 will be interpreted in light of witness Hancock's testimony. Next, Transco notes that Condition 25 contains no guidance or limitations concerning the types of costs or benefits that CP&L and NCNG should consider in evaluating proposals to provide additional gas supply or capacity. Finally, Transco states that major new supply and capacity contracts subject to Condition 25 merit additional regulatory scrutiny and that CP&L and NCNG should be required to consult with the Public Staff prior to soliciting and selecting proposals for major long-term gas supply and capacity projects. Suffice it to say that the Commission intents to enforce all of the Regulatory Conditions consistent with their intended goals and that the Commission believes that Condition 25 is adequate as now written and that no further guidance or limitation is appropriate with respect to Condition 25 at this time. To the extent any interested party has a concern with regard to the Commission's interpretation or implementation of the Regulatory Conditions, the party may file a complaint with the Commission.

Finally, CIGFUR filed a statement of position at the hearing urging that any order approving the merger require, at a minimum, that:

- any cost savings resulting from the transactions, as determined by annual Utilities Commission review, be shared with electric and gas ratepayers;
- electric and gas rates not increase as a result of the merger;
- present and prospective electric generators and marketers not be disadvantaged;
- CP&L and affiliates receive no competitive advantages in generation and marketing of electricity and natural gas;
- competitive information obtained through monopoly operations not be given to or used by affiliates, including other monopoly providers;
- prices for monopoly services paid to CP&L and NCNG by affiliates be publicly disclosed on a real-time basis;
- CP&L retail electric customers not subsidize NCNG gas customers;
- present and future gas capacity and gas transportation in CP&L and NCNG service areas be allocated and priced fairly and without discrimination in favor of CP&L, NCNG or affiliates;
- interruptible gas customers not be disadvantaged; and
- sources of new CP&L energy and capacity be determined by competitive bid processes.

CIGFUR did not conduct any cross-examination or file a post-hearing brief. Suffice it to say that the Commission believes that CIGFUR's points are either sufficiently covered by the Regulatory Conditions and Code of Conduct or should be rejected.

In conclusion, the Commission believes that the Code of Conduct, the Regulatory Conditions, and the commitments made by CP&L and NCNG at the hearing and noted in this Order address all of the parties' concerns with the merger. To the extent unforeseen or unintended issues arise, any interested party may bring them to the attention of the Commission, and the Commission has the authority to take action. The Commission will make the Code of Conduct, Regulatory Conditions, and the commitments made by CP&L and NCNG at the hearing and noted in this Order express conditions of approval of the merger. The Regulatory Conditions are set forth in the ordering paragraphs of this Order; the Code of Conduct is attached to this Order as Appendix A; the commitments are noted hereinabove in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding of fact is found in the testimony of NCNG witness Wells, CP&L witness Hancock, the Public Staff panel of witnesses, and the other testimony discussed above.

G.S. 62-111 provides that a public utility may not engage in a merger or business combination without first obtaining Commission approval, which approval "shall be given if justified by the public convenience and necessity." G.S. 62-161 provides that a public utility shall not issue any securities without first obtaining an order from the Commission that such issuance is (1) for some lawful object within the corporate purposes of the public utility, (2) is compatible with the public interest, (3) is necessary or appropriate for or consistent with the proper performance by such utility of its service to the public and will not impair its ability to perform that service, and (4) is reasonably necessary and appropriate for such purpose.

The Code of Conduct and Regulatory Conditions adopted and approved herein and the commitments made by CP&L and NCNG at the hearing and noted in this Order are designed and intended to eliminate and minimize all of the potential foreseeable risks of the merger to CP&L and NCNG customers and to the competitors of CP&L's and NCNG's affiliates. If additional refinements to them are needed to address unforeseen or unintended events, CP&L and NCNG acknowledge that the Commission has the authority to make such refinements. The Commission finds that the merger of CP&L and NCNG, viewed as a whole, is justified by the public convenience and necessity, is for a lawful purpose, is in the public interest, is consistent with the proper performance of CP&L's and NCNG's service to their customers and will not impair either utility's ability to provide adequate and reliable service to its customers at reasonable rates and is reasonably necessary and appropriate. Thus, the Commission concludes that the merger satisfies the requirements of G.S. 62-111 and 62-161 and should be approved as hereinafter provided.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L's and NCNG's application to engage in a business combination transaction and issue stock in connection therewith, as described herein, and to issue securities in the manner set forth herein and in the application, is approved upon the commitments made by CP&L and NCNG at the hearing and noted hereinabove in this Order and upon the following Regulatory Conditions with which CP&L and NCNG are hereby ordered to comply:

(1) All costs of the merger, and all direct and indirect corporate cost increases, if any, attributable to the merger, will be excluded from CP&L's and NCNG's utility accounts, and also will be excluded from utility costs, for all purposes that affect CP&L's retail electric rates and charges and NCNG's natural gas rates and charges. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level that CP&L and NCNG would have incurred using prudent business judgment had the merger not occurred.

(2) CP&L will file an affiliate cost allocation manual with the Commission by December 31, 1999. The cost allocation manual shall describe how all direct, indirect, and other costs will be charged to capital projects, nonutility operations and divisions, and subsidiaries. In that connection, CP&L and NCNG will perform a detailed review of the common costs to be allocated and allocation factors to be used. On December 31, 1999, CP&L and NCNG shall provide a list of items considered to be shared services and the basis for that determination. CP&L and NCNG also shall file an annual report of affiliated transactions with the Commission. The first report on affiliated transactions shall be filed on March 1, 2000. Subject to future orders of the Commission, all of CP&L's and NCNG's administrative and general expenses shall be allocated consistent with past practices by either direct assignment or allocation or by such other means as the Commission determines are necessary to assure an appropriately independent relationship between the regulated and nonregulated

business segments of the merged company so that no cost increases attributable to the merger are reflected in electric or gas operations. Transactions between each utility's regulated operations and its nonutility affiliates and operations shall be reviewed regularly by its internal auditors. All workpapers shall be available for review by the Commission Staff.

(3) CP&L will file with the Commission by December 31, 1999, an electric cost of service manual which delineates and describes the steps taken to functionalize, classify, directly assign, and allocate revenues, O&M expenses, depreciation, taxes, and plant for input into the electric cost of service computer program.

(4) An amount equal to CP&L's net equity investment in NCNG (i.e., the amount initially recorded as net investment in NCNG in NARUC Account 123, plus future earnings of NCNG less dividends paid by NCNG) will be eliminated from CP&L's unconsolidated capital structure for all purposes that affect its North Carolina retail rates and charges.

(5) Both companies shall keep their respective accounting books and records in a manner that will allow all components of the cost of capital to be identified easily and clearly for CP&L and NCNG on separate bases.

(6) To the extent the cost rates of CP&L's or NCNG's long-term debt (more than one year), short-term debt (one year or less) or preferred stock are or have been adversely affected by the merger, through a downgrade or otherwise, a replacement cost rate to remove the effect will be used for all purposes affecting CP&L's North Carolina retail rates and charges and NCNG's rates and charges. This replacement cost rate will be applicable to all financings, refundings, and refinancings. This procedure will be effective through CP&L's and NCNG's next respective general rate cases. As part of CP&L's and NCNG's next respective general rate cases, any future procedure relating to a replacement cost calculation will be determined. This condition does not indicate a preference by any party for any specific debt rating or preferred stock rating for CP&L or NCNG on current or prospective bases.

(7) In accordance with North Carolina law, CP&L and NCNG will continue to provide the Commission and its Staff full access to the books and records of CP&L and NCNG, their affiliates and nonutility operations.

(8) The revenues from certain CP&L electric utility wholesale transactions are (a) allocated in part to CP&L's North Carolina retail operations in CP&L's North Carolina retail cost of service study and/or (b) treated in part as a credit to jurisdictional fuel expenses in CP&L's annual North Carolina retail fuel proceedings. To the extent commitments to CP&L's wholesale customers relating to the merger are made by or imposed upon CP&L, the effects of which serve to increase the North Carolina retail cost of service and/or North Carolina retail fuel costs under reasonable cost allocation practices traditionally followed by CP&L and approved by the

Commission, those effects shall not be recognized for North Carolina retail cost of service or ratemaking purposes.

(9) These conditions do not supersede any orders or directives that have been or will be issued by the Commission regarding the issuance of specific securities by CP&L and NCNG. As with securities issuances prior to the announcement of the merger, the issuance of securities after the announcement of the merger does not restrict the Commission's right to review, and if deemed appropriate, adjust CP&L's or NCNG's cost of capital for ratemaking purposes for the effect of these securities.

(10) Long-term debt (of more than one year duration) issued by CP&L and NCNG will be identified as clearly as possible with either (1) the assets that are or will be utilized to provide service to regulated utility customers; or (2) the existing debt to be replaced with the new debt issuance.

(11) The cost of capital conditions also will apply to CP&L's and NCNG's determinations of their maximum allowable AFUDC rates, the rates of return applied to any of CP&L's deferral accounts and regulatory assets and liabilities that accrue a return, and any other component of CP&L's or NCNG's cost of service impacted by the cost of debt and/or preferred stock. NCNC will continue to apply an interest rate of 10% to its Deferred Gas Cost and Price Sensitive Volume Adjustment Accounts.

(12) The cost of capital conditions included elsewhere herein shall also apply, for North Carolina retail cost of service/ratemaking purposes, in all instances in which the cost of capital affects the determination of Harris Purchased Capacity and Energy Costs calculated pursuant to CP&L's Power Coordination Agreement (PCA) with the North Carolina Eastern Municipal Power Agency (NCEMPA).

(13) For North Carolina electric retail cost of service/ratemaking purposes, wherever such costs would affect the determination of Harris Purchased Capacity and Energy Costs calculated pursuant to the PCA with the NCEMPA -

> (a) all costs of the merger, and all direct and indirect corporate cost increases, if any, attributable to the merger, shall be excluded from CP&L's utility accounts and/or costs. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level that CP&L would have incurred on a stand-alone basis.
>
> (b) subject to future orders of the Commission, all administrative and general expenses shall be allocated consistent with past practices by either direct assignment or allocation so that, for North Carolina electric retail cost of service/ratemaking purposes, no cost increases attributable to the merger are reflected in the determination of Harris Purchased Capacity and Energy costs.

(14) That CP&L, NCNG, and their affiliates shall be bound by the Code of Conduct approved by the Commission. The Code shall be considered the minimum conditions to which the merged company is agreeing and shall not preclude the Commission from amending the Code later to incorporate additional conditions. If necessary, the Code will be modified if there is a change in the merged company's organizational structure, changes in the structure of the electric or natural gas industry, or if other changes occur that warrant such amendments.

(15) Any acquisition adjustment that results from the business combination of CP&L and NCNG shall be treated for accounting and ratemaking purposes so that it does not affect CP&L's retail electric rates and charges and/or NCNG's natural gas rates and charges.

(16) None of CP&L's base retail electric rates will be increased from the date of an order approving the merger until after December 31, 2004, except for the following reasons: (1) annual fuel cost adjustment proceedings pursuant to G.S. 62-133.2; (2) to reflect the financial impact of governmental action (legislative, executive or regulatory) having a substantial specific impact on the electric industry generally or on a segment thereof that includes CP&L, including but not limited to major expenditures for environmental compliance; or (3) to reflect the financial impact of major expenditures associated with *force majeure*. For purposes of this condition and condition number 17, the term *force majeure* means an occurrence that is beyond the control of CP&L and/or NCNG and not attributable to either's fault or negligence. Without limiting the foregoing, *force majeure* includes acts of nature, like earthquakes, cyclones, rain, tornadoes, hurricanes, flood, fire, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. To qualify as an exception, a *force majeure* event must be reported within 15 working days of its occurrence.

Any request pursuant to these exceptions will include a specification of the reasons for the request and an accurate quantification of the financial impact of the request.

In addition, CP&L will not file for any cost deferral from the date of an order approving the merger until after December 31, 2004, except for major expenditures to restore or replace property damaged or destroyed by *force majeure*.

(17) None of the margin rates for gas sales and transportation services provided by NCNG will be increased from the date of an order approving the merger until after November 1, 2003, except for the following reasons: (1) gas cost adjustments or changes in increments or decrements pursuant to G.S. 62-133.4 or Commission Rule R1-17(k); (2) to reflect the financial impact of governmental action (legislative, executive or regulatory) having a substantial specific impact on the gas industry generally or on a segment thereof that includes NCNG, including but not limited to

major expenditures for environmental compliance; (3) to implement natural gas expansion surcharges imposed pursuant to G.S. 62-158; (4) to reflect the financial impact of major expenditures associated with *force majeure* (as set forth in Condition 16); or (5) to incorporate investment in major NCNG pipeline expansion projects; provided, however, that if a filing is made pursuant to subsection (5), no less than $7.5 million of pre-tax income related to new gas-fired electric generation will be reflected in the determination of the revenue requirement.

Any request pursuant to these exceptions will include a specification of the reasons for the request and an accurate quantification of the financial impact of the request. For purposes of this condition, the "margin rate" is defined as the tariffed sales rate less the benchmark commodity cost of gas, fixed gas cost rate, and temporary increments and/or decrements imposed pursuant to G.S. 62-133.4 or Commission Rule R1-17(k).

After December 31, 2001, NCNG may file a general rate case application to rebalance its rates to address any rate of return disparities among customer classes without any increase in overall revenues, except as provided above. This limitation on increases in overall revenues includes the recovery of lost margins through the deferred gas cost account or other ratemaking mechanisms.

(18) It is assumed, based on representations made by CP&L, that the merger will not cause CP&L to become a registered holding company under the Public Utility Holding Company Act of 1935 (PUHCA). If CP&L or its affiliates engage in acquisitions or other actions (such as, but not limited to, the creation of a parent of CP&L) after the merger that create the possibility of CP&L (or a parent) becoming a registered holding company under PUHCA, CP&L will notify the Utilities Commission (NCUC) at least 30 days prior to filing with the Securities and Exchange Commission (SEC) any application necessary to obtain authorization to take such actions or, where no such application is necessary, at least 60 days prior to taking such actions. CP&L will bear the full risk of any preemptive effects of the Federal Power Act and/or PUHCA. The previous sentence includes, but is not limited to, an agreement by CP&L to take all such actions as the NCUC finds are necessary and appropriate to hold North Carolina retail ratepayers harmless from rate increases, foregone opportunities for rate decreases or other effects of such preemption, including filing with and obtaining approval from the SEC or the Federal Energy Regulatory Commission for such commitments as the NCUC deems necessary to prevent such preemptive effects.

(19) CP&L will continue to take steps designed to implement and further its commitment to providing superior electric service to North Carolina retail customers following the merger. CP&L shall provide to the Public Staff by October 31, 1999, the Service Quality Indices that it currently uses and believes are appropriate for measuring service quality. CP&L will work with the Public Staff to ensure that these indices are the most appropriate and to revise them if and when such revisions are necessary.

(20) NCNG will continue to take steps designed to implement and further its commitment to providing superior natural gas service to North Carolina customers following the merger. NCNG shall provide to the Public Staff by October 31, 1999, the Service Quality Indices that it proposes to use to measure service quality. NCNG will work with the Public Staff to ensure that these indices are appropriate and to revise them if and when such revisions are necessary.

(21) NCNG and/or CP&L will file its current ten-year plan for new or expanded gas pipeline facilities with the Commission by October 31, 1999, and updates shall be filed with the Commission by October 31 every year thereafter. Such plans shall incorporate details regarding CP&L's electric generation plans and the pipeline routing and specifications required to provide gas and transportation service to each electric generating plant. The filing shall also describe each inquiry received from a party interested in locating gas-fired electric generation in North Carolina and report on the status of each inquiry (confidentially if necessary). To the extent substantial changes occur in any plans or proposals to expand or extend facilities, notice of such changes shall be filed with the Commission immediately. To the extent customers want to have input into the pipeline expansion planning process, NCNG shall develop a process to encourage such input on an on-going basis.

(22) Neither CP&L, NCNG, nor an affiliate will begin the construction of natural gas facilities, including a pipeline, to serve an electric generating plant without filing a notice of intent with the Commission. The notice of intent shall be filed well in advance of any construction-related activity, including the acquisition of any rights-of-way. Any application for a certificate of public convenience and necessity (CPCN) filed with the Commission by CP&L or an affiliate shall incorporate details with respect to the routing of any new or expanded gas pipeline or other facilities required to serve the proposed electric generating plant and details about any proposed pipeline routing and specifications related to any new or expanded natural gas facilities needed to provide gas and/or transportation service to the proposed electric generating plant.

(23) NCNG shall not recover from ratepayers the margins lost as the result of bypass by an interstate gas pipeline in which CP&L or any affiliate has an ownership interest.

(24) CP&L will determine the appropriate self-built or purchased power resources to be used to provide future generating capacity and energy to CP&L's electric customers, including the siting considered appropriate for such resources, on the basis of the benefits and costs of such siting and resources specifically to CP&L's electric customers.

(25) CP&L and NCNG shall utilize competitive solicitation procedures to determine future long-term sources of interstate pipeline capacity and supply. The determination of the appropriate source(s) for the interstate pipeline capacity and supply shall be made by CP&L on the basis of the benefits and costs of such source(s) specifically to CP&L's electric customers. The determination of the appropriate source(s) for the

interstate pipeline capacity and supply shall be made by NCNG on the basis of the benefits and costs of such source(s) specifically to NCNG's gas customers, including electric power generating customers. If a conflict should occur among the CP&L and NCNG standards, the conflict shall be resolved by the Commission on a case-by-case basis.

(26) CP&L shall use its best efforts to promote the expansion of gas service and economic development in North Carolina by siting gas-fired electric generating plants on NCNG's system to the extent such siting is not inconsistent with Condition 24.

2. That the Code of Conduct attached hereto as Appendix A is hereby approved and CP&L and NCNG are hereby ordered to comply therewith.

3. That it is the intent of the foregoing conditions that CP&L's and NCNG's ratepayers be held harmless from any adverse effects of the merger, including potential actions by other regulatory jurisdictions related to the merger, and that they receive benefits from the merger that are at least commensurate with the potential adverse effects of the merger.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of July, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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Commissioner Koger's term expired, and he did not participate in this decision.

Appendix A

CODE OF CONDUCT GOVERNING THE RELATIONSHIP AMONG CAROLINA POWER & LIGHT COMPANY, NORTH CAROLINA NATURAL GAS CORPORATION, THEIR AFFILIATES AND THEIR NONPUBLIC UTILITY OPERATIONS

I. Definitions

For purposes of this Code of Conduct, the terms listed below shall have the following definitions:

Affiliate: Any company or subsidiary, ten percent (10%) or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by Carolina Power & Light Company.

Commission: The North Carolina Utilities Commission.

CP&L: The public utility operations of Carolina Power & Light Company as defined in N.C.G.S. § 62-3(23).

Customer: Any retail electric customer of CP&L located within CP&L's electric service territory and any natural gas sales or natural gas transportation customer of NCNG located within NCNG's franchised service area.

Customer Information: Any and all customer specific information obtained by CP&L and/or NCNG.

Electric Services: Commission-regulated electric energy sales, generation, transmission, distribution and/or delivery, and other related services, including, but not limited to, metering and billing.

Fully Distributed Costs: All direct and indirect costs, including overheads and the cost of capital, incurred in providing the goods and services in question.

Gas Marketing Affiliate: An affiliate or nonpublic utility operation of NCNG or CP&L engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

Gas Marketing Affiliate Personnel: An employee or other representative of the gas marketing affiliate that is involved in fulfilling the business purpose of the marketing affiliate. An officer or director of both NCNG and a gas marketing affiliate shall not be considered gas marketing affiliate personnel unless that individual is directly involved in fulfilling the business purpose of the gas marketing affiliate.

Natural Gas Services: Commission-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, metering and billing.

NCNG: the public utility operations of North Carolina Natural Gas Corporation as defined in N.C.G.S. § 62-3(23).

NCNG Operating Personnel: An employee or other representative of NCNG that is involved in the acquisition, marketing, pricing, or scheduling of gas supply, interstate pipeline capacity, or gas storage facilities on behalf of NCNG. NCNG operating personnel also includes personnel involved in managing NCNG's facilities or responsible for determining which customers to curtail, or involved in selling products and services to NCNG's customers eligible to purchase gas, products, and services from persons other than NCNG.

Nonaffiliated Gas Marketer: An entity, not affiliated with NCNG or CP&L, engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

Nonpublic Utility Operations: All activities engaged in by CP&L and/or NCNG involving the sale of a good or service that are not regulated by the North Carolina Utilities Commission.

Shipper: A gas marketing affiliate, nonaffiliated marketer, a municipal gas customer, or end-user of gas.

Similarly Situated: Possessing comparable characteristics, such as, the type and delivered price of alternative fuel used, gas curtailment priority, daily usage and daily load swing or relevant Standard Industrial Classification.

II. Code of Conduct

This Code of Conduct, while not wholly inclusive or totally encompassing, establishes the minimum guidelines and rules that apply to transactions involving either or both CP&L and/or NCNG, and one or more of their affiliates and/or one or more of their nonpublic utility operations. This Code of Conduct will become applicable on the date that it is approved by the Commission.

A. GENERAL STANDARDS

1. Equal Treatment - CP&L and NCNG shall not show any preference to: customers of their affiliates; requests for service from affiliates; and/or customers of their nonpublic utility operations, as compared to nonaffiliated entities and their customers.

2. Cross-subsidies involving either or both CP&L and/or NCNG, and one or more of their affiliates and/or one or more of their nonpublic utility operations are prohibited.

3. Separation - CP&L, NCNG, and their affiliates shall operate independently of each other (except for sharing of services under Section II.D.3). CP&L, NCNG, and each of their affiliates shall maintain separate books and records. CP&L's and NCNG's nonpublic utility operations shall maintain separate records to ensure appropriate cost allocations and any requirements of arm's length transactions. CP&L and its affiliates shall conduct business from physically separate offices located on different floors or in different buildings. However, CP&L and its affiliates may share offices to the extent necessary to perform those shared corporate functions permitted under Section II.D.3 of this Code of Conduct.

4. Disclosure - Upon request, CP&L shall provide electric Customer Information to NCNG, CP&L's affiliates and nonpublic utility operations under the same terms and conditions that such information is provided to nonaffiliates. Upon request, NCNG shall provide natural gas Customer Information to CP&L, NCNG's affiliates and nonpublic utility operations under the same terms and conditions that such information is provided to all nonaffiliates. Customer Information shall not be disclosed to any person or company without the Customer's consent except to the extent provided for in Section II.D.3. If disclosed, it must be done with advance public notification, in a manner determined by the Commission to ensure that the opportunity to receive the disclosed information is made available to nonaffiliates at the same time that it is made available to affiliates and/or nonpublic utility operations. Notwithstanding the prohibitions established by this subsection, NCNG may disclose Customer Information to CP&L without Customer consent and without making the information available to any other person or company in order to allow CP&L to perform billing services for NCNG. Such Customer Information shall only be disclosed to those CP&L employees performing billing operations and shall be stored in such a manner that only CP&L's employees that perform billing operations and employees in CP&L's Customer Service Department who are responsible for responding to customer inquiries concerning customer service and billing matters may access the information.

B. NONDISCRIMINATION AND INFORMATION STANDARDS

1. CP&L and NCNG shall process all similar requests for Electric Services and/or Natural Gas Services in the same timely manner, whether requested on behalf of an affiliate, nonpublic utility operation or nonaffiliated entity. CP&L and NCNG shall apply the provisions of their tariffs equally to affiliates, nonpublic utility operations and nonaffiliates.

2. CP&L will not represent to any Customer that any affiliate and/or nonpublic utility operation will receive any preference from CP&L relative to providing Electric Services over any unaffiliated service provider, nor will CP&L provide its affiliates and/or nonpublic utility operations with any preference

over nonaffiliates in provision of Electric Services. NCNG will not represent to any Customer that any affiliate and/or nonpublic utility operation will receive any preference from NCNG relative to providing Natural Gas Services over any unaffiliated service provider, nor will NCNG provide its affiliates and/or nonpublic utility operations with any preference over nonaffiliates in provision of Natural Gas Services.

3. CP&L and NCNG shall not condition or otherwise tie the provision or terms of any Electric Services or Natural Gas Services to the purchasing of any goods or services from the other or from an affiliate and/or from their nonpublic utility operations.

4. When any CP&L and/or NCNG employee receives a request for information from or provides information to a Customer about an affiliate and/or nonpublic utility operation service, the employee must advise the Customer that such services may also be available from nonaffiliated suppliers

C. **MARKETING STANDARDS**

1. CP&L, NCNG, their affiliates and their nonpublic utility operations may engage in joint sales, joint sales calls, joint proposals and/or joint advertising, subject to any conditions or restrictions that the Commission may hereafter establish, provided CP&L and NCNG agree to engage in similar activities with nonaffiliates under the same terms and conditions. However, CP&L, NCNG and a gas marketing affiliate collectively may not engage in joint sales, joint sales calls, joint proposals and/or joint advertising and NCNG operating personnel must not provide sales leads to its gas marketing affiliate. CP&L and/or NCNG shall post certain information regarding the joint marketing programs/calls on its internet web site at least 14 days prior to commencing a joint marketing arrangement and the information shall remain posted on the web site for the duration of the arrangement. The information disclosed on the web site shall include a description and terms for the joint marketing arrangement. Posting of the terms for the joint marketing arrangement shall include an offer by CP&L and/or NCNG to engage in joint marketing on such terms with nonaffiliates.

2. Affiliates may not use CP&L's and/or NCNG's name and/or logo in any communications unless a disclaimer is included that states the following:

   (a) "[Affiliate] is not the same company as [Utility], and [Affiliate] has separate management and separate employees;"

   (b) "[Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission;"

(c) "there is no advantage to customers of [Utility] if they buy products or services from [Affiliate];" and

(d) "a customer does not have to buy products or services from [Affiliate] in order to continue to receive the same safe and reliable electric (or natural gas) service from [Utility]."

Nonpublic utility operations may not use CP&L's and/or NCNG's name and/or logo in any communications unless a disclaimer is included that states the following:

(a) "[Nonpublic utility operation] is not part of the regulated services offered by [Utility] and is not in any way sanctioned by the North Carolina Utilities Commission;"

(b) "there is no advantage to customers of [Utility] if they buy products or services from [Nonpublic utility operation];" and

(c) "a customer does not have to buy products or services from [Nonpublic utility operation] in order to continue to receive the same safe and reliable electric (or natural gas) service from [Utility]."

The required disclaimer must be sized and displayed in a way that is commensurate with the name and/or logo so that the disclaimer is no smaller than the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

3. Personnel of an affiliate or nonpublic utility operation shall not give the appearance that the affiliate or nonpublic utility operation speaks on behalf of CP&L and/or NCNG.

4. Personnel of CP&L, NCNG, an affiliate or nonpublic utility operation shall not indicate to a third party that any advantage exists as the result of that third party dealing with an affiliate or nonpublic utility operation as compared with a nonaffiliate.

D. COST ALLOCATION AND TRANSFER PRICING STANDARDS

1. As a general guideline, with regard to the transfer prices charged for goods and services, including the use and/or transfer of personnel, exchanged between and among CP&L, NCNG, their affiliates and their nonpublic utility operations, the following conditions shall apply:

(a) For untariffed goods and/or services provided by CP&L and/or NCNG to an affiliate and/or nonpublic utility operation, the transfer price shall be the higher of market value or fully distributed cost.

(b) For goods and/or services provided by an affiliate and/or nonpublic utility operation to CP&L and/or NCNG, the transfer price charged by the affiliate and/or nonpublic utility operation to CP&L and/or NCNG shall be the lower of market value or the affiliate's and/or nonpublic utility operation's fully distributed cost. If the public utility does not engage in competitive solicitation and instead obtains the goods and/or services from an affiliate and/or nonpublic utility operation, the public utility shall implement adequate safeguards to ensure utility customers receive service at the lowest cost in each case.

(c) With the exception of gas supply and/or transportation, transactions between CP&L and NCNG for untariffed goods and/or services shall be priced at the lower of fully distributed costs or market value.

(d) For gas sales and/or transportation service transactions between CP&L and NCNG, NCNG shall provide service to CP&L at the same price and terms that are made available to other similarly situated customers.

2. All permitted transactions between CP&L, NCNG, the affiliates, and nonpublic utility operations shall be recorded and accounted for in accordance with CP&L's cost allocation manual.

3. CP&L, NCNG, the affiliates and the nonpublic utility operations may use certain corporate services and functions on a joint basis. Such shared services shall be charged among CP&L, NCNG, the affiliates and nonpublic utility operations. Shared services shall be those provided in response to Public Staff Merger Condition (2), subject to approval by the Commission.

4. CP&L and NCNG may participate with each other in joint purchases of goods and services. All joint purchases, including leases, shall be priced in a manner that permits clear identification of CP&L's and NCNG's portions of such purchases or leases. CP&L and NCNG shall not engage in joint purchases with affiliates and/or nonpublic utility operations, unless specifically permitted in advance by Commission order upon a finding that it is in the best interest of ratepayers.

5. Any costs CP&L or NCNG incurs in assembling, compiling, preparing and/or furnishing requested customer information to an affiliate, nonpublic utility operation or nonaffiliate shall be recovered from the requesting party pursuant to Section II.D.1 of this Code of Conduct.

6. Any technology or trade secrets developed by CP&L and/or NCNG will not be transferred to any of CP&L's and/or NCNG's affiliates and/or nonpublic utility operations without just compensation from the affiliate and/or

nonpublic utility operation, and the filing of notice with the Public Staff and Commission at least 60 days prior to the transfer.

7. CP&L and NCNG shall receive compensation from its affiliates and nonpublic utility operations for intangible benefits, if appropriate.

E. **REGULATORY OVERSIGHT**

1. The State's existing requirements under N.C.G.S. 62-153 for reporting of affiliate transactions shall apply.

2. The books and records of CP&L and NCNG, their affiliates and nonpublic utility operations shall be open for examination by the Commission, its staff, and the Public Staff consistent with the provisions of N.C.G.S. 62-34, 62-37, and 62-51.

3. If NCNG supplies any of the Natural Gas Services used by CP&L to generate electricity, CP&L shall file a report with the Commission in CP&L's annual fuel case demonstrating that the purchase was prudent and the price was reasonable. NCNG shall identify the volumes and prices for deliveries to the CP&L facilities in its monthly negotiated loss report to the Commission.

4. When requested, NCNG shall disclose on a confidential basis to nonaffiliated electricity generators on its system the gas supply and transportation prices, characteristics, and other terms of service for gas deliveries to CP&L for electric generation.

5. All gas supply and/or transportation arrangements between NCNG and CP&L of more than two months shall be filed with the Commission in advance.

F. **COMPLAINT PROCEDURE** - CP&L and NCNG shall establish complaint procedures to resolve potential complaints that arise due to the relationship of CP&L and/or NCNG with their affiliates and/or nonpublic utility operations. These complaint procedures do not affect a complainant's right to file a formal complaint with or otherwise address questions to the Commission. The complaint procedures shall provide for the following:

1. Verbal and written complaints shall be referred to a designated representative of NCNG and/or CP&L.

2. The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.

3. CP&L and/or NCNG shall investigate the complaint and communicate the results of the investigation to the complainant within 60 days of receiving the complaint.

4. CP&L and/or NCNG shall maintain a log of complaints and related records for inspection by the Commission, its staff and the Public Staff.

5. If the complainant is not satisfied, CP&L and/or NCNG shall inform the Commission, its staff and the Public Staff of the complaint.

G. **UTILITY BILLING FORMAT** - To the extent CP&L includes on a customer's electricity bill charges for Natural Gas Services and/or unregulated services, such charges shall be separated from all regulated Electricity Services charges and contain the following introductory notice in bold print: **Your natural gas service may not be terminated for failure to pay for your electricity service and your electricity may not be terminated for failure to pay for your natural gas service. Neither Your Regulated Natural Gas Services, Nor Your Regulated Electric Services Can be Terminated For Failure to Pay For the Following Unregulated Services.**

H. **NATURAL GAS/ELECTRICITY COMPETITION** - CP&L and NCNG shall continue to compete against all energy providers, including each other, to serve those retail customer energy needs that can be legally and profitably served by both electricity and natural gas. The competition between CP&L and NCNG shall be at a level that is no less than that which existed prior to the merger of the companies. Without limitation as to the full range of potential competitive activity, CP&L and NCNG shall maintain the following minimum standards:

1. NCNG will make all reasonable efforts to extend the availability of natural gas to as many new customers as possible.

2. In determining where and when to extend the availability of natural gas, NCNG will at a minimum apply the same standards and criteria that it applied before the merger with CP&L.

3. In determining where and when to extend the availability of natural gas, NCNG will make decisions in accordance with the best interests of NCNG, even though its best interest may not be the same as CP&L's.

4. To the extent that either the natural gas or electricity industry is further restructured, CP&L and NCNG will continue to maintain the full level of competition envisioned by this Code of Conduct.

I. **NATURAL GAS MARKETING STANDARDS**

1. NCNG shall treat similarly situated shippers in the same manner with respect to the delivery of gas on distribution facilities, contract terms, the scheduling of gas supplies, balancing provisions, and allocation of gas supplies and capacity at city gate stations.

2. All NCNG information pertaining to interstate pipeline transportation, storage, distribution, or gas supply that is provided to a gas marketing affiliate shall be made available to all shippers on a contemporaneous, nondiscriminatory and nonpreferential basis by posting the information on NCNG's internet web site and provided in a written form upon the request of a shipper. Aggregate customer information and market data made available to shippers shall be made available on a similar basis.

3. NCNG shall not disclose information provided by nonaffiliated marketers and customers to its marketing affiliate, unless such parties specifically authorize disclosure of the information.

4. A gas marketing affiliate shall function independently of NCNG and gas marketing affiliate personnel must be located in a facility that is physically separate from that used by the NCNG operating personnel performing similar functions.

5. NCNG operating personnel may not perform any of the following functions on behalf of a gas marketing affiliate:

   (a) Purchase gas, pipeline capacity or storage capacity.
   (b) Market or sell gas and related services.
   (c) Price or administer products and services.
   (d) Hire and/or train marketing affiliate personnel.
   (e) Offer consulting services regarding gas functions.

6. An individual may be an officer or director of both NCNG and a gas marketing affiliate provided that the individual does not obtain or use knowledge of market-sensitive information for more than one of the entities. NCNG shall post on its internet web site the identity, job title and responsibilities for each officer or director that falls within the definition of NCNG operating personnel.

7. NCNG shall post its criteria for evaluating proposals from shippers on its internet web site. NCNG shall not give one shipper any form of preference over other similarly situated shippers in matters relating to assignment, release, or other transfer of capacity rights on interstate pipeline systems.

8. NCNG shall post on its internet web site a current list of contact persons and telephone numbers of all gas marketers that are active on its system.

DOCKET NO. E-22, SUB 380

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Dominion Resources, Inc.,	)	
for Authorization under G.S. 62-111 to Engage	)	ORDER APPROVING
in a Business Combination Transaction	)	MERGER

HEARD: Tuesday, September 7, 1999, at 7:00 p.m. in Courtroom A, Pasquotank County Courthouse, Elizabeth City, North Carolina

Wednesday, September 8, 1999, at 7:00 p.m. in the Assembly Room, Second Floor, City Hall, Williamston, North Carolina

Thursday, September 9, 1999, at 7:00 p.m. at the Kirkwood F. Adams Community Center, Roanoke Rapids, North Carolina

Monday, September 20, 1999, at 3:30 p.m. in Commission Hearing Room 2115, Dobbs Building, Raleigh, North Carolina

BEFORE: Commissioner William R. Pittman, Presiding, and Commissioners Robert V. Owens and J. Richard Conder[1]

APPEARANCES:

For Dominion Resources and Virginia Electric and Power Company d/b/a North Carolina Power:

Robert W. Kaylor, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27603

Stephen H. Watts, II, One James Center, 901 E. Cary Street, Richmond, Virginia 23219

For the Public Staff

Gisele L. Rankin and Paul Lassiter, Staff Attorneys, Public Staff – North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626

[1]Commissioner Sam J. Ervin, IV, who presided over the public hearings in Elizabeth City, Williamston, and Roanoke Rapids, was replaced on the panel by Commissioner J. Richard Conder prior to the hearing in Raleigh.

For the Attorney General:

Leonard G. Green, Assistant Attorney General, N.C. Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

For the Carolina Industrial Group for Fair Utility Rates, Inc. (CIGFUR I):

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

BY THE COMMISSION: On April 5, 1999, Dominion Resources, Inc. (DRI) filed an application (Application) pursuant to G.S. 62-111 for approval to engage in a business combination transaction with Consolidated Natural Gas Company (CNG). DRI is a holding company and the parent company of Virginia Electric and Power Company (the Company or VEPCO). The Company provides public utility electric service to customers in Virginia, where it is regulated by the Virginia State Corporation Commission (VSCC), and in North Carolina, where it is regulated by the North Carolina Utilities Commission (NCUC or Commission). The Company's regulated public utility business in Virginia is operated under the name Virginia Power and in North Carolina under the name North Carolina Power (NC Power). CNG is a Delaware corporation and is a public utility holding company registered under the Public Utility Holding Company Act of 1935 (1935 Act). On May 24, 1999, DRI filed a revised merger agreement with the Commission to reflect certain changes to its transaction with CNG.

On May 20, 1999, the Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene in this proceeding. On May 28, 1999, the Carolina Industrial Group for Fair Utility Rates (CIGFUR I) filed a Petition to Intervene in this proceeding. Both CUCA's and CIGFUR I's Petitions were granted by Commission Order dated June 8, 1999. CUCA did not appear at the hearings.

On July 15, 1999, the Commission issued an Order that scheduled public hearings, provided for the filing of petitions to intervene, and set a schedule for the filing of prefiled testimony from DRI and intervening parties.

On July 27, 1999, the Attorney General filed a Notice of Intervention in the proceeding.

On August 9, 1999, DRI filed the Direct Testimony of Robert E. Rigsby, executive vice president of DRI, and chief operating officer of Virginia Power and NC Power.

On August 26, 1999, CIGFUR I filed a Statement of Position. On August 27, 1999, CUCA filed a Statement of Position.

Public hearings were held in Elizabeth City, North Carolina, on September 7, 1999, at which two public witnesses appeared; in Williamston, North Carolina, on September 8, 1999, at which two public witnesses appeared; and in Roanoke Rapids, North Carolina, on September 9, 1999, at which three public witnesses appeared. Each of the seven public witnesses testified in support of the proposed merger.

On September 8, 1999, the Public Staff filed the Joint Testimony of Thomas W. Farmer, Jr. – Director, Economic Research Division, Michael C. Maness - Electric Supervisor, Accounting Division, and Sami M. Salib – Engineer, Electric Division.

The evidentiary hearing scheduled by the Commission to take place in Raleigh, North Carolina, on September 16, 1999, was canceled due to inclement weather, and the hearing was rescheduled and held on September 20, 1999. Prior to the hearing, on September 20, 1999, DRI, NC Power, and the Public Staff filed a Joint Stipulation (Stipulation) setting forth the conditions intended by the parties to protect North Carolina ratepayers from adverse affects of the merger. Also prior to the hearing, on September 20, 1999, the Public Staff and DRI agreed to certain Interim Standards governing affiliate relationships. Additionally, on September 20, 1999, DRI filed the Supplemental Direct Testimony of Edgar M. Roach, Jr., executive vice president of DRI and chief executive officer of Virginia Power and NC Power. At the hearing, the Commission accepted the parties' prefiled testimony and the Stipulation into the record.

Based on the foregoing and all of the parties' testimony and exhibits received into evidence and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. DRI is a holding company with its corporate offices in Richmond, Virginia. DRI's businesses include regulated and unregulated electric power generation, transmission, distribution, and trading through VEPCO and Dominion Energy, Inc, (DEI); natural gas development through DEI; and financial services through Dominion Capital, Inc.

2. DRI is the parent corporation of VEPCO, a regulated electric public utility company with its principal corporate offices in Richmond, Virginia. In the state of Virginia, VEPCO operates as Virginia Power, and serves approximately 1.9 million customers. VEPCO operates in the state of North Carolina under the business name North Carolina Power, and serves approximately 104,000 customers in the northeastern part of the state.

3. CNG is a holding company organized under the laws of the state of Delaware. Its businesses include oil and gas exploration and production, gas transmission, and local gas distribution in the states of Ohio, West Virginia, Virginia and Pennsylvania.

4. Through their application to the Commission, DRI and CNG seek authorization under G.S. 62-111 to engage in a business combination transaction which would make CNG a wholly-owned subsidiary of DRI through a two-step process. In the first step, DRI will create a new subsidiary (DRI New Sub I) which will then be merged with DRI, with DRI as the surviving entity. To accomplish this first step, existing DRI common stockholders would be given an option, subject to certain limitations, of accepting cash or shares of new DRI common stock in exchange for their existing DRI common shares. During the second step of the process, a second new subsidiary of DRI (DRI New Sub II) will be created, and CNG will be merged into this subsidiary. DRI New Sub II will be the surviving entity in this transaction, but will change its name to CNG. This second merger will be accomplished by giving CNG common stockholders an option, subject to certain limitations, of accepting cash or DRI common stock in exchange for their shares of CNG common stock. This

exchange has been structured to fix the value of consideration paid to CNG common stockholders at $66.60 per share of CNG common stock, either in cash or in shares of DRI common stock. DRI will register with the Securities and Exchange Commission (SEC) as a holding company under the 1935 Act, and DRI New Sub II will register to continue CNG's status as a registered holding company under the 1935 Act. DRI and CNG shareholders have approved the merger.

5. The Regulatory Conditions set forth herein are adequate to ensure that NC Power's retail customers shall be held harmless from any adverse effects of the merger, including actions by other regulatory jurisdictions related to the merger, and shall receive benefits from the merger that are at least commensurate with the potential adverse effects of the merger.

6. The Regulatory Conditions set forth herein are adequate to ensure that NC Power's retail customers shall be protected from possible preemptive effects of the 1935 Act, and that the jurisdiction of the Commission is adequately protected.

7. The Interim Standards set forth herein are adequate, on an interim basis, to govern the relationship between NC Power, its affiliates, and its nonpublic utility operations given NC Power's commitment to not engage in nonpublic utility operations within its North Carolina service territory beyond fulfillment of existing commitments, unless agreed to by the Public Staff.

8. The proposed merger is justified by the public convenience and necessity, is for a lawful purpose, is compatible with the public interest, and is consistent with the proper performance of NC Power's service to its customers. The proposed merger will not impair the utility's ability to provide adequate and reliable service to its customers at just and reasonable rates, and it satisfies the requirements of G.S. 62-111.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

These findings of fact are essentially informational, procedural and jurisdictional in nature and are not in dispute. The description of the proposed merger is based on the application filed herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting Finding of Fact No. 5 is found in the testimony of DRI witness Robert E. Rigsby, the Public Staff panel of witnesses, the agreement of the Public Staff, DRI, and NC Power to the first 29 conditions set forth in the Stipulation filed on September 20, 1999, and the lack of objection to the Stipulation by any other party to this proceeding.

DRI, through the direct testimony filed by Mr. Rigsby, testified that the merger will enhance the public interest in general, and NC Power's ability to serve its retail customers in particular. The testimony provides that the proposed merger will not change the rates charged to North Carolina retail customers or affect their service reliability in any way, and that all current tariffs, regulatory obligations and affiliated interest agreements approved by the Commission will remain in place. Additionally, Mr. Rigsby stated that the purpose of the merger is to allow the combined company to better conduct its operations and to better serve the existing customers of DRI and CNG. Benefits to NC Power's retail customers, DRI, CNG, and the public in general include: a fully integrated gas and electric company with an energy portfolio of more than 20,000 megawatts of power generation, 2.4 trillion cubic feet equivalent natural gas and oil reserves producing nearly 300 billion cubic feet equivalent annually, and a major interstate gas pipeline and the largest natural gas storage system in North America; the creation of a stable and more financially robust company that will offer a full portfolio of energy products and services; economies of scale including greater efficiencies in operations and business processes and streamlined purchasing practices; an enhanced ability to raise and attract capital; the greater diversification of risk; the promotion of competition in the rapidly changing gas and electric arenas; and a continuation of NC Power's long history of community and civic involvement in North Carolina.

In its joint testimony, the Public Staff expressed concerns about the effects of the proposed merger upon NC Power's retail customers. Because the merger will involve the combination of two large holding companies, the Public Staff was concerned that significant changes could take place in the corporate organization at the holding company level in the processes and methods used to deliver corporate services to the operating companies and in the allocation of the costs of such services. The Public Staff further wanted to address the possibility that the merger could introduce additional risk to DRI's, and thus NC Power's, cost of capital or otherwise increase corporate and/or operating company costs.

Recognizing the need for assurances that the above concerns would be adequately addressed, representatives of the Public Staff, DRI, and NC Power met on a number of occasions to reach mutual agreement as to conditions which would be appropriate for the Commission to impose as a part of its approval of the merger. Prior to the hearing, DRI, NC Power, and the Public Staff executed a Stipulation which sets forth the parties' agreement to 42 regulatory conditions (Regulatory Conditions). The first 29 Regulatory Conditions are intended to ensure that NC Power's retail customers shall be held harmless from any adverse effects of the merger, including actions by other regulatory jurisdictions related to the merger, and shall receive benefits from the merger that are at least commensurate with the potential adverse effects of the merger. The issues addressed in the first 29 Regulatory Conditions include, among other things, access to books and records, affiliate transactions, cost accounting, cost of capital, retail electric rates, reliability of service, and future generating capacity.

After careful consideration, the Commission concludes that the first 29 Regulatory Conditions agreed to by DRI, NC Power, and the Public Staff are adequate to ensure that NC Power's retail customers shall be held harmless from any adverse effects of merger, including actions by other regulatory jurisdictions related to the merger, and shall receive benefits from the merger that are at least commensurate with the potential adverse effects of the merger. The Commission notes that no other party to this proceeding objected to the Regulatory Conditions or to the Stipulation as a whole.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting Finding of Fact No. 6 is found in the testimony of DRI witness Edgar M. Roach, Jr., the Public Staff panel, the agreement of the Public Staff, DRI, and NC Power to the final thirteen conditions in the Stipulation, and the lack of objection to the Stipulation by any other party to this proceeding.

The Public Staff, in its joint testimony, raised the risk of preemption of the Commission's authority by the 1935 Act as an additional area of concern. The Public Staff stated that after DRI's merger with CNG, DRI will become a registered holding company under the 1935 Act. The Public Staff witnesses testified that they had been advised that "registered" status presents the risk that certain aspects of the Commission's authority to regulate the North Carolina retail operations of NC Power could be found to be preempted. The Public Staff witnesses further testified that they had been advised that if adequate protections are not imposed, the Commission risks losing jurisdiction in a number of areas, including: (1) affiliate charges made to and incurred by VEPCO, (2) the transfer of assets between and among affiliates and VEPCO, (3) the value placed on such transfers, and (4) securities issuances and financings affecting VEPCO.

In light of these concerns, the Public Staff proposed that nine additional conditions be placed upon DRI to ensure that the Commission's authority was protected against preemption. DRI objected to certain provisions of these conditions, and the parties commenced negotiations of revisions to the conditions originally proposed by the Public Staff.

In Mr. Roach's Supplemental Direct Testimony, he testified that the parties had come to resolution regarding the outstanding issues with respect to the possible preemptive effect of the 1935 Act. Mr. Roach further stated that the conditions agreed to by the parties provide for numerous assurances of the Commission's continuing jurisdiction, and that DRI would agree to bear the full risk of potential preemption of the Commission's jurisdiction by the 1935 Act with respect to the Commission's undisputed regulatory authority over the rates and services as well as certain affiliate arrangements of NC Power. Additionally, the testimony provides that DRI bears this risk with respect to the Commission's authority over asset transfers and intercompany financings to the extent the Commission has such authority. Mr. Roach summarized DRI's position on this issue by stating that the language contained in the Stipulation, if included in an order unconditionally approving the merger, will accomplish the goal of protecting NC Power's retail customers with respect to the possible preemptive effects of the 1935 Act. At the conclusion of the negotiations between the parties, the nine conditions originally proposed by the Public Staff in its testimony were replaced with thirteen conditions mutually agreed to by the parties and identified as Regulatory Conditions Nos. 30 through 42 in the Stipulation.

At the hearing and again in its post-hearing statement, the Public Staff urged the Commission to further consider a condition proposed in the Public Staff's testimony but not ultimately agreed to by the parties. Regulatory Condition No. 36, to which the parties have agreed, states as follows:

> 36. DRI and CNG shall amend their application for approval of the acquisition filed with the SEC pursuant to the 1935 Act to include a request that the SEC include the following statement in its approval order(s):
>
>> DRI and NC Power recognize that the NCUC wishes to preserve its state law authority, under present or future state law, to require approval of transfers of control or ownership of any asset or portion thereof from the Company to one or more Nonpublic Utility Operations, or other Affiliates, or non-Affiliates. Notwithstanding the reservation of NC Power's and DRI's right to assert that the NCUC does not and should not have such authority, DRI and CNG request the SEC to state, in its order

> approving the instant acquisition, that the SEC does not intend its approval of the acquisition to preclude a future state commission order mandating or otherwise exercising state authority over such a transfer of assets.

In addition to the above language finally agreed upon by the parties, the Public Staff originally proposed that the Commission's "final approval of the proposed business combination [be] conditioned on the SEC including the requested language or some other ratification of this condition in its final order(s) approving the acquisition."

After careful consideration, the Commission concludes that the final thirteen Regulatory Conditions agreed to in the Stipulation are adequate to ensure that NC Power's retail customers shall be protected from possible preemptive effects of the 1935 Act, and that the jurisdiction of the Commission is adequately protected. Therefore, the Commission does not find it necessary to condition its approval of the proposed merger on the SEC's inclusion of the requested language. The Commission, however, strongly encourages the SEC to include the language in Regulatory Condition No. 36 in its final order or orders approving the proposed merger. The Commission again notes that no other party to this proceeding objected to the above Regulatory Conditions or to the Stipulation as a whole.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting Finding of Fact No. 7 is found in the testimony of the Public Staff panel, the agreement of the Public Staff, DRI, and NC Power to the Interim Standards, the agreement by the Public Staff, DRI, and NC Power to develop Final Standards within six months from the date of this Order, and the lack of objection to the Interim Standards by any other party to this proceeding.

In its joint testimony, the Public Staff stated that it was concerned that the increasingly complex relationships between VEPCO and its affiliates could cause NC Power's North Carolina retail ratepayers to be less than fully compensated for affiliate use of VEPCO's resources or could allow DRI and/or its affiliates to gain a competitive advantage over nonregulated competitors. The Public Staff is also concerned that the affiliate relationship between VEPCO and CNG could potentially compromise the location of electric generating facilities in VEPCO's service area, VEPCO's acquisition of natural gas supply or transportation services to serve its regulated electric customers, or the location of potential natural gas pipelines in North Carolina.

The Public Staff's testimony provides that DRI and the Public Staff have begun negotiations of standards intended to govern the relationship between and among NC Power/VEPCO, DRI, their affiliates, and VEPCO's nonpublic utility operations. The Public Staff further testified that its objective is that the Final Standards will comprise the minimum requirements necessary to prevent NC Power's/VEPCO's affiliated and nonpublic utility operations from profiting at the expense of NC Power's retail customers and to prevent cross-subsidization between NC Power and any of its affiliates or nonpublic utility operations.

The Public Staff stated in its testimony that it was unable to come to a final agreement with DRI regarding a complete set of standards prior to the filing date of the testimony, and that as a result, the parties have agreed to a set of Interim Standards, which were attached to the Public Staff's testimony as Exhibit 1. The Public Staff testified that, in its opinion, the Interim Standards constitute an adequate set of requirements to govern affiliate relationships for a short period of time, given NC Power's commitment therein to not engage in nonpublic utility operations within its North Carolina service territory beyond fulfillment of existing commitments, unless agreed to by the Public Staff.

The Stipulation provides that NC Power, DRI, their Affiliates, and NC Power's Nonpublic Utility Operations shall be bound by the Interim Standards contained in Public Staff Exhibit 1 once they are approved by the Commission in this proceeding. The parties have further agreed that they shall continue to negotiate in good faith to develop mutually agreeable Final Standards and that they do not wish such negotiations to delay the approval of the merger. The Stipulation additionally provides that if the parties have not developed Final Standards within six months after the closing date of the merger, they shall submit any outstanding issues to the Commission for resolution.

The Commission has reviewed the Interim Standards agreed to by DRI and the Public Staff, and concludes that, for the short-term, they are adequate to govern the relationships between NC Power, its affiliates, and its nonpublic utility operations, given the additional commitments made by NC Power. The Commission agrees with the Public Staff that a more complete set of Final Standards should be developed and agreed to by the parties, and the Commission agrees that a period that concludes six months after closing of the merger transaction should be adequate for this purpose. The Commission notes that no other party to this proceeding objected to the Interim Standards or to a six month time period for the development of Final Standards.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting Finding of Fact No. 8 is found in the testimony of DRI witnesses Rigsby and Roach, the Public Staff panel, the Stipulation agreed to between the Public Staff, DRI, and NC Power, and the lack of objection to the Stipulation by any other party to this proceeding.

G.S. 62-111 provides that a public utility may not engage in a merger or business combination transaction without first obtaining Commission approval, which approval "shall be given if justified by the public convenience and necessity." The Interim Standards and the Regulatory Conditions adopted and approved herein and the commitments made by DRI and NC Power as noted in this Order are designed and intended to eliminate or minimize all of the potential foreseeable risks of the merger to NC Power's retail customers. The Commission finds that the merger, viewed as a whole, is justified by the public convenience and necessity, is for a lawful purpose, is in the public interest, is consistent with the proper performance of NC Power's service to its customers, and will not impair the utility's ability to provide adequate and reliable service to its customers at reasonable rates and is reasonably necessary and appropriate. Thus, the Commission concludes that the merger satisfies the requirements of G.S. 62-111, and that it should be approved as hereinafter provided.

IT IS, THEREFORE, ORDERED as follows:

1. That DRI's application for authorization to engage in a business combination transaction, as described herein, is approved upon the commitments made by DRI as noted in this

Order and as set forth in the Stipulation executed on September 20, 1999, and upon the following Regulatory Conditions with which DRI is hereby ordered to comply:

(1) In accordance with North Carolina law, the NCUC and the Public Staff will continue to have access to the books and records of the Company, its parent corporation, its Affiliates and subsidiaries, and its Nonpublic Utility Operations.

(2) All costs of the merger and all direct and indirect corporate cost increases (other than the cost increases experienced by the Company in order to achieve personnel and operating efficiencies that lower its cost of service), if any, attributable to the merger shall be excluded from NC Power's utility accounts, and also shall be excluded from utility costs, for all purposes that affect NC Power's retail electric rates and charges. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level that NC Power (1) would have incurred using prudent business judgment or (2) would have had allocated to it, had the merger not occurred. "Corporate cost increases" shall also include any payments made under change-of-control agreements, salary continuation agreements, and/or other severance- or personnel-type arrangements that are reasonably attributable to the merger.

(3) Subject to the future orders of the NCUC, and to the extent they affect NC Power's cost of providing public utility service, all administrative and general expenses of DRI, its Affiliates, and NC Power shall be distributed for North Carolina retail ratemaking purposes by either direct assignment, allocation, or such other means as the NCUC determines are necessary after notice and opportunity for hearing, to assure that the relationship between NC Power and the Company's Affiliates and Nonpublic Utility Operations is consistent with the Interim Standards (or any subsequent replacement thereof) referenced in Condition No. 16.

(4) NC Power shall file the Company's cost allocation manual with the NCUC within six months after the closing date of the merger. The cost allocation manual shall describe how the Company's direct, indirect, and other costs will be charged to capital projects, Nonpublic Utility Operations, and Affiliates, which shall include a detailed review of common costs to be allocated and allocation factors to be used. On or prior to the date such cost allocation manual is filed, NC Power shall provide a list of items considered to be shared services and the basis for that determination. If the organization of the Company's public utility operation changes, NC Power will file with the NCUC any resulting changes to such cost allocation manual.

(5) NC Power shall file with the NCUC, within six months after the closing date of the merger, a cost allocation manual for each service company or other Affiliate providing goods and services to NC Power. Each cost allocation manual shall describe how all direct, indirect, and other costs of such service company or other Affiliate will be charged among DRI, the Company, and the other Affiliates and shall include a detailed review of the common costs to be allocated and the allocation factors to be used. On or prior to the date each such cost allocation manual is filed,

NC Power shall file a list of the services and goods that are provided or are anticipated to be provided shortly thereafter by a service company or other Affiliate. NC Power shall not commit to any cost allocation affected by any changes to such cost allocation manual or list of services and goods unless it has filed such changes with the NCUC. If the organization of the Company's public utility operation changes, NC Power will file with the NCUC any resulting changes to such cost allocation manual.

(6) NC Power shall file with the NCUC an annual report of Affiliate transactions in the format in which the Company files such report with the VSCC. This filing, which currently is scheduled to be filed with the VSCC annually on April 1, shall be made at the time that such report is filed with the VSCC. This North Carolina filing requirement and the format as it exists as of the date of this Stipulation shall be modified only if a description of such modification is filed with the NCUC.

(7) Transactions between the Company's regulated operations and its Nonpublic Utility Operations, parent corporation, and other Affiliates shall be reviewed regularly by its external or internal auditors. NC Power shall file with the NCUC its annual audit of Affiliate transactions in the format in which the Company files such report with the VSCC. This filing, which is currently scheduled to be filed with the VSCC annually on April 1, shall be made at the time such audit is filed with the VSCC. This North Carolina filing requirement and the format as it exists as of the date of this Stipulation shall be modified only if a description of such modification is filed with the NCUC. NC Power shall make available for review by the Public Staff and the NCUC all internal workpapers relating to the annual audit and all other internal audit workpapers, if any, related to Affiliate transactions, and shall not oppose Public Staff and NCUC requests to review external audit workpapers.

(8) NC Power shall file with the NCUC, within six months after the closing date of the merger, an electric cost of service manual which delineates and describes the steps taken to functionalize, classify, directly assign, and allocate revenues, O&M expenses, depreciation, taxes, and plant for input into the Company's electric cost of service computer program.

(9) NC Power shall provide to the Public Staff at the time of its next rate case the amount of DRI's equity investment in CNG that is reflected in accounting records.

(10) The Company shall keep its accounting books and records in a manner that will allow all components of the cost of capital for the Company and NC Power to be identified clearly and easily on a separate basis.

(11) To the extent the cost rates of long-term debt (more than one year), short-term debt (one year or less), or preferred stock for DRI or the Company, are or have been adversely affected by the merger, through a downgrade or otherwise (such as being placed on a "watch list"), a replacement cost rate to remove such adverse effect shall be used for all purposes affecting North Carolina retail rates and

charges. This replacement cost rate will be applicable to all financings, refundings, and refinancings. This procedure will be effective through NC Power's next general rate case, during which a procedure will be determined that identifies a replacement cost calculation, if necessary, for subsequent NC Power rate cases. This condition does not indicate a preference by any party for any specific debt rating or preferred stock rating for DRI or the Company on a current or prospective basis.

(12) For NC Power's general rate cases beginning with its next general rate case and upon request by the Public Staff, NC Power will provide an analysis that identifies, as clearly as reasonably possible, the long term debt (of more than one year duration) issued by DRI or the Company, as appropriate, with either (1) the assets that are or will be utilized to provide service to regulated utility customers in North Carolina; or (2) the existing debt to be replaced with the new debt issuance.

(13) The issuance of securities by DRI or the Company after the announcement of the merger does not restrict NCUC's authority to review and, if required in order to establish just and reasonable rates, adjust the cost of capital of DRI or NC Power, as the case may be, for ratemaking purposes.

(14) Conditions 11 and 13 above shall apply to NC Power's determination of its maximum allowable AFUDC rate, the rates of return applied to any of NC Power's deferral accounts and regulatory assets and liabilities that accrue a return, and any other component of NC Power's cost of service impacted by the cost of debt and/or preferred stock.

(15) The revenues from certain Company electric utility wholesale transactions are (a) allocated in part to NC Power's North Carolina retail operations in its retail cost of service study and/or (b) treated in part as a credit to jurisdictional fuel expenses in NC Power's annual North Carolina retail fuel proceedings. To the extent commitments to the Company's wholesale customers relating to the merger are made by or imposed upon the Company, the effects of which serve to increase NC Power's North Carolina retail cost of service and/or North Carolina retail fuel costs under reasonable cost allocation practices traditionally followed by NC Power and approved by the NCUC, those effects shall not be recognized for NC Power's North Carolina retail cost of service or ratemaking purposes.

(16) NC Power, DRI, their Affiliates, and NC Power's Nonpublic Utility Operations shall be bound by the Interim Standards contained in Public Staff Exhibit 1, once they are approved by the NCUC in this proceeding. The parties have begun good faith negotiations regarding the development of mutually agreeable Final Standards. They intend to continue such negotiations in the future but agree that the approval of the merger should not be delayed while these negotiations go forward. In the event such negotiations do not produce agreement on all issues within six months after the closing date of the merger, the parties agree that the issue(s) on which the negotiations have not produced agreement shall be presented to the NCUC for resolution.

(17) Any acquisition adjustment that results from the merger shall be excluded from NC Power's utility accounts and treated for accounting and ratemaking purposes so that it does not affect NC Power's retail electric rates and charges.

(18) None of NC Power's base retail electric rates shall be increased above the level in effect as of the date of an order approving the merger until after December 31, 2005, except for the following reasons: (1) annual fuel cost adjustment proceedings pursuant to G.S. § 62-133.2; (2) to reflect the financial impact of governmental action (legislative, executive or regulatory) having a substantial specific impact on the electric industry generally or on a segment thereof that includes NC Power, including but not limited to major expenditures for environmental compliance; or (3) to reflect the financial impact of major expenditures associated with force majeure. For purposes of this condition, the term force majeure means an occurrence that is beyond the control of NC Power and not attributable to its fault or negligence. Without limiting the foregoing, force majeure includes acts of nature, like earthquakes, cyclones, rain, tornadoes, hurricanes, flood, fire; acts of public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; injunctions, interventions or acts, or failures or refusals to act, by government authority; and other similar occurrences beyond the control of NC Power which NC Power is unable to prevent by exercising reasonable diligence. To qualify as an exception, a force majeure event must be reported in writing by NC Power to the NCUC, with a copy of such notice to the Public Staff, within thirty days of the last day of such force majeure event. Any request for such an exception shall include a specification of the reasons for the request and an accurate quantification of the financial impact of the request. In addition, NC Power shall not file for any cost deferral from the date of an order approving the merger until after December 31, 2005, except for: (i) major expenditures to restore or replace property damaged or destroyed by force majeure or (ii) the effects of accounting changes, imposed by the Financial Accounting Standards Board as part of its asset retirement obligation project, that must be adopted prior to December 31, 2005. The filing for cost deferral under (ii) above must address only those accounting effects that are appropriately attributable, subject to the NCUC order, to periods prior to the merger closing date. This provision does not indicate that the Public Staff would support, or that the Commission would approve, such cost deferral.

(19) NC Power shall have the burden of proving that all goods and services procured from the Company's Affiliates have been procured on the most favorable terms and conditions reasonably available in the market, which shall include a showing that such goods or services could not have been procured at a lower cost from non-Affiliate sources or that NC Power could not have provided the services or goods itself at a lower cost. This showing shall include periodically conducted market price studies.

(20) If the 1935 Act is repealed, amended or replaced by future legislation, the parties shall meet promptly after the passage of such legislation and negotiate in good faith whether and how these conditions have been affected by such legislation and

whether they should be revised or removed. In the event the parties are unable to reach agreement within a reasonable time after passage of such legislation, the unresolved issues shall be submitted to the NCUC for resolution.

(21) NC Power shall file with the NCUC, and provide a copy to the Public Staff, a copy of all documents or reports filed with the SEC under the 1935 Act by DRI or the Company, and of all orders issued by the SEC directly affecting NC Power's accounting practices, financings or operations.

(22) NC Power shall maintain the overall reliability of its electric service at levels no less than the overall levels it has achieved in the past decade. NC Power will provide quarterly service reliability reports (annual data for an historical five year period) indicating its System Average Interruption Duration Index (SAIDI) and the System Average Interruption Frequency Index (SAIFI), and these indices shall be determined and reported both including and excluding major storm events. NC Power also commits to provide such other data as required by the NCUC and/or the Public Staff, including information on transmission and generation reliability. NC Power will meet with the Public Staff every six months to review such reports and other operational information.

(23) NC Power's Nuclear Decommissioning funds shall not be used in full or in part for the purpose of this merger or any other purpose other than providing financial assurance for decommissioning the Surry and North Anna nuclear power stations owned by the Company.

(24) Beginning December 31, 1999, and annually by December 31 of each year thereafter, NC Power shall file with the NCUC (a) a description of any new or expanded gas pipeline facilities that are planned or contemplated by the Company or its Affiliates to be built in North Carolina within the ten years following the date of each report, or (b) a statement that no such facilities are planned or contemplated.

(25) Neither the Company nor any of its Affiliates shall begin the construction of natural gas facilities in North Carolina, including a pipeline, to serve an electric generating plant in North Carolina without NC Power filing a notice of intent with the NCUC. The notice of intent shall be filed well in advance of any construction-related activity, including the acquisition of new rights-of-way or the dedication of any of NC Power's then-existing rights-of-way. An application for a certificate of public convenience and necessity (CPCN) filed with the NCUC by NC Power, DRI, or an Affiliate of the Company shall incorporate details with respect to the routing of any new or expanded gas pipeline or other facilities required to serve the proposed electric generating plant and details about any proposed pipeline routing and specifications related to any new or expanded natural gas facilities needed to provide gas and/or transportation service to the proposed electric generating plant.

(26) NC Power shall determine the appropriate self-built or purchased power resources to be used to provide future generating capacity and energy to its regulated

electric customers, including the siting considered appropriate for such resources, on the basis of the benefits and costs of such siting and resources specifically to its regulated electric customers.

(27) NC Power shall utilize competitive solicitation procedures to determine future long-term sources of interstate natural gas pipeline capacity and supply. The determination of the appropriate source(s) for such interstate pipeline capacity and supply shall be made by NC Power on the basis of the benefits and costs of such source(s) specifically to its regulated electric customers.

(28) NC Power shall continue to serve its retail customers in North Carolina with the lowest-cost power it can generate or purchase from other sources in order to meet its native load requirements in accordance with Condition No. 22 before making power available for off-system sales.

(29) NC Power agrees to meet and consult with the Public Staff, no less than quarterly through 2005, regarding plans for significant changes in the Company's organization and structure, the impact of such plans on NC Power's rates, operations, and service, and proposals for assuring that such plans do not adversely affect NC Power's North Carolina regulated electric customers.

(30) With respect to any transaction that is subject to Section 13 of the 1935 Act, the following procedures shall apply:

(a) NC Power shall not engage in any such transaction without first obtaining from the NCUC such authority as is required under North Carolina law in connection with the acceptance of the contract that memorializes such a transaction and the authorization of the payment of compensation or fees pursuant thereto. Proposed contracts must first be submitted to the Public Staff for informal review at least ten days before filing with the NCUC.

(b) Any such contract shall provide that NC Power

(i) may not make or incur a charge under any such contract except in accordance with North Carolina law and the rules, regulations and orders of the NCUC promulgated thereunder; and

(ii) may not seek to reflect in rates any cost incurred or revenue level earned under an agreement subject to the 1935 Act to the extent disallowed by the NCUC.

(c) The SEC shall have found that such contract is not inconsistent with the 1935 Act except that no such finding by the SEC shall be required if no SEC approval of such contract is required under the 1935 Act.

(31) Neither the Company, DRI, or any Affiliate thereof shall assert in any forum, with respect to any transaction to which the Company is a party and which is subject to Section 13 of the 1935 Act, that the 1935 Act in any way preempts the NCUC from reviewing the reasonableness of any commitment entered into by the Company and from disallowing costs of or imputing revenues to NC Power. Should any other entity so assert, the Company, DRI, or an Affiliate shall not support any such assertion and shall, upon learning of such assertion, so advise and consult with the NCUC and Public Staff regarding such assertion.

(32) DRI and CNG shall request the SEC to include the following language in any order issued approving DRI's acquisition of CNG (the acquisition):

> Approval of this application in no way precludes the North Carolina Utilities Commission from scrutinizing and disallowing charges incurred or made or allowing or imputing a different level of such charges when setting rates for services rendered to customers of Affiliate public utilities.

(33) NC Power shall not take any service from an Affiliate under circumstances where its costs incurred for that service (whether directly or through allocation) exceed fair market value.

(34) With respect to the voluntary transfer by the Company to Nonpublic Utility Operations, an Affiliate, and/or a non-Affiliate, of the control or ownership of any asset or portion thereof used for the transmission, distribution, generation or other provision of electric power and/or service to customers in North Carolina:

> (a) DRI and NC Power shall not commit to or carry out such a transfer except in accordance with North Carolina law and the rules, regulations and orders of the NCUC promulgated thereunder; and
>
> (b) NC Power may not reflect in rates the value of any such transfer subject to the 1935 Act except as allowed by the NCUC.

(35) DRI and CNG shall amend their application for approval of the acquisition filed with the SEC pursuant to the 1935 Act to include the commitment set forth in paragraph 34 above.

(36) DRI and CNG shall amend their application for approval of the acquisition filed with the SEC pursuant to the 1935 Act to include a request that the SEC include the following statement in its approval order(s):

> DRI and NC Power recognize that the NCUC wishes to preserve its state law authority, under present or future state law, to require approval of transfers of control or ownership of any asset or portion thereof from the Company to one or more Nonpublic Utility Operations, or other Affiliates, or non-Affiliates. Notwithstanding the reservation of NC Power's and DRI's

right to assert that the NCUC does not and should not have such authority, DRI and CNG request the SEC to state, in its order approving the instant acquisition, that the SEC does not intend its approval of the acquisition to preclude a future state commission order mandating or otherwise exercising state authority over such a transfer of assets.

(37) Any filing with the SEC in connection with asset transfers involving NC Power shall request that the SEC include the following language in its approval order(s):

> Approval of this application in no way precludes the North Carolina Utilities Commission from scrutinizing and establishing the value of the asset transfer for purposes of determining the rates for services rendered to NC Power's customers. It is the SEC's intention that the North Carolina Utilities Commission retain the right to review and determine the value of such asset transfer for purposes of determining rates.

(38) Neither the Company, DRI, or any Affiliate thereof shall assert in any forum, with respect to any asset transfer transaction to which the Company is a party and which is subject to the 1935 Act, that the 1935 Act in any way preempts the NCUC from (a) exercising such authority as it may have under North Carolina law to mandate, approve or otherwise regulate a transfer of assets by or to the Company, or (b) scrutinizing and establishing the value of the asset transfers for purposes of determining the rates for services rendered to NC Power's customers. Should any other entity so assert, the Company, DRI, or an Affiliate shall not support any such assertion and shall, upon learning of such assertion, so advise and consult with the NCUC and Public Staff regarding such assertion.

(39) With respect to any financing transaction entered into between the Company and DRI or among NC Power and any one or more of the Company's Affiliates and DRI, any contract memorializing such transaction shall provide that the Company:

> (a) may not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations and orders of the NCUC promulgated thereunder; and
>
> (b) may not reflect in rates the effect of any capital structure or debt and/or equity costs except as allowed by the NCUC.

(40) DRI and CNG shall amend their application for approval of the acquisition filed with the SEC pursuant to the 1935 Act to include a request that the SEC include the following statement in its approval order(s):

> The SEC further finds that its approval of this acquisition or future financing arrangements does not preclude the NCUC or other regulatory authority from setting rates based on the assumption of a capital structure, a corporate

structure, debt costs or equity costs that varies from the structure(s) or cost(s) approved in this Order.

(41) Neither the Company, DRI, or any Affiliate thereof shall assert in any forum, with respect to any financing transaction to which the Company is a party and which is subject to the 1935 Act, that the 1935 Act in any way preempts the NCUC from exercising any lawful authority it may have over such financings or that the NCUC is precluded from setting rates based on the capital structure, corporate structure, debt costs, or equity costs that it finds to be appropriate for ratemaking purposes. Should any other entity so assert, the Company, DRI, or an Affiliate shall not support any such assertion and shall, upon learning of such assertion, so advise and consult with the NCUC and Public Staff regarding such assertion.

(42) With respect to the above-described Affiliate transactions, asset transfers, and financings, NC Power, DRI and their Affiliates shall bear the full risk of any preemptive effects of the 1935 Act. The previous sentence includes, but is not limited to, agreement by NC Power, DRI, and their Affiliates to take all such actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases or other effects of such preemption. Such actions include, but are not limited to, filing with and obtaining approval from the SEC of such commitments as the NCUC deems reasonably necessary to prevent such preemptive effects.

2. That the Stipulation executed by and between DRI, Virginia Electric and Power Company d/b/a North Carolina Power, and the Public Staff on September 20, 1999, is adopted in full herein, and DRI and NC Power are ordered to comply therewith.

3. That the Interim Standards Governing the Relationship Between North Carolina Power, Dominion Resources, Inc., their Affiliates and the Nonpublic Utility Operations of North Carolina Power attached hereto as Appendix A are hereby approved and DRI and NC Power are hereby ordered to comply therewith.

4. That DRI and the Public Staff shall continue negotiations of Final Standards which will replace the Interim Standards approved above. In the event that the parties have not developed Final Standards within six months from the date of this Order, the parties shall submit any outstanding issues to this Commission for resolution.

5. That it is the intent of the foregoing conditions that NC Power's retail customers be held harmless from any adverse effects of the merger, including potential action by other regulatory jurisdictions related to the merger, and that they receive benefits from the merger that are at least commensurate with the potential adverse effects of the merger.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

INTERIM STANDARDS GOVERNING THE RELATIONSHIP BETWEEN NORTH CAROLINA POWER, DOMINION RESOURCES, INC., THEIR AFFILIATES AND THE NONPUBLIC UTILITY OPERATIONS OF NORTH CAROLINA POWER

I. Definitions

For purposes of these Interim Standards, the terms listed below shall have the following definitions:

Affiliate: Any company or subsidiary, ten percent (10%) or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by DRI, and is thus affiliated with both DRI and NC Power.

Commission: The North Carolina Utilities Commission or NCUC.

Confidential Systems Operation Information: Electricity generation, transmission, distribution, or other similar information that pertains to Electric Services provided by NC Power and is not public information.

Consolidated Natural Gas Company (CNG): Subsequent to merger, a wholly-owned subsidiary corporation of DRI, engaged in oil and gas exploration and production, gas transmission and distribution, and retail energy marketing.

Customer: Any North Carolina retail electric customer of NC Power.

Customer Information: Any and all Customer specific information obtained by NC Power.

Dominion Resources, Inc. (DRI): The parent corporation of NC Power and CNG.

Electric Services: Commission-regulated electric energy sales, generation, transmission, distribution and/or delivery, and other related services, including, but not limited to, metering and billing.

Fuel and Purchased Power Supply Services: All fuel for generating electric power and purchased power obtained by NC Power from external sources for the purpose of providing Electric Services.

Fully Distributed Costs: All direct and indirect costs, including overheads and the cost of capital, incurred in providing the goods and services in question.

Natural Gas Services: Natural gas sales and natural gas transportation, and other related services, including, but not limited to, metering and billing.

Nonpublic Utility Operations: All activities engaged in by NC Power involving the sale of goods or services that are not subject to public utility regulation at the state or federal level.

North Carolina Power (NC Power): The business name in North Carolina of Virginia Electric and Power Company. As used in these Interim Standards, the term "NC Power" means the business and operations of Virginia Electric and Power Company as a regulated North Carolina public utility, and references to NC Power's operations, revenues, costs, accounts, other financial matters, and other items shall mean those items as they affect such business and operations.

Service Company: An Affiliate that provides shared goods and services to NC Power, DRI, other Affiliates, and/or the Nonpublic Utility Operations.

Similarly Situated: Possessing comparable characteristics, such as time of use, manner of use, customer class, load factor, and relevant Standard Industrial Classification.

Virginia Electric and Power Company (the Company): A wholly-owned subsidiary corporation of DRI that engages in public utility operations, as defined in N.C.G.S. § 62-3(23), within the state of North Carolina (under the business name North Carolina Power).

II. Interim Standards

These Interim Standards establish the rules that apply to transactions between NC Power and DRI, one or more of the Affiliates, and/or one or more of the Nonpublic Utility Operations. These Interim Standards will become applicable on the date approved by the Commission and shall remain applicable until Final Standards are put in place pursuant to Merger Condition (16).

A. GENERAL STANDARDS

1. NC Power shall not show any preference to customers of DRI, the Affiliates, or the Nonpublic Utility Operations, or to requests for service from DRI, the Affiliates, or the Nonpublic Utility Operations, as compared to non-Affiliated entities and their customers.

2. Cross-subsidies between NC Power and DRI, NC Power and one or more of the Affiliates, and/or NC Power and one or more of the Nonpublic Utility Operations are prohibited.

3. To the maximum extent practicable, NC Power shall operate independently of, and maintain separate books and records from, its Affiliates and Nonpublic Utility Operations. NC Power shall maintain its accounting records in a manner that clearly identifies the activities and transactions of its Nonpublic

Utility Operations and transactions with Affiliates and that ensures appropriate cost allocations.

4. Confidential Systems Operation Information shall not be disclosed by NC Power to DRI, any Affiliate, or any Nonpublic Utility Operation except (1) in the performance of NC Power's public utility functions, or (2) as required by a state or federal regulatory agency or a state or federal court having jurisdiction over the disclosure of such information. Every effort must be made to prevent the use of such information in anticompetitive or otherwise inappropriate ways, and any information provided to DRI, any Affiliate, or any Nonpublic Utility Operation must be safeguarded so that only the employees performing public utility functions have access to it.

   Unless the applicable NC Power retail Customer consents to the disclosure, Customer Information shall not be disclosed by NC Power to DRI, any Affiliate, or any Nonpublic Utility Operation except (1) in the performance of NC Power's public utility functions or (2) as required by a state or federal regulatory agency or a state or federal court having jurisdiction over the disclosure. In the instance of such disclosure, every effort must be made to prevent the use of such information in anticompetitive or otherwise inappropriate ways, and any information provided to DRI, any Affiliate, or any Nonpublic Utility Operation must be safeguarded so that only the employees performing public utility functions have access to it.

   Until the Final Standards are determined, either by negotiation or by order of the Commission, and in recognition that NC Power and the Public Staff have not agreed to a standard governing the provision of Customer Information under other circumstances, NC Power shall not provide Customer Information to DRI, any Affiliate, or any Nonpublic Utility Operation for any reason except those described in the preceding paragraph.

B. NONDISCRIMINATION AND INFORMATION STANDARDS

1. NC Power shall process all similar requests for Electric Services in the same timely manner, whether requested on behalf of DRI, an Affiliate, a Nonpublic Utility Operation, or a non-Affiliated entity. NC Power shall apply the provisions of its tariffs equally to DRI, the Affiliates, the Nonpublic Utility Operations, and non-Affiliates.

2. NC Power will not represent to any Customer that DRI, any Affiliate, and/or any Nonpublic Utility Operation will receive any preference from NC Power relative to providing Electric Services over any non-Affiliated service provider, nor will NC Power provide DRI, the Affiliates, and/or the Nonpublic Utility Operations with any preference over non-Affiliates in provision of Electric Services.

3. NC Power shall not condition or otherwise tie the provision or terms of any Electric Services to the purchasing of any goods or services from DRI, an Affiliate, and/or a Nonpublic Utility Operation.

4. When any NC Power employee or representative receives a request for information from or provides information to a Customer about services available from DRI, an Affiliate, and/or a Nonpublic Utility Operation, the employee must advise the Customer that such services may also be available from non-Affiliated suppliers.

C. MARKETING STANDARDS

1. Until the Final Standards are determined, either by negotiation or by order of the Commission, NC Power agrees to not to engage in Nonpublic Utility Operations in its North Carolina service territory beyond fulfillment of existing commitments, unless agreed to by the Public Staff.

2. Personnel or representatives of NC Power, DRI, an Affiliate, or a Nonpublic Utility Operation shall not give the appearance that DRI, the Affiliate, or the Nonpublic Utility Operation speaks on behalf of NC Power.

3. Personnel or representatives of NC Power, DRI, an Affiliate, or a Nonpublic Utility Operation shall not indicate to a third party that any advantage exists as the result of that third party dealing with DRI, an Affiliate, or a Nonpublic Utility Operation as compared with a non-Affiliate.

D. COST ALLOCATION AND TRANSFER PRICING STANDARDS

1. With regard to the transfer prices charged for goods and services, including the use and/or transfer of personnel, exchanged between and among NC Power, DRI, the Affiliates, and the Nonpublic Utility Operations, the following conditions shall apply:

   (a) For untariffed goods and/or services provided by NC Power to DRI, an Affiliate, and/or a Nonpublic Utility Operation, the transfer price shall be the higher of market value or fully distributed cost.

   (b) For goods and/or services provided by DRI, an Affiliate, and/or a Nonpublic Utility Operation to NC Power, the transfer price charged by DRI, the Affiliate, and/or the Nonpublic Utility Operation to NC Power shall be the lower of market value or DRI's, the Affiliate's, and/or the Nonpublic Utility Operation's fully distributed cost. If NC Power does not engage in competitive solicitation and instead obtains the goods and/or services from DRI, an Affiliate, and/or a Nonpublic Utility Operation, NC Power shall implement adequate safeguards to ensure utility Customers receive service at the lowest cost in each case.

(c) For tariffed goods and/or services provided by NC Power to DRI, an Affiliate, and/or a Nonpublic Utility Operation, NC Power shall provide these goods and services at the same prices and terms that are made available to other Similarly Situated Customers under the applicable tariff.

2. All permitted transactions between NC Power and either DRI, the Affiliates, and/or the Nonpublic Utility Operations shall be recorded and accounted for in accordance with NC Power's cost allocation manual.

3. A Service Company may provide NC Power, DRI, the Affiliates, and the Nonpublic Utility Operations with certain corporate services and functions on a joint basis. Such shared services shall be charged among NC Power, DRI, the Affiliates, and the Nonpublic Utility Operations. Shared services shall be those provided in response to Public Staff Merger Condition (5), subject to approval by the Commission.

4. NC Power shall notify the Commission and the Public Staff of any joint purchases with DRI, the Affiliates, and/or the Nonpublic Utility Operations within 60 days of such joint purchases, and such joint purchases shall be subject to Commission and/or Public Staff investigation. Any joint purchases, including leases, shall be priced in such a manner that permits clear identification of each participant's portion of such purchase or lease.

5. Any costs NC Power incurs in assembling, compiling, preparing and/or furnishing requested Confidential Systems Operation Information or Customer Information to DRI, an Affiliate, a Nonpublic Utility Operation, or a nonaffiliate shall be recovered from the requesting party pursuant to Section II.D.1 of these Interim Standards.

6. Any technology or trade secrets developed by NC Power will not be transferred to DRI, any of the Affiliates, and/or any of the Nonpublic Utility Operations without just compensation from the transferee and the filing of notice with the Public Staff and Commission at least 60 days prior to the transfer.

7. NC Power shall receive compensation from DRI, the Affiliates, and the Nonpublic Utility Operations for intangible benefits, if appropriate.

E. REGULATORY OVERSIGHT

1. The State's existing requirements under N.C.G.S. § 62-153 for reporting of Affiliate transactions shall apply.

2. The books and records of NC Power, DRI, the Affiliates, and the Nonpublic Utility Operations shall be open for examination by the Commission, its staff, and the Public Staff consistent with the provisions of N.C.G.S. §§ 62-34, 62-37, and 62-51.

3. If DRI, an Affiliate, or a Nonpublic Utility Operation supplies any Natural Gas Services or other Fuel and Purchased Power Supply Services used by NC Power to generate electricity, NC Power shall file a report with the Commission in its annual fuel case identifying such purchases.

F. **COMPLAINT PROCEDURE** - NC Power shall establish complaint procedures to resolve potential complaints that arise due to the relationship of NC Power with DRI, the Affiliates, and/or the Nonpublic Utility Operations. These complaint procedures do not affect a complainant's right to file a formal complaint with or otherwise address questions to the Commission. The complaint procedures shall provide for the following:

1. Verbal and written complaints shall be referred to a designated representative of NC Power.

2. The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.

3. NC Power shall investigate the complaint and communicate the results of the investigation to the complainant within 60 days of receiving the complaint.

4. NC Power shall maintain a log of complaints and related records for inspection by the Commission, its staff and the Public Staff.

5. If the complainant is not satisfied, NC Power shall inform the Commission, its staff and the Public Staff of the complaint.

G. **UTILITY BILLING FORMAT** - To the extent NC Power includes on a Customer's electricity bill charges for unregulated services, such charges shall be separated from all regulated Electricity Services charges and contain language in bold print stating that the Customer's electric service will not be terminated for failure to pay for unregulated services.

DOCKET NO. E-2, SUB 748

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light Company	)	
Light Company for Authority to Adjust Its Electric	)	ORDER APPROVING
Rates and Charges Pursuant to G.S. 62-133.2	)	FUEL CHARGE
and NCUC Rule R8-55	)	ADJUSTMENT

HEARD: Tuesday, August 3, 1999, at 10:00 a.m., Industrial Commission Hearing Room 2173, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner William R. Pittman, Presiding, and Commissioners Ralph A. Hunt and J. Richard Conder

APPEARANCES:

For the Applicant:

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

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Carolina Utility Customer Association, Inc. (CUCA):

James P. West, West Law Office, P.C., Suite 1735, Two Hanover Square, 434 Fayetteville Street Mall, Raleigh, North Carolina 27601

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

Carson Carmichael, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

BY THE COMMISSION: G.S. 62-133.2 and Commission Rule R8-55 require the Commission to conduct annual hearings to review changes in Carolina Power & Light Company's (hereinafter CP&L or Company) cost of fuel and the fuel component of purchased power. Rule R8-55 requires CP&L to file a variety of information regarding its fuel cost and the fuel component of purchased power in the form of testimony and exhibits at least 60 days prior to each such annual hearing.

On June 3, 1999, 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 Company witness Ronald R. Penny. In its Application, CP&L proposed a decrement of 0.219 cents/kWh (0.226 cents/kWh including gross receipts tax) to the base factor of 1.276 cents/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537, resulting in a recommended fuel factor of 1.057 cents/kWh. CP&L also requested an increment of 0.057 cents/kWh (0.059 cents/kWh including gross receipts tax) for the Experience Modification Factor (EMF) rider to collect approximately $19.2 million of under-recovered fuel expense experienced during the period April 1, 1998 to March 31, 1999. CP&L proposed that the EMF rider be in effect for a fixed twelve-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 722, would result in no net change in customers' bills.

On June 4, 1999, CP&L filed a Stipulation entered into and agreed upon by CP&L, Duke Power Company, North Carolina Power, the Public Staff and the Attorney General regarding the appropriate percentage of purchased power costs that should be treated as fuel for fuel cost recovery purposes when purchases are made from electricity marketers.

On June 9, 1999, the Commission issued its Order Scheduling Hearing, Requiring Filing of Testimony and Requiring Public Notice. The Order required intervenor testimony and exhibits to be filed by July 20, 1999 and scheduled the hearing for August 3, 1999.

On June 9, 1999, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene in the proceeding. The Commission granted CUCA's Petition on June 14, 1999. On June 14, 1999, the Carolina Industrial Group for Fair Utility Rates (CIGFUR) filed a Petition to Intervene. The Petition was granted by the Commission on June 16, 1999. On July 16, 1999, the Public Works Commission of the City of Fayetteville filed a Petition to Intervene, which was granted on July 27, 1999. The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e).

On July 19, 1999, the Public Staff filed Affidavits and Exhibits of Dennis J. Nightingale and Darlene P. Peedin. No other parties filed testimony.

On July 27, 1999, CUCA took the deposition of CP&L employee Ernest Boyd, Manager of Fuel Accounting. On July 29, 1999, at the request of CUCA, the Commission issued a subpoena for Ernest Boyd to appear at the hearing in this proceeding. On July 30, 1999, again at the request of CUCA, the Commission re-issued a subpoena for Ernest Boyd because the July 29, 1999 subpoena contained the incorrect time for the beginning of the hearing. The Commission also issued a subpoena, at the request of CUCA, for CP&L employee William Knight, Director of Fossil Fuel, to appear at the hearing. The original subpoena for Boyd was served on July 30; the reissued subpoena for Boyd and the subpoena for Knight were served on the afternoon of August 2, 1999.

On July 30, 1999 CP&L filed a Motion to Quash the Subpoena issued to Ernest Boyd. On August 2, 1999 CP&L amended its Motion to Quash to include the subpoena issued to William

Knight. CP&L also moved the Commission to prohibit the introduction of all or any portion of the deposition of Ernest Boyd into evidence.

On August 2, 1999, the Company filed the Affidavits of Publication showing that public notice had been given as required by the Commission's June 9, 1999 Order.

The hearing was held as scheduled on August 3, 1999. At the beginning of the hearing, following oral argument by CP&L and CUCA, the Commission (1) denied CP&L's Motion to Quash the Subpoena issued to Ernest Boyd, (2) granted CP&L's Motion to Quash the Subpoena issued to William Knight, and (3) reserved ruling on CP&L's motion to prohibit the introduction in evidence of the deposition of Ernest Boyd. CP&L presented the direct testimony and exhibits of witness Ronald R. Penny. CUCA presented CP&L employee Ernest Boyd as its witness. The Public Staff presented the Affidavit and direct testimony of witness Dennis Nightingale and the Affidavit of witness Darlene Peedin. CUCA did not seek to introduce the transcript of the deposition of Ernest Boyd into evidence at the hearing, and CP&L's motion to prohibit such was therefore rendered moot.

Following the hearing, motions were filed with respect to introduction of a late-filed exhibit. On August 26, 1999, CP&L filed a Motion to Prohibit the Filing of Late Filed Exhibits in this docket. Later that same day, CUCA filed a Motion for Leave to Take Discovery and Offer a Late-Filed Confidential Document as an Exhibit and Response to CP&L. In this filing, CUCA asserted that it obtained discovery of documents from CP&L in another proceeding and that one of these documents is relevant and important to the present docket, and CUCA asked for leave to serve one discovery request upon CP&L in order to produce the document in this docket and then to present the document as a late-filed exhibit. Still later on August 26, 1999, CP&L filed an Amendment to its Motion to Prohibit the Filing of Late Filed Exhibits. The Commission issued an Order on Motions on August 27, 1999, denying the motion filed by CUCA "in the interest of finality and in the interest of fairness to all parties." The Commission ruled that all parties had had ample opportunity to conduct discovery and to present evidence and that "CUCA simply wishes to reopen the record to discover and present a document that it had every opportunity to discover and present at the hearing but, for whatever reason, did not."

Finally, following the filing of a Joint Proposed Order by CP&L and the Public Staff, CUCA filed a Response on September 1, 1999, objecting to a request in the Joint Proposed Order that the Commission take judicial notice of certain matters. CP&L responded on September 7, 1999. The Commission has not judicially noticed the matters in question, and CUCA's Response therefore requires no ruling.

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. CP&L is a public utility under the laws 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 twelve-month period ended March 31, 1999.

3. CP&L's fuel procurement and power purchasing practices were reasonable and prudent during the test period. The re-negotiations of the coal contracts challenged herein, and the resulting costs during the test period, were reasonable and prudent based on the evidence in this proceeding.

4. The performance of CP&L's nuclear units during the test period was reasonable and prudent.

5. The proper fuel factor for this proceeding is 1.057 cents/kWh (excluding gross receipts tax).

6. CP&L's North Carolina test period jurisdictional fuel expense under-collection is $19,238,268.

7. CP&L's proper Experience Modification Factor (EMF) rider is an increment of 0.057 cents/kWh (0.059 cents/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 controversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. 62-133.2 sets out the information which each electric utility is required to furnish to the Commission in its annual fuel charge adjustment proceeding for a historical twelve-month period. By Commission Rule R8-55(b), the Commission has prescribed the twelve months ending March 31 as the test period for CP&L. The prefiled exhibits and direct testimony submitted by CP&L in support of its Application utilized the twelve months ended March 31, 1999, as the test year. CP&L made the standard adjustments to the test period data to reflect normalizations for weather, customer growth, generation mix, Southeastern Power Administration and North Carolina Eastern Municipal Power Agency transactions. The test period was not challenged by any party, and the Commission concludes that the test period appropriate for use in this proceeding is the twelve months ended March 31, 1999.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding can be found in the Company's Application, the monthly fuel reports on file with the Commission, and the testimony and exhibits of CP&L witness Penny, CUCA witness Boyd, and Public Staff witness Nightingale.

Commission Rule R8-52(b) requires each utility to file a Fuel Procurement Practice Report at least once every ten years, as well as each time the utility's fuel procurement practices change. In its Application, CP&L indicated that the procedures relevant to its procurement of fossil and nuclear fuels were filed in the Fuel Procurement Practices Report which was updated in May of 1994. In addition, the Company files monthly reports of its fuel costs pursuant to Commission Rule R8-52(a). These reports were filed in Docket No. E-2, Sub 719 for calendar year 1998 and in Docket No. E-2, Sub 742 for calendar year 1999. These documents provide the Commission with CP&L's actual cost of fuel purchased and expensed during the period in question.

In this proceeding, CUCA challenged the reasonableness and prudence of CP&L's coal purchasing procedures and the resulting costs for the test period. CUCA did this through direct examination of CP&L employee Ernest Boyd, who was subpoenaed to appear at the request of CUCA, and through cross-examination of CP&L witness Penny and Public Staff witness Nightingale. CUCA's examination of witness Boyd focused on CP&L's coal costs under four (sometimes counted as three) long-term contracts first entered into by CP&L in the late 1960s and early 1970s and later re-negotiated. Witness Boyd, who was formerly a Principal Analyst in CP&L's Fossil Fuel Department, acknowledged that CP&L's coal costs were higher than those of Duke and VEPCO and explained that "we have some long-term contracts that we entered into in the ... late 60s and early 70s for various terms of up to 30 years that are higher than what you could buy coal for today." He identified the Wolf Creek, Marrowbone, Franklin CSX, and Eastern Associated Coal contracts. He testified that the Wolf Creek contract was re-negotiated in 1995; the Marrowbone contract, in 1996; and the Eastern Associated contract, in 1998. CUCA also established through its examination of witness Penny that CP&L's fuel factor is higher than that of Duke Power Company. Asked to account for the differential, Penny answered, "I assume it's fuel costs or a mix of generating plant operation." In its Brief, CUCA summarizes its argument as follows:

> Ratepayers purchasing electricity from CP&L have been overcharged by approximately $50 million during the one year period April 1, 1998 until March 31, 1999. The means by which CP&L assessed $50 million in overcharges in a single year was by renegotiating several high volume, high cost coal purchase contracts to provide for the payment of large lump sums now in exchange for lower coal costs in future years. CP&L then used the fuel cost adjustment mechanism that is at issue in this proceeding to pass through to all ratepayers at this time the grossly excessive coal costs resulting from the lump sum payments.
>
> The reason CP&L is overcharging its current ratepayers is that the utility is trying to prepare for retail electric competition by requiring current ratepayers to subsidize the cost of CP&L's coal in the next decade. Subsidized coal costs will allow CP&L to generate and sell electricity at a lower price, which will help CP&L retain a market share when Duke and North Carolina Power..., two neighboring utilities who sell electricity at a lower cost than does CP&L, begin to compete for customers.

In response to CP&L's questions, witness Boyd testified that he had been employed in CP&L's Fuel Procurement Department since 1981. He explained that CP&L purchases coal on both the spot market as well as pursuant to term contracts. He further explained that there are a number of variables that enter into CP&L's decision to enter into term contracts including, but not limited to, the volume of coal to be purchased, the price of the coal, the quality and characteristics of the coal, projected prices of coal in the future, and the length of the contract. He explained that CP&L decides when and under what conditions to enter into term contracts based on the best information available and on weighing all these variables. Witness Boyd testified that when CP&L entered into the coal contracts in question, it did so on the basis of the best available pricing data for the type of coal needed for the term desired and that "when they were signed, it was a prudent thing to do."

Witness Boyd testified that whenever it appears that there are new opportunities to procure coal comparable to that being procured under term contracts at a lower price, CP&L will attempt to re-negotiate the existing term contracts to shorten their term or reduce the price, or both. Boyd explained that CP&L had successfully re-negotiated the three term coal contracts in question. Boyd explained that these re-negotiations achieved one or both of the following benefits to CP&L and its customers: (1) shortening of the contract term so that CP&L could take advantage of new coal purchasing opportunities; and (2) a lower cost of coal to CP&L over the remaining term of the contract. In order to achieve either cost reductions in the later years of the contract or an early termination of the contract, CP&L gave the sellers an increase in the amount of coal or the cost of coal for a short period of time. Witness Boyd testified that, in every re-negotiation, the net present value cost of coal during the term of the contract was reduced, thereby reducing CP&L's fuel costs, and in turn its customers' fuel costs, over the life of the contract.

Public Staff witness Nightingale explained that he had been an employee of the Public Staff since its creation. He testified that he was familiar with, and had participated in, the fuel cost adjustment proceedings for Duke Power Company, North Carolina Power, and CP&L for his entire career. He explained that he and his staff routinely review all three utilities' coal contracts, prices and coal purchasing procedures. He explained that CP&L's coal prices, coal purchases and coal purchasing procedures during the test period were reasonable and prudent and that he could find no basis for disallowance of any coal costs.

For the following reasons, the Commission rejects CUCA's arguments.

First, the Commission concludes that evidence of one utility's fuel factor or total fuel costs is of limited relevance to setting the appropriate fuel factor for another utility absent a showing that the two utilities are substantially similar in key respects. Public Staff witness Nightingale explained that there are numerous reasons why one utility's coal costs may be different than another utility's coal costs. He listed,

> what they purchase, what the units can burn, transportation differences, who has more compliance coal versus who has less compliance coal, who has to burn higher Btu content coal, grindability, some of the same factors that Mr. Boyd mentioned earlier today. Depending on how the plants are designed and built can dictate what type of fuel you can buy. If you have a different design philosophy in engineering your boilers dictates different fuels which may have different costs.

No showing of substantial similarity was made in this case, and the Commission believes that the evidence with regard to the difference between CP&L's and other utilities' fuel costs is not, in and of itself, persuasive in this proceeding.

CUCA contends that CP&L has re-negotiated its coal contracts in such a manner as to "overcharge" its customers by approximately $50 million in this proceeding. However, the

Commission notes witness Boyd's testimony that any time CP&L re-negotiates a coal contract its objective is to reduce the cost on a net present value basis, thus lowering CP&L's overall coal costs during the term of the agreement. The Commission cannot consider an increase in coal costs during the test period in a vacuum. The fact that these re-negotiations may have increased CP&L's coal costs during the test period for this proceeding must be considered in conjunction with the fact that these re-negotiations will reduce CP&L's coal costs over the terms of the contracts, thus lowering the total fuel costs CP&L's customers will pay as compared to what would have been paid had these re-negotiations not occurred. The Commission concludes that it would be unreasonable for CP&L not to pursue opportunities to reduce the costs of its long-term coal contacts. While it may be true that these contract re-negotiations increased CP&L's coal costs in the short term, and in this proceeding, it is also true that these re-negotiations will lower CP&L's coal costs in future proceedings. The Commission's view of reasonable and prudent fuel costs is not so short-sighted as to ignore the benefits to customers over the long term.

Further, by focusing only on the lump sum payments contained in the re-negotiated contracts, CUCA would have the Commission single out one provision for disallowance, without considering the re-negotiated contracts in their entirety. The Commission notes that the re-negotiated contacts tend to split the amounts which CP&L agrees to pay to the suppliers into lump sum payments and costs per ton. If the lump sum payments, which amounted to approximately $50 million during the test period according to CUCA, had not been included, it is highly unlikely that the suppliers would have agreed to the same re-negotiated costs per ton. CUCA produced no evidence that the re-negotiated contracts, in their entirety, were unreasonable or imprudent.

CUCA contends that one reason for CP&L's re-negotiation of its coal contracts is to prepare for restructuring of the electric industry. CUCA contends that CP&L is preparing to compete in the future at the expense of its retail customers today. Based on a review of the evidence in this proceeding, the Commission finds little merit in CUCA's argument. When asked whether the pendency of deregulation was what motivated CP&L to re-negotiate the coal contracts, witness Boyd testified:

> No, not when we were doing the [Marrowbone] and Wolf Creek. Wolf Creek was done in 1995. I don't recall any discussion about deregulation going on in 1995. [Marrowbone] was done in 1996. I don't recall any discussions other than just some, you know, national news that it might be coming but that was it. That was not the basis for the way those contracts were structured.

The Commission concludes that there is no certainty as to restructuring in North Carolina and, as testified to by witnesses Boyd and Nightingale, there was even less certainty at the time the coal contracts were re-negotiated. Further, the Commission notes that CUCA's theory apparently assumes that CP&L would not be allowed to recover the re-negotiated costs as stranded costs if and when restructuring occurs in North Carolina.

The Commission gives great weight to the testimony of Public Staff witness Nightingale in reaching its decision on this issue. Witness Nightingale testified that he attended the entire deposition of CP&L employee Ernest Boyd and listened to the testimony of witness Boyd and CP&L witness Penny during the hearing and that he heard nothing that would cause him to question the prudence of CP&L's coal procurement procedures, prices, or contract negotiations, and that he did not hear anything that surprised him. He further explained that in his opinion the coal contract re-negotiations in question were prudent.

Based upon the record in this proceeding, the Commission finds that the re-negotiations of the coal contracts in question herein, and the resulting costs during the test period, were reasonable and prudent. Further, the Commission finds that CP&L's fuel procurement procedures were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding can be found in the Company's Application and direct testimony and exhibits of CP&L witness Penny and the affidavit of Public Staff witness Nightingale.

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 719 for calendar year 1998 and Docket No. E-2, Sub 742 for calendar year 1999. Witness Penny 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 92.21%, exceeding the NERC five-year average of 71.02%. The Company's nuclear units at Brunswick Units 1 and 2 experienced capacity factors of 88.91% and 97.04%, respectively. The nuclear units at Robinson and Harris experienced capacity factors of 99.09% and 85.34%, respectively. Public Staff witness Nightingale verified the Company's test year average capacity factor calculation. No other party offered evidence on this issue.

Based on the evidence, the Commission concludes that the operation of the Company's base load nuclear plants was reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding can be found in the testimony and exhibits of CP&L witness Penny and the Affidavit and testimony of Public Staff witness Nightingale.

In his Exhibit No. 3, CP&L witness Penny calculated a fuel factor of 1.314 cents/kWh based on normalized capacity factors for its nuclear units in accordance with Commission Rule R8-55(c)(1) using the five-year North American Reliability Council (NERC) Equipment Availability Report 1993-1997 average for boiling water reactors (BWRs) and pressurized water reactors (PWRs). The NERC five-year capacity factors for Brunswick Units 1 and 2, both BWRs, were normalized at 66.31% and the capacity factors for the Robinson and Harris Units, both PWRs, were normalized at 76.00%. The calculations resulted in a normalized system nuclear capacity factor of 71.02% using this data. Penny also made kWh normalization adjustments for customer growth and weather at both meter and generation levels, in the same manner as in past cases. Normalization adjustments were also made for SEPA deliveries and hydro generation. The unit prices used for coal, nuclear, internal combustion turbines, purchases and sales were also calculated in a manner consistent with past cases. The fuel factor so calculated was 1.314 cents/kWh. Witness Penny testified that CP&L would be fully justified in seeking a fuel factor of 1.314 cents/kWh based upon the NERC average capacity factors and the methodology established by Commission Rule R8-55, but that the Company was proposing a lower fuel factor. Witness Penny recommended adoption of a base fuel factor of 1.057 cents/kWh, and he gave two reasons for recommending the lower number. First, he testified that the Company was making the proposal "in order to maintain rate stability at this time," i.e., to keep the net fuel factor to its customers unchanged. Second, he testified that "confidence that our nuclear units will out-perform the NERC averages that this Commission uses as a test for reasonableness does give us confidence in asking for less than the fuel factor that was computed in...Exhibit No. 3." CP&L's counsel offered to stipulate that the Company had "varied and strayed from the statute and the rule" in proposing the lower number. He stated that if the Company had followed the statute and Commission Rule, "it would be a higher fuel factor for our customers and in our goal not to raise rates,...we'll just leave the net fuel factor where it is."

On cross examination, Penny could not point to no exhibit where he had calculated the proposed fuel factor of 1.057 cents/kWh. Asked how he calculated it, he testified that it "is the factor necessary to maintain no change in the customers' charge in this case taking into consideration the EMF requested of .057 and the current fuel charge of I believe 1.115."

Public Staff witness Nightingale recommended that the Commission approve CP&L's requested base fuel factor of 1.057 cents/kWh. Witness Nightingale stated that the proposed fuel factor was based on the premise that the operation of the Company's nuclear units will outperform the NERC five-year average of 71.02%. Witness Nightingale testified that he had performed a calculation of a fuel factor for CP&L utilizing the methodology contained in Commission Rule R8-55 and that the resulting factor was very close to the factor calculated by witness Penny in Penny Exhibit No. 3. He then testified that since the factor being proposed by CP&L in this case was less than the factor he had calculated, the Public Staff did not oppose the adoption of the base fuel factor of 1.057 cents/kWh requested by CP&L.

CUCA challenges the Company's requested base fuel factor. CUCA argues that "CP&L has become so bold with regard to its abuse of the fuel factor that CP&L has this year applied to the Commission for approval of a proposed fuel factor for which CP&L has not offered any evidentiary support." CUCA did not propose a fuel factor of its own; CUCA asks that the Commission deny CP&L any fuel factor in this case.

The Commission will adopt the base fuel factor proposed by CP&L. G.S. 62-133.2 requires the Commission to establish Rules consistent with the intent of the statute to "....appropriately measure management efficiency in minimizing fuel costs." Rule R8-55 was adopted to do that. Under this Rule, the Commission uses NERC five-year nuclear capacity factors and normalization procedures which were established in the utility's last general rate case to establish a preliminary fuel factor. The NERC factors are considered the minimum level of operation for a utility to be deemed prudent. Penny Exhibit No. 3 determined a fuel factor of 1.314 cents/kWh using March 1999 fuel prices and the NERC data. Witness Penny testified that CP&L's test year nuclear capacity factor of 92.2% exceeded the 71.02% NERC average. CP&L's nuclear performance has consistently exceeded the NERC average in recent years, and Penny testified that the Company is confident it will do so again in the upcoming period. This confidence has led the Company to propose no change in the fuel factor, in the interest of maintaining rate stability. This is permitted by Commission Rule R8-55(e), which states, in part, "Nothing in this rule shall be construed to require the respondent utility to propose a change in rates or to utilize any particular methodology to calculate any change in rates proposed by the respondent utility in this proceeding."[1] Although CUCA challenged CP&L's proposal, it did not propose a fuel factor of its own. Adoption of CP&L's proposed factor does not prejudice CUCA or any other customer because the only other evidence in the record supports a higher factor. It must also be remembered that whatever factor is established in this proceeding will be trued-up in the next fuel charge adjustment proceeding, with any over-recovery being returned to customers with interest and any under-recovery being recovered by the Company without interest.

The Commission has relied on the NERC nuclear capacity factors as the upper level for fuel costs as a method to encourage utilities to operate in an efficient manner. In this case, CP&L expects its nuclear units to outperform the national averages in the period during which this new fuel factor will be in effect. The proposed fuel factor of 1.057 cents/kWh is below the factor calculated using the NERC data, and thus it is well within the requirements of G.S. 62-133.2 and Rule R8-55 and is permissible in this proceeding.

Based on the evidence of the record, the Commission determines that the proper fuel factor to adopt in this case is 1.057 cents/kWh. This factor is a reduction of 0.219 cents/kWh (0.226 cents/kWh with gross receipts tax) from the base fuel factor of 1.276 cents/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537.

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

The evidence supporting these findings can be found in the testimony and exhibits of Company witness Penny and the affidavits of Public Staff witnesses Nightingale and Peedin.

G.S. 62-133.2(d) provides that the Commission "shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period . . . in fixing an increment or decrement rider. The Commission shall use deferral accounting and consecutive test periods in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case . . . "

Company witness Penny explained that the Company under-collected its fuel expense by approximately $19.2 million during the test year from the fuel factors approved in the past two fuel cases, Docket Nos. E-2, Sub 712 and Sub 722. Witness Penny further explained that the under-recovery had been adjusted on a monthly basis to reflect the adjustment for Stone Container fuel costs and marketer fuel cost. Public Staff witness Peedin reviewed the Company's EMF calculations and agreed with the $19.2 million amount.

Public Staff witness Peedin in her Affidavit recommended that the Commission approve the Stipulation reached by the Public Staff, the Attorney General, CP&L, Duke Power Company, and

[1] In light of this provision of the Rule, CP&L counsel conceded too much when he offered to stipulate that the Company had "strayed" from the statute and Rule. In fact, neither the statute nor Rule dictate a specific formula, and the Rule specifically permits what the Company did in this proceeding.

North Carolina Power regarding the proper methodology for determining the fuel costs associated with power purchases from power marketers and other suppliers (the Marketer Stipulation). CP&L filed the Marketer Stipulation with the Commission on June 4, 1999, in this docket.

The Marketer Stipulation specifies how the fuel costs of certain purchases made by a utility are determined for purposes of fuel charge adjustment proceedings. The 70% factor was chosen because it was representative of the fuel-to-energy cost ratio for off-system sales generated by the three utilities that signed the Marketer Stipulation. The Marketer Stipulation was intended to be applicable to the 1999, 2000 and 2001 fuel cases filed by the utilities listed above. The Commission notes that a similar Marketer Stipulation was used in all the 1997 and 1998 fuel cases.

In its Order in Duke Power Company's 1996 fuel proceeding, the Commission stated, "When faced with a utility's reliance upon some such form of proof [i.e., a reasonable and reliable proxy] in a future fuel adjustment proceeding, the considerations will be whether the proof can be accepted under the statute, whether the proffered information seems reasonably reliable, and whether or not alternative information is reasonably available." Applying this standard to the evidence presented by Witnesses Penny and Peedin, the Commission concludes that the methodology for determining the fuel cost component of purchases from marketers and certain other suppliers as set forth in the Marketer Stipulation is reasonable and will be accepted for purposes of this proceeding. Further, no evidence was introduced in this case to suggest that the Commission's reliance on the Marketer Stipulation would be unreasonable. As such, the Commission approves for this case the EMF under-recovery amount of $19.2 million as proposed by the Company and accepted by the Public Staff.

Witness Penny proposed an EMF increment factor of 0.057 cents/kWh (0.059 cents/kWh with gross receipts tax) to collect $19,238,268 of under-recovered fuel costs incurred during the test period. This factor was determined by dividing the under-recovered amount by North Carolina retail adjusted kWhs of 33,676,567,783. CP&L asked that this factor remain in effect for a 12-month period. Public Staff witnesses Nightingale and Peedin agreed with the EMF factor computed by the Company and recommended its approval in this proceeding.

The Commission finds that the EMF increment of 0.057cents/kWh (0.059 cents/kWh with gross receipts tax) proposed by the Company and recommended by the Public Staff is appropriate for use in this proceeding. The EMF increment will remain in effect for a fixed 12-month period from the effective date of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after September 15, 1999, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.219 cents/kWh decrement (0.226 cents/kWh including gross receipts tax) from the base fuel component approved in Docket No. E-2, Sub 537, and the decrement shall remain in effect until changed by a subsequent Order of this Commission in a general rate case or fuel charge adjustment proceeding;

2. That CP&L shall establish an EMF Rider as described herein to reflect an increment of 0.057 cents/kWh (0.059 cents/kWh including gross receipts tax), and the EMF shall to remain in effect for a 12-month period beginning September 15, 1999;

3. That CP&L shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustments approved herein not later than five (5) working days from the date of this Order; and

4. That CP&L shall notify its North Carolina retail customers of the fuel charge adjustments approved herein by including the customer notice attached as Appendix A as a bill message to be included on bills rendered during the Company's next normal billing cycle following the effective date.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg090899.03

APPENDIX A

CP&L BILL MESSAGE

The North Carolina Utilities Commission issued an Order on September 9, 1999, after public hearings, in which the Commission decided that there shall be no net change in the fuel charges paid by the customers of Carolina Power & Light Company in North Carolina.

DOCKET NO. E-7, SUB 642

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Duke Power, a Division of Duke Energy	)	ORDER APPROVING
Corporation, Pursuant to G.S. 62-133.2 and NCUC	)	FUEL CHARGE
Rule R8-55 Relating to Fuel Charge Adjustments for	)	ADJUSTMENT
Electric Utilities	)	

HEARD: Tuesday, May 4, 1999, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Robert K. Koger, Presiding; Commissioners William R. Pittman and Robert V. Owens, Jr.

APPEARANCES:

For Duke Power:

Sally G. Helweg, Senior Counsel, Duke Power, Post Office Box 1244, Charlotte, North Carolina 28201-1244

and

Robert W. Kaylor, P.A., 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27603

For the Public Staff:

For the Using and Consuming Public:

Amy Barnes Babb, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On March 12, 1999, Duke Power (Duke, or Company) filed an Application and accompanying testimony and exhibits pursuant to G.S. 62-133.2 and Commission Rule R8-55 relating to fuel charge adjustments for electric utilities.

On March 16, 1999, the Commission issued an Order Scheduling Hearing and Requiring Public Notice.

On April 16, 1999, the Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene which was granted by Commission Order in this Docket dated April 22, 1999. The intervention of the Public Staff is also noted pursuant to Commission Rule R1-19(e).

On April 19, 1999, the Public Staff filed the Affidavits of Thomas S. Lam, Electric Engineer, Electric Division, and Darlene P. Peedin, Staff Accountant, Accounting Division.

The case came on for hearing as ordered on May 4, 1999. Steven K. Young, Vice President, Rates and Regulatory Affairs of Duke Power presented direct testimony for Duke. The Affidavits of Darlene P. Peedin, Staff Accountant, Accounting Division and Thomas S. Lam, Electric Engineer, Electric Division were entered in the record on behalf of the Public Staff as if given orally from the stand. No other party presented witnesses and no public witnesses appeared at the hearing.

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 makes the following

FINDINGS OF FACT

1. Duke Power, a division of Duke Energy Corporation, 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 12 month period ended December 31, 1998.

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 76,408,053 mWh.

5. The test period per book system generation is 86,934,045 mWh and is categorized as follows:

Generation Type	mWh
Coal	42,164,142
Oil and Gas	845,812
Light Off	-
Nuclear	38,366,268
Hydro	1,982,835
Net Pumped Storage	(730,380)
Purchased Power	1,955,782
Catawba Contract Purchases	1,656,337
Catawba Interconnection Agreements	566,799
Interchange	126,450
Total Generation	86,934,045

6. The nuclear capacity factor appropriate for use in this proceeding is 82%.

7. The adjusted test period system generation for use in this proceeding is 86,710,703 mWh and is categorized as follows:

Generation Type	mWh
Coal	46,172,706
Oil and Gas	573,463
Light Off	-
Nuclear	36,160,258
Hydro	1,855,000
Net Pumped Storage	(632,658)
Purchased Power	1,955,782
Catawba Contract Purchases	626,152
Total Generation	86,710,703

8. The appropriate fuel prices and fuel expenses for use in this proceeding are as follows:

A. The coal fuel price is $13.16/mWh.
B. The oil and gas fuel price is $37.69/mWh.
C. The appropriate light off fuel expense is $2,624,000.
D. The nuclear fuel price is $4.49/mWh.
E. The purchased power fuel price is $16.98/mWh.
F. The Catawba Contract Purchase fuel price is $4.59/mWh.

9. Setting fuel costs associated with purchases from power marketers and certain other sellers at a level equal to 70% of the energy portion of the purchase price is reasonable for use in this proceeding.

10. The adjusted test period system fuel expense for use in this proceeding is $734,012,000.

11. The proper fuel factor for this proceeding is .96980/kWh, excluding gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense over-collection was $24,578,000. The pro forma North Carolina jurisdictional sales are 43,278,271 mWh.

13. The Company's Experience Modification Factor (EMF) is a decrement of .0568¢/kWh, excluding gross receipts tax.

14. Interest expenses associated with the over-collection of test period fuel revenues amount to $3,994,000, based upon a 10% annual interest rate.

15. The EMF interest decrement is .00920¢/kWh, excluding gross receipts tax.

16. The final fuel factor is .9038¢/kWh, excluding gross receipts tax.

17. The Power Sale Adjustment Rider established by Order of the Commission in Docket No. E-7, Sub 487 will expire on August 19, 1999.

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 Commission Rule R8-55(b), the Commission has prescribed the 12 months ending December 31st as the test period for Duke Power. The Company's filing was based on the 12 months ended December 31, 1998.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Commission 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, 1998. In addition, the Company files monthly reports of its fuel costs pursuant to Commission 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 FINDING OF FACT NOS. 4-6

The evidence for these findings of fact is found in the testimony of Company witness Young.

Company witness Young testified that the test period per book system sales were 76,408,053 mWh and test period per book system generation was 86,934,045 mWh. The test period per book generation is categorized as follows:

Generation Type	mWh
Coal	42,164,142
Oil and Gas	845,812
Light Off	-
Nuclear	38,366,268
Hydro	1,982,835
Net Pumped Storage	(730,380)
Purchased Power	1,955,782
Catawba Contract Purchases	1,656,337
Catawba Interconnection Agreements	566,799
Interchange	126,450
Total Generation	86,934,045

Witness Young testified that Duke Power achieved a system nuclear capacity factor of 87.70% for the test period and that the most recent (1992-1996) North American Electric Reliability Council's five-year average nuclear capacity factor for all pressurized water reactor units is 76%. Witness Young's testimony and exhibits reflect the use of an 82% system nuclear capacity factor to determine the fuel factor in this proceeding. Public Staff witness Lam supported the use of the 82% nuclear capacity factor proposed by the Company. No other party contested the use of an 82% nuclear capacity factor in this proceeding.

Based upon the agreement of the Company and the Public Staff as to the appropriate numbers, and noting the absence of evidence presented to the contrary, the Commission concludes that the level of per book sales and generation is reasonable and appropriate for use in this proceeding.

Based upon the performance of the Duke Power system and the agreement of the Public Staff, the Commission concludes that the 82% nuclear capacity factor and its associated generation of 36,160,258 mWh are 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 Young. Witness Young made an adjustment of a negative 223,342 mWh to per book generation for adjustments relating to weather normalization, customer growth, Catawba retained generation and line losses/Company use, based on an 82% normalized system nuclear capacity factor and, therefore, calculated an adjusted generation level of 86,710,703 mWh.

Witness Lam reviewed and accepted witness Young's adjusted generation level of 86,710,703.

The Commission concludes, after finding a system nuclear capacity factor of 82% reasonable and appropriate in Finding of Fact No. 6, that the adjustment to per book system generation of a negative 223,342 mWh and the resulting adjusted test period generation level of 86,710,703 mWh are both reasonable and appropriate for use in this proceeding. Total adjusted generation is categorized as follows:

Generation Type	mWh
Coal	46,172,706
Oil and Gas	573,463
Light Off	-
Nuclear	36,160,258
Hydro	1,855,000
Net Pumped Storage	(632,658)
Purchased Power	1,955,782
Catawba Contract Purchases	626,152
Total Generation	86,710,703

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for these findings of fact is found in the testimony and exhibits of Company witness Young and the testimony of Public Staff witnesses Lam and Peedin.

Witness Young recommended fuel prices as follows: (1) coal price of \$13.16/mWh; (2) oil and gas price of \$37.69/mWh; (3) light off fuel expense of \$2,624,000; (4) nuclear fuel price of \$4.49/mWh; (5) purchased power fuel price of \$16.98/mWh; and (6) Catawba contract purchase fuel price of \$4.59/mWh.

Based upon the agreement between the Company and the Public Staff as to the appropriate prices, and noting absence of evidence to the contrary, the Commission concludes that these prices are reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

According to Ms. Peedin's testimony, during the test year, Duke Power purchased power from 23 power marketers and other suppliers that did not provide it with the actual fuel cost associated with those purchases. A similar situation has occurred in each Duke Power fuel proceeding since 1996. N.C.G.S. 62-133.2 requires that purchased power-related costs recovered through fuel proceedings consist of only the fuel cost component of those purchases. In its Order in Duke Power's 1996 fuel proceeding, the Commission stated that whether a proxy for actual fuel costs associated with these types of purchases would be acceptable in a future fuel proceeding would depend on "whether the proof can be accepted under the statute, whether the proffered information seems reasonably reliable, and whether or not alternative information is reasonably available."

Based on that Order, the Public Staff, Duke Power, Carolina Power & Light, North Carolina Power, and the Attorney General entered into a stipulation in 1997 regarding the proper methodology for determining the fuel cost associated with power purchased from power marketers and other suppliers. The stipulation, which was applicable to the 1997 and 1998 fuel proceedings, provided for the setting of fuel costs associated with purchases from power marketers at a level equal to 75% of the energy portion of the purchase price, and also contained a process for determining the fuel costs associated with purchases from certain other suppliers when those suppliers refused to provide their fuel costs or appeared to provide only estimates of their fuel costs. The methodology set forth in the stipulation was accepted as reasonable by the Commission in each of the utilities' fuel proceedings in 1997 and 1998.

The Public Staff based its agreement with the 75% ratio on its analysis of the fuel cost component of the utilities' own off-system sales. The Public Staff considers it reasonable to assume that the fuel-to-energy-cost ratio exhibited by these sales is similar to the average ratio exhibited by the sales made by marketers from the same types of generating resources. Furthermore, the utilities' off-system sales' fuel cost data is readily available. The Public Staff is unaware of any available alternative current information concerning the fuel cost component of marketers' sales made to utilities. In the absence of reasonably available alternative information, the Public Staff believes the use of the utilities' own off-system sales to determine a proxy for the fuel cost component of the utilities' purchases from marketers appears reasonable.

During the test year, Duke Power used the 75% ratio to record fuel costs related to the purchases from most of the 23 power marketers and other suppliers noted above. However, because the 1997 stipulation is not applicable to fuel proceedings in 1999 and later years, including this proceeding, the Public Staff performed a new analysis of the fuel component of the utilities' off-system sales, based on the monthly fuel reports for the 12 months ended October 31, 1998. Based on this analysis, the Public Staff testified that the fuel ratio applied to the energy component of 1998 purchases from power marketers and other suppliers not providing fuel costs should be reduced from 75% to 70%.

Based upon the agreement between the Company and the Public Staff as to the appropriate numbers, and nothing presented in evidence to the contrary, the Commission concludes that this fuel ratio of 70% is reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 10-17

Based upon the agreement between the Company and the Public Staff as to appropriate numbers, as discussed in the Evidence and Conclusions for Findings of Fact Nos. 4-8, and nothing presented in evidence to the contrary, the Commission concludes that adjusted test period fuel expenses of $734,012,000 and the base fuel factor of .9698¢/kWh, excluding gross receipts tax, are reasonable and appropriate for use in this proceeding. This approved base fuel factor is .1334¢/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.

Public Staff witness Peedin testified that two adjustments to Duke Power's EMF calculation are recommended by the Public Staff, which were agreed to by Duke Power.

The first adjustment recommended by the Public Staff concerns power that Duke Power purchases from certain suppliers for resale to its electric utility customers. An adjustment to Duke Power's North Carolina retail test year fuel over-recovery in the amount of $204,000 reflects the Public Staff applying a 70% fuel ratio to the energy component of 1999 purchases from power marketers and other suppliers not providing fuel costs, as found reasonable by the Commission in the Evidence and Conclusions for Finding of Fact No. 9. As a result of this adjustment, the appropriate test period jurisdictional fuel expense over-collection is $24,578,000, and the interest expense associated with this over-collection, based on a 10% annual interest rate, is $3,994,000.

The second adjustment recommended by the Public Staff concerns the level of kWh used as a denominator in the calculation of the EMF and interest decrements. As discussed in Duke Power witness Young's testimony, the Company is proposing to delay the effective date of the fuel factor approved in this proceeding until August 19, 1999, in order to coincide with the expiration of the Company's CP&L Schedule J Power Sale Adjustment Rider. Due to this delay in the effective date of the new fuel rate, the EMF and interest decrements will only be in effect from August 19, 1999 until June 30, 2000. Therefore, the Public Staff reduced the pro forma kWh sales used to determine the decrements from an annual amount to an amount, provided to witness Peedin by witness Lam, reflective of the period that the rates will actually be in effect. This adjustment increases the EMF and interest decrements to ensure that approximately the full amount of Duke Power's 1998 fuel cost over-recovery and associated interest is returned to the North Carolina retail customers. There being no evidence to the contrary, the Commission finds this adjustment reasonable.

N.C.G.S. 62-133.2(d) provides that the Commission "shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period...in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case."

The $24,578,000 over-recovered fuel revenue is divided by the adjusted North Carolina jurisdictional sales of 43,278,271 mWh to arrive at an EMF decrement of .0568¢/kWh, excluding gross receipts tax and the associated interest of $3,994,000 is likewise divided, producing an EMF interest decrement of .0092¢/kWh. The Commission concludes that the EMF decrement of .0568¢/kWh, excluding gross receipts tax, and the EMF interest decrement of .0092¢/kWh are reasonable and appropriate for use in this proceeding.

Accordingly, the fuel calculation, incorporating the conclusions reached herein, results in a final net fuel factor of .9038¢/kWh, excluding gross receipts tax.

In Docket No. E-7, Sub 487, the Commission established a Power Sale Adjustment Rider decrement equal to .0681¢/kWh (excluding gross receipts tax) to reflect the benefits of Duke's 400 mW sale to Carolina Power & Light Company (CP&L) under Schedule J. In its Order dated April 22, 1993 in Docket No. E-7, Sub 487, the Commission stated that Duke's Power Sale Adjustment Rider would be placed into effect on and after the date of receipt by Duke of payment from CP&L under the Power Sale Agreement and that the eventual determination of the expiration date of the rider should take into account the period of time over which capacity is sold to CP&L under Schedule J. In this fuel proceeding, Duke witness Young testified that the Schedule J decrement rider was made effective for service rendered on and after August 19, 1993, the sale was for a six-year period and the Power Sale Adjustment Rider decrement will expire on August 19, 1999. Witness Young also testified that the implementation of fuel factor approved in this proceeding at the same time as the expiration of the Schedule J decrement rider will reduce the upward impact on rates caused by the cessation of the rider as well as eliminate the necessity to adjust rates in two consecutive months. Therefore, witness Young testified that Duke was recommending that the fuel rate established in this proceeding should be reflected in rates on and after August 19, 1999, so as to coincide with the expiration of the Schedule J decrement rider. No party to this proceeding expressed opposition to this proposal by Duke.

IT IS, THEREFORE, ORDERED:

1. That, effective for service rendered on and after August 19, 1999, Duke Power shall adjust the base fuel cost approved in Docket No. E-7, Sub 487, in its North Carolina rates by an amount equal to an .1334¢/kWh decrease (excluding gross receipts tax), and further that Duke Power shall adjust the resultant approved fuel cost by decrements of .0568¢/kWh and .0092¢/kWh (excluding gross receipts tax) for the EMF and EMF interest decrements, respectively. The EMF and EMF interest decrements are to remain in effect for service rendered through June 30, 2000.

2. That the current fuel factor shall remain in place through August 18, 1999, and that implementation of the new fuel factor shall begin on service rendered on and after August 19, 1999 so as to coincide with the expiration of the Power Sale Adjustment Rider.

3. That Duke Power shall file appropriate rate schedules and riders with the Commission in order to implement these approved fuel charge adjustments and the expiration of the Power Sale Adjustment Rider no later than 10 days from the date of this Order.

4. That Duke Power shall notify its North Carolina retail customers of these fuel adjustments and the expiration of the Power Sale Adjustment Rider by including the "Notice to Customers of Change in Rates" 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 22nd day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

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APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 642

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power, a Division of	)	
Duke Energy Corporation, Pursuant to	)	NOTICE TO CUSTOMERS
G.S. 62-133.2 and NCUC Rule R8-55	)	OF CHANGE IN RATES
Relating to Fuel Charge Adjustments	)	
for Electric Utilities - 1999	)	

NOTICE IS GIVEN that the North Carolina Utilities Commission entered an Order on June 22, 1999, after public hearings, approving a fuel charge net rate decrease of approximately $10,352,000 on an annual basis in the rates and charges paid by the retail customers of Duke Power in North Carolina. It is intended that the net rate decrease will be in effect for service rendered for the period of August 19, 1999 through June 30, 2000. The rate decrease was ordered by the Commission after review of Duke Power's fuel expense during the 12-month period ended December 31, 1998, 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 change in the approved fuel charge together with the termination of the power sale adjustment rider made pursuant to the Order of the North Carolina Utilities Commission in Docket No. E-7, Sub 487 will result in a monthly net rate increase of approximately 50¢ for each 1,000 kWh of usage per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

DOCKET NO. E-22, SUB 382

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Power Pursuant to	)	
North Carolina General Statute 62-133.2 and North	)	ORDER APPROVING
Carolina Utilities Commission Rule R8-55 Relating	)	FUEL CHARGE
to Fuel Charge Adjustments for Electric Utilities	)	ADJUSTMENT

HEARD: Tuesday, November 16, 1999, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611

BEFORE: Commissioner William R. Pittman, Presiding; and Commissioners Ralph A. Hunt and Sam J. Ervin, IV

APPEARANCES:

For North Carolina Power:

Robert W. Kaylor, 225 Hillsborough Place, Suite 480, Raleigh, North Carolina 27603

For the Public Staff:

Amy Barnes Babb, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520 For: The Using and Consuming Public

For Carolina Industrial Group for Fair Utility Rates:

Ralph McDonald, Bailey and Dixon, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865

BY THE COMMISSION: G.S. 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel 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 23, 1998 in Docket No. E-22, Sub 376.

North Carolina Power filed its fuel charge adjustment application and supporting testimony and exhibits in accordance with North Carolina Utilities Commission Rule R8-55 and G.S. 62-133.2 on September 17, 1999. North Carolina Power filed testimony and exhibits for the following witnesses: Charles R. Goode, III, Regulatory Specialist— Corporate Accounting; Daniel J. Green, Director-Energy Planning; and Glenn A. Pierce, Regulatory Specialist-Rate Design. The Company also filed information and workpapers required by North Carolina Utilities Commission Rule R8-55(d).

On October 4, 1999, the Commission issued an Order Scheduling Hearing and Requiring Public Notice, which was modified the same day by a Corrected Order Scheduling Hearing and Requiring Public Notice.

On October 6, 1999, the Public Staff filed a Motion for Clarification moving the Commission to clarify its Corrected Order Scheduling Hearing and Requiring Public Notice. The Commission issued an Order on Motion for Clarification on October 8, 1999.

The Carolina Industrial Group for Fair Utility Rates (CIGFUR I) filed a Petition to Intervene on October 26, 1999, which petition was granted on November 4, 1999.

On November 1, 1999, the Public Staff filed the affidavits of Thomas S. Lam and Darlene P. Peedin, and a Notice of Affidavits. The Notice of Affidavits indicated that the Public Staff's affidavits would be used in evidence in lieu of oral testimony in the absence of a request to cross examine the affiants. No party requested the right to cross examine the Public Staff.

On November 4, 1999, the Company filed a Notice of Affidavits, which indicated that the Company would enter its direct testimony 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 15, 1999, the Company filed its Notice of Publication of this proceeding.

The matter came on for hearing as scheduled on Tuesday, November 16, 1999. The prefiled direct testimony of the Company's witnesses was stipulated into the record by affidavit. The affidavits of Public Staff witnesses Lam and Peedin and the exhibits of all of the witnesses were also admitted into evidence.

Based upon the foregoing, the prefiled testimony and affidavits of Company witnesses Goode, Green and Pierce and Public Staff witnesses Lam and Peedin, 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, 1999.

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 69,490,559 MWh.

5. The fuel proceeding test period per book system generation is 72,834,423 MWh, which includes various generation as follows:

	MWh
Coal[1]	34,335,671
Combustion Turbine	2,956,250
Heavy Oil	3,384,021
Natural Gas	-0-
Nuclear[2]	27,645,899
Hydro	3,027,385
Pumped Storage (Pumping)	(3,321,682)
Power Transactions	
NUG	2,905,536
Other	6,310,979
Sales for Resale	(4,409,636)

6. The normalized system nuclear capacity factor which is appropriate for use in this proceeding is 89.01%, which is the estimated nuclear capacity factor for the rate year ending December 31, 2000.

7. The increase to system test period sales of 1,375,587 MWh results from an increase of 288,870 MWh associated with customer growth, 477,223 MWh of additional customer usage, an increase of 625,836 MWh associated with weather normalization, and a decrease of 16,342 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 69,490,559 MWh.

8. The adjusted test period system generation for use in this proceeding is 74,300,105 MWh, which includes various generation as follows:

[1] Includes 3,246,958 MWh Old Dominion Electric Cooperative (ODEC) generation and a small amount of natural and refinery gas.

[2] Includes 1,764,212 MWh ODEC generation.

	MWh
Coal[1]	36,168,505
Combustion Turbine	3,114,029
Heavy Oil	3,564,642
Natural Gas	-0-
Nuclear[2]	26,448,356
Hydro	3,027,385
Pumped Storage (Pumping)	(3,321,682)
Power Transactions	
NUG	3,060,633
Other	6,647,873
Sales for Resale	(4,409,636)

9. The appropriate fuel prices for use in this proceeding are as follows:

A. The coal fuel price is $12.98/MWh.
B. The nuclear fuel price is $4.37/MWh.
C. The heavy oil fuel price is $18.98/MWh.
D. The natural gas price is $-0-/MWh.
E. The internal combustion turbine fuel price is $34.58/MWh.
F. The fuel price for other power transactions is $12.48/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, 1998, to June 30, 1999 test period for use in this proceeding is $717,768,916.

11. The appropriate fuel cost rider (Rider A) for this proceeding is a decrement of 0.078 ¢/kWh, excluding gross receipts tax, or a 0.081 ¢/kWh decrement, including gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense under-collection as filed is $2,107,132. The adjusted North Carolina jurisdictional test year sales are 3,149,713 MWh.

13. After review, the total jurisdictional fuel expense under-collection which was found to be appropriate for use in establishing the experience modification factor (EMF) in this proceeding is $1,849,947.

14. The Company's EMF is an increment of 0.059 ¢/kWh, excluding gross receipts tax, or a 0.061 ¢/kWh increment, including gross receipts tax.

15. The final fuel factor is 1.107 ¢/kWh, including gross receipts tax.

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[1] Includes 3,311,897 MWh of ODEC generation.
[2] Includes 1,764,212 MWh of ODEC generation.

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 Commission 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 17, 1999, was based on the 12 months ended June 30, 1999.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Commission 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 Commission Rule R8-52(a).

No party offered or elicited any testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any evidence 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

Company witness Green testified with regard to the July 1, 1998 to June 30, 1999 test period sales, test period generation, and normalized nuclear capacity factor. Company witness Green testified that the test period levels of sales and generation were 69,490,559 MWh and 72,834,423 MWh, respectively. The test period per book system generation includes various generation as follows:

	MWh
Coal	34,335,671
Combustion Turbine	2,956,250
Heavy Oil	3,384,021
Natural Gas	-0-
Nuclear	27,645,899
Hydro	3,027,385
Pumped Storage (Pumping)	(3,321,682)
Power Transactions (Net)	
NUG	2,905,536
Other	6,310,979
Sales for Resale	(4,409,636)

The 34,335,671 MWh of per book system coal generation includes 3,246,958 MWh of ODEC generation and a small amount of natural and refinery gas. The 27,645,899 MWh of per book system nuclear generation includes 1,764,212 MWh of ODEC generation.

Public Staff witness Lam 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 93.0% for the July 1, 1998 to June 30, 1999 test period. Witness Green normalized the system nuclear capacity factor to a level of 89.01%, which is the estimated nuclear capacity factor for the rate year ending December 31, 2000. Witness Lam agreed that the nuclear capacity factor of 93.0% as achieved by the Company should be normalized to 89.01% as proposed by the Company. No other party offered or elicited testimony on the normalized nuclear capacity factor. In the absence of evidence to the contrary, the Commission concludes that the July 1, 1998 to June 30, 1999 test period levels of sales and generation are reasonable and appropriate for use in this proceeding. The Commission further concludes that the 89.01% 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, 1999 were adjusted by jurisdiction for weather normalization, customer growth, and increased usage. Witness Pierce adjusted total Company sales by 1,375,587 MWh. This adjustment is the sum of adjustments for customer growth, increased usage, and weather normalization of 288,870 MWh, 477,223 MWh and 625,836 MWh, respectively, and an adjustment of (16,342) 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 288,870 MWh, 477,223 MWh, and 625,836 MWh, respectively, and an adjustment of (16,342) MWh to restate 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

Company witness Pierce presented an adjustment to per book MWh generation for the 12-month period ended June 30, 1999, due to weather normalization, customer growth, and increased usage of 1,465,682 MWh, to arrive at witness Green's adjusted generation level of 74,300,105 MWh. Witness Lam reviewed and accepted witness Pierce's adjustment to per book MWh generation for the 12-month period ended June 30, 1999, due to weather normalization, customer growth and increased usage. Witness Lam also accepted witness Green's adjusted generation level of 74,300,105 MWh which includes various generation as follows:

	MWh
Coal	36,168,505
Combustion Turbine	3,114,029
Heavy Oil	3,564,642
Natural Gas	-0-
Nuclear	26,448,356
Hydro	3,027,385
Pumped Storage (Pumping)	(3,321,682)
Power Transactions (Net)	
NUG	3,060,633
Other	6,647,873
Sales for Resale	(4,409,636)

The 36,168,505 MWh of adjusted test period coal generation includes 3,311,897 MWh of ODEC generation. The 26,448,356 MWh of adjusted test period nuclear generation includes 1,764,212 MWh of ODEC generation.

Based on the foregoing evidence and with no other evidence to the contrary, the Commission concludes that the adjustment of 1,465,682 MWh is reasonable and appropriate for use in this proceeding, and that the resultant adjusted fuel generation level of 74,300,105 MWh is 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 witness Green and Pierce and the affidavit of Public Staff witness Lam.

Witness Green testified that the Company's proposed fuel factor is based on June 1999 fuel prices as follows: (1) coal price of $12.98/MWh; (2) nuclear fuel price of $4.37/MWh; (3) heavy oil price of $18.98/MWh; (4) natural gas price of $-0-/MWh; (5) internal combustion turbine price of $34.58/MWh; (6) other power transactions price of $12.48/MWh; and (7) hydro, pumped storage, and non-utility generation at a zero fuel price. Witness Lam 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 Lam are reasonable and appropriate for use in this proceeding.

The Commission concludes that adjusted fuel test period expenses of $717,768,916 and the fuel cost rider (Rider A) decrement of 0.078 ¢/kWh, excluding gross receipts tax, or a 0.081 ¢/kWh decrement, including 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. 12-14

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witnesses Goode and Pierce and the affidavits of Public Staff witnesses Peedin and Lam.

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."

Company witness Goode testified that the Company under-collected its fuel expense by \$2,107,132 during the test year ending June 30, 1999. Company witness Pierce testified that the adjusted North Carolina jurisdictional fuel clause test year sales are 3,149,713 MWh. Upon review of the Company's filing, Public Staff witness Peedin discovered an error in North Carolina Power's calculation of its North Carolina retail fuel under-collection. After making the necessary adjustments, the Public Staff recommended a retail fuel under-collection of \$1,849,947, and an EMF increment of 0.059 ¢/kWh, excluding gross receipts tax, or 0.061 ¢/kWh including gross receipts tax. North Carolina Power has agreed to this adjustment.

In her affidavit, Public Staff witness Peedin also recommended that the Commission adopt the 1999 Stipulation reached by the Public Staff, the Attorney General, Carolina Power & Light Company (CP&L), Duke Power Company (Duke), and North Carolina Power regarding the proper methodology for determining the fuel cost associated with power purchases from power marketers and other suppliers (the Marketer Stipulation). The Marketer Stipulation was filed by CP&L with the Commission on June 4, 1999, in Docket No. E-2, Sub 748. Among other items, the Marketer Stipulation specifies that for purposes of fuel charge adjustment proceedings, a 70% ratio will be applied to energy costs to determine the fuel costs associated with purchases from power marketers. The Marketer Stipulation is intended by the parties to be used in the fuel proceedings held in 1999, 2000 and 2001.

In its Order in Duke Power Company's 1996 fuel proceeding, the Commission stated when addressing the issue of purchases from power marketers, "When faced with a utility's reliance upon some such form of proof, [i.e., a reasonable and reliable proxy] in a future fuel adjustment proceeding, the considerations will be whether the proof can be accepted under the statute, whether the proffered information seems reasonably reliable, and whether or not alternative information is reasonably available." As a result of this Order, the Public Staff, Duke, CP&L, North Carolina Power, and the Attorney General entered into a stipulation in 1997 regarding the proper methodology for determining the fuel cost associated with power purchased from power marketers and other suppliers, and this methodology was accepted as reasonable by the Commission in each of the utilities' fuel proceedings in 1997 and 1998.

Upon expiration of the 1997-1998 stipulation, the Public Staff performed an analysis of the fuel component of the utilities' off-system sales based on the Monthly Fuel Reports for the twelve months ended October 31, 1998. This analysis, which was similar to the analysis the Public Staff performed in connection with the earlier stipulation, became the basis for the 70% ratio used in the 1999-2001 Marketer Stipulation. The Public Staff continues to consider it reasonable to use the utilities' off-system sales as a basis for the ratio utilized in the Marketer Stipulation, because the utilities make a large number of off-system sales from their generation stock and the sales made by marketers and other utilities utilize the same types of generation resources. Furthermore, the utilities' off-system sales fuel cost data is readily available, and the Public Staff is unaware of any alternative information that is currently available concerning the fuel cost component of marketers' sales to utilities. Therefore, the Public Staff recommended that the Commission adopt the Marketer Stipulation for purposes of this proceeding. North Carolina Power has calculated its purchased power fuel costs in accordance with the Marketer Stipulation.

The Commission notes that the Marketer Stipulation was used in CP&L's 1999 fuel case, and the 70% ratio was used in Duke's 1999 fuel case. No evidence was produced in this case to suggest that the Commission's reliance upon the Marketer Stipulation is unreasonable or otherwise unjustified.

Applying the Commission's standard to the evidence presented by Witnesses Goode and Peedin, the Commission concludes that the methodology for determining the fuel cost component of purchases from marketers and certain other suppliers as set forth in the Marketer Stipulation is reasonable and will be accepted for purposes of this proceeding. As such, the Commission approves for purposes of this case the EMF under-recovery amount of $1,849,947 as proposed by the Public Staff and accepted by the Company.

The total jurisdictional fuel expense under-collection for use in establishing the EMF in this proceeding is $1,849,947.

The Company is proposing to collect the fuel revenue under-collection over a 12-month period beginning January 1, 2000, using the adjusted North Carolina retail sales of 3,149,713 MWh.

The Commission concludes that the fuel revenue under-collection of $1,849,947 is appropriate for use in this proceeding and should be collected from customers over a 12-month period. No party opposed these calculations. This refund should be in the form of a separate EMF-Rider B.

The $1,849,947 under-collected fuel revenue was divided by the adjusted North Carolina jurisdictional sales of 3,149,713 MWh to arrive at the proposed EMF increment of 0.059 ¢/kWh, excluding gross receipts tax, or a 0.061¢/kWh increment, including gross receipts tax. This reflects the EMF-Rider B increment proposed by Company witness Pierce, and modified by Public Staff witnesses Peedin and Lam. The Commission concludes that, there being no controversy, the proposed EMF increment of 0.059 ¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding, and shall become effective on January 1, 2000, and shall expire one year from that date.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence supporting this finding of fact is cumulative and is contained in the testimony and exhibits of Company witnesses Goode, Pierce and Green, and the affidavits of Public Staff witnesses Peedin and Lam.

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 1.107 ¢/kWh.

The fuel factor is determined as follows:

Normalized System Fuel Expense	$717,768,916
System kWh Sales at Sales Level	70,866,145,853
Base Fuel Component (¢/kWh) Excluding Gross Receipts Tax	1.091
Gross Receipts Tax Factor	1.03327

Fuel Cost/Rider A (¢/kWh) = $717,768,916 / 70,866,145,853 - $0.01091 x 1.03327
[(Fuel Expense/kWh Sales) -
Base Fuel Component] x GRT Factor = ($0.00081)/kWh

	Effective 1/1/2000 (Including Gross Receipts Tax)
Base Fuel Factor (¢/kWh)	1.127
Fuel Cost/Rider A (¢/kWh)	(0.081)
EMF/Rider B (¢/kWh)	0.061
FINAL FUEL FACTOR (¢/kWh)	1.107

IT IS, THEREFORE, ORDERED as follows:

1. That effective beginning with usage on and after January 1, 2000, 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 0.078 ¢/kWh, excluding gross receipts tax, or a 0.081 ¢/kWh decrement, including gross receipts tax;

2. That an EMF Rider increment (Rider B) of 0.059 ¢/kWh, excluding gross receipts tax, or a 0.061 ¢/kWh increment, including gross receipts tax, shall be instituted and remain in effect for usage from January 1, 2000 until December 31, 2000;

3. That North Carolina Power shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustments approved herein not later than five (5) working days from the date of receipt of this Order; and

4. 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 17th day of December, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

jc121399.01

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-22, SUB 382

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Power	)	
Pursuant to North Carolina General	)	NOTICE TO CUSTOMERS
Statute 62.133.2 and North Carolina	)	OF RATE INCREASE
Utilities Commission Rule R8-55 Relating	)	
To Fuel Charge Adjustments for Electric	)	
Utilities	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on December 17, 1999, after public hearings, approving an \$5,228,524 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 for usage on and after January 1, 2000. The rate increase was approved by the Commission after a review of North Carolina Power's fuel expenses during the 12-month test period ended June 30, 1999, and represents changes experienced by the Company with respect to its reasonable costs of fuel and the fuel component of purchased power.

For a typical residential customer using 1,000 kWh per month, the Commission's Order will result in a net rate increase of approximately \$1.66 per month from the previously effective rates.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of December 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-5, SUB 391

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition by Public Service Company of	)	
North Carolina, Inc., for Approval of a	)	ORDER APPROVING
Proposed Expansion Project and	)	EXPANSION PROJECT
Withdrawal of Funds from PSNC's	)	TO ALEXANDER COUNTY
Expansion Fund	)	

HEARD: Wednesday, November 18, 1998, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioners Judy Hunt, Presiding, Ralph A. Hunt, and J. Richard Conder

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

J. Paul Douglas, Vice President - Corporate Counsel, Public Service Company of North Carolina, Inc., Post Office Box 1398, Gastonia, North Carolina 28053

Marcus Trathen, Brooks, Pierce, McLendon, Humprey & Leonard, Attorneys at Law, Post Office Box 1800, Raleigh, North Carolina 27602

For the Carolina Utility Customers Association, Inc.:

James West, West Law Offices, Suite 1735, 434 Fayetteville Street Mall, Raleigh, North Carolina 27601

For the Using and Consuming Public:

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

BY THE COMMISSION: On July 6, 1998, Public Service Company of North Carolina, Inc. (PSNC or Company) filed a petition with the Commission for approval of an expansion project that would extend natural gas service into Alexander County, an unserved area in its franchised territory. PSNC is also requesting authority for the withdrawal of funds from its Expansion Fund to reduce the negative net present value (NPV) of the project to zero. The proposed expansion facilities include a six-inch diameter natural gas transmission line beginning in Statesville and following N.C. Highway 90 to Taylorsville, running a total distance of 24.9 miles. The proposed project will also include distribution facilities to serve Taylorsville.

In its application, PSNC estimated the total cost of the project, unadjusted for inflation, to be $6,157,947, consisting of $5,624,849 to construct the proposed transmission line and $533,098 to construct the proposed distribution mains including service attachments. Adjusting for inflation, PSNC estimated the project to have a cost of $6,188,379, and a negative NPV of $5,330,239.

By Order issued on July 22, 1998, the Commission ordered a hearing on PSNC's application for approval of its Alexander County project and partial funding of that project from its Expansion Fund, required public notice, and established a procedural schedule for this proceeding.

On August 5, 1998, the Commission issued an Order Requiring Filing of Net Present Value Analysis showing all the details of its NPV analysis. On August 20, 1998, PSNC filed its NPV analysis. On September 17, 1998, the Commission issued an Order Requesting Supplemental Testimony from PSNC regarding assumptions relied on in its NPV analysis. On October 22, 1998, PSNC filed testimony and exhibits in response to the Commission's Order.

On October 23, 1998, the Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene. On October 24, 1998, the Commission issued an Order Granting Petition to Intervene.

On November 4, 1998, the Public Staff filed its testimony; and on November 16, 1998, PSNC filed its rebuttal testimony.

This matter came on for hearing as scheduled in Raleigh, North Carolina, on November 18, 1998. Darrell Robertson, Chairman of the Alexander County Board of Commissioners appeared as a public witness in support of the project. PSNC presented the testimony of Ellen V. Baldwin, PSNC's Manager – Accounting Services; Bruce P. Barkley, PSNC's Director – Rates and Regulatory Administration; and Bill Rayner, PSNC's Director – Western Engineering Services. The Public Staff presented the testimony of Jan A. Larsen, Utilities Engineer with the Public Staff's Natural Gas Division; Calvin C. Craig, III, a Utilities Financial Analyst with the Public Staff's Economic Research Division; and Kirk Kibler, Staff Accountant with the Public Staff's Accounting Division. PSNC offered the rebuttal testimony of Bruce P. Barkley.

Based upon the application, the testimony of the parties, and the entire proceeding the Commission makes the following:

FINDINGS OF FACT

1. 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 franchised areas consisting of all or parts of thirty-one (31) counties in central and western North Carolina as designated in PSNC's certificates of public convenience and necessity issued by this Commission, including Alexander 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.

NATURAL GAS - EXPANSION

3. PSNC is before the Commission upon its application for approval of an expansion project filed pursuant to G.S. 62-158 and Rule R6-84.

4. The project involves running a six-inch diameter steel transmission main from the terminus of PSNC's existing transmission pipeline in Statesville for a distance of 24.9 miles to the Town of Taylorsville. The route will generally follow NC Highway 90 into Alexander County and to the Town of Taylorsville.

5. The proposed distribution system consists of 16,600 feet of four-inch diameter plastic main and 3,000 feet of two-inch diameter plastic main.

6. The project is expected to take ten months to complete.

7. PSNC filed an NPV analysis of the Alexander County project that calculated a negative NPV of $5,330,239. PSNC revised this amount downward to $4,918,294.

8. The Public Staff proposed adjustments to the NPV analysis filed by PSNC.

9. The NPV analysis filed by the Public Staff calculated a negative NPV of $4,301,380.

10. The appropriate state income tax rate for use in the NPV analysis is 6.9%, which results in an effective corporate tax rate of 39.485%.

11. The appropriate growth rate to use in the NPV analysis is 1.97%.

12. The total cost of the project adjusted for inflation, which includes $9,215 of costs associated with two additional customers recommended by the Public Staff, is $6,262,567. This sum consists of $5,643,832 related to transmission facilities and $618,735 for the distribution system, including service attachments.

13. The total volumes used to determine the margins in the NPV analysis are 5,074,069 dekatherms (dts). This amount includes 8,385 dts associated with the two customers identified by the Public Staff who both qualify for service under Rate Schedule 125 (Small General Service).

14. The Public Staff's calculation of property tax is reasonable and appropriate and should be incorporated into the NPV analysis.

15. It is appropriate to reflect in the NPV analysis the new margins, rate of return, and capital structure approved by the Commission in Docket No. G-5, Sub 386, PSNC's recent general rate case.

16. The appropriate inflation adjustment for use in the NPV study is an annual increase of 2.7%.

17. It is appropriate to apply the inflation adjustment to all cash flow items including margins, O&M expenses, and construction costs in the calculation of the NPV.

18. The Company's regression-based approach is not the most appropriate method for estimating O&M expenses in this proceeding.

19. The Public Staff calculated O&M expenses based on cost-causative factors, such as plant and customers.

20. The cost-causative approach utilized by the Public Staff results in a rational and reasonable level of O&M expenses and is the appropriate methodology to be used in this proceeding.

21. The appropriate level of O&M expense for use in determining the NPV for the Alexander County project is $5,453,392.

22. The pipeline route proposed is the most direct, cost-effective route to serve the area covered by the expansion project and will also maximize potential attachments of gas customers and utilize existing corridors to facilitate construction.

23. PSNC's design and location of the proposed transmission pipeline and distribution mains for this project are appropriate.

24. It is reasonable to assume that the construction and operation of natural gas facilities in the unserved area covered by PSNC's proposed project in this docket will assist in industrial and economic growth in the area lending to increased throughput on PSNC's system.

25. 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, PSNC's system will benefit.

26. PSNC 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 Alexander County project proposed by PSNC is in accordance with G.S. 62-2(9) and 62-158 and should be approved for funding in the amount of $4,301,380 from PSNC's Expansion Fund.

28. Local government assistance payments were not included in PSNC's NPV analysis as neither Alexander County nor any of the towns to receive natural gas service, Hiddenite, Stony Point, and Taylorsville, has proposed to provide such assistance. In this proceeding, the Commission concludes that this proposed project should be approved even though the local governmental entities are not providing any financial assistance.

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 in this proceeding, PSNC's application, the testimony and exhibits by the witnesses for PSNC and the Public Staff, and are uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-6

The evidence supporting these findings of fact is contained in the application and in the direct testimony of Company witness Rayner.

PSNC is proposing to construct a six-inch diameter steel transmission main from the terminus of PSNC's existing transmission pipeline in Statesville for a distance of 24.9 miles to the Town of Taylorsville. Specifically, the route will begin with 6,000 feet of cross-country right of way beginning at Amity Hill Road and running in a westerly direction to Blue Bird Lane (SR 2345). The remainder of the route will be within public right of way beginning along Blue Bird Lane (SR 2345), Hillhaven Road (SR 1381), Wallace Springs Road (SR 1338), Arey Road (SR 1337), Buffalo Shoals Road (SR 1004), Airport Road (SR 1379), U.S. Highway 70, Gilbert Road (SR 1513), and Woodbridge Road (SR 1512) to Loray and along N.C. Highway 90 to Taylorsville. In determining this route, Company witness Rayner stated that "the route selected is the shortest path to NC 90 where the majority of the potential customers are located." Company witness Rayner said that PSNC looked at another route but determined that it was "longer, and the available capacity is limited." PSNC is also proposing a distribution system for Taylorsville consisting of 16,600 feet of four-inch diameter plastic main and 3,000 feet of two-inch diameter plastic main.

In addition, Company witness Rayner stated that the proposed transmission and core distribution system will take approximately 10 months to complete. Company witness Rayner estimated that if construction began in March 1999, PSNC should be connecting customers beginning in December 1999.

Based on this evidence, the Commission concludes that PSNC has selected the shortest and least expensive route to construct the proposed transmission line. The Commission also concludes that PSNC has selected the pipeline route so that it is along where the majority of the potential customers are located and begins at a point where PSNC has adequate capacity in order to provide natural gas service to Alexander County and to the Town of Taylorsville.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-15

The evidence supporting these findings of fact is contained in the Company's application, the testimony of Company witnesses Barkley and Baldwin, the NPV analysis filed by PSNC, the rebuttal testimony of Company witness Barkley and the Public Staff's joint testimony, revised joint testimony, and exhibits.

In response to the Commission's Order of August 5, 1998, PSNC filed its NPV analysis on August 20, 1998, which reflected a negative NPV of $5,330,239. The Public Staff recommended certain adjustments in its joint testimony to the NPV analysis filed by PSNC. Some of these adjustments included: (1) changing the state income tax rate to 6.9%; (2) incorporating additional volumes and construction costs associated with two additional customers; (3) calculating property tax expense based on the current Alexander County property tax rate as applied to gross plant; (4)

changing the growth rate to 1.97% based upon the most recent population data for the County; and (5) updating margins, capital structure, and the rate of return to reflect the Commission's Order in Docket No. G-5, Sub 386, PSNC's recent general rate case. Company witness Barkley stated the Company's acceptance, for purposes of this proceeding only, of the above five adjustments proposed by the Public Staff. In his rebuttal testimony, witness Barkley revised his negative NPV amount to $4,918,294. No other party to this proceeding, except in reference to the growth factor which is discussed next, offered evidence or contested as incorrect or inappropriate the above five adjustments proposed by the Public Staff.

The only discussion concerning the above Public Staff adjustments was in reference to the growth rates used by PSNC and the Public Staff in their respective NPV analysis. This discussion centered on a statement made by a public witness, Alexander County Commissioner Robertson, who stated that "Our growth last year was 7% which was the highest in the uni-four area. That 7% was primarily residential growth." He further testified that the projected growth rate over ten years was 6.3%.

CUCA, in its post-hearing brief, stated that if PSNC maintains that the inflation adjustment should be 2.1% based upon one recent quarter of historical data and the Commission agrees with PSNC, then PSNC and the Commission must for methodological consistency alone accept a population growth of 7% over forty years based upon the most recent year of data instead of 1.97%, which is based upon eight years of data. On the other hand, if forecasted data rather than historic data is to be incorporated in the NPV analysis, a population growth rate of approximately 6.3% per year rather than 1.97% must be incorporated for methodological consistency. In either case, PSNC's negative NPV calculation has been significantly overstated and must be lowered according to CUCA.

The Commission notes that no evidence was given to support the growth rates testified to by Mr. Robertson, and no detail was provided on how they were determined or how they should be applied. Neither the Public Staff nor PSNC witnesses could confirm the validity or reasonableness of the growth rates cited by Mr. Robertson. The Commission also notes that Mr. Robertson mentioned the growth rates in response to a question from CUCA's attorney concerning the County's growth rate over the last 20 years. Mr. Robertson did not suggest that the rate of 7% be used in the NPV analysis in lieu of the rate used by the Public Staff. In fact, Mr. Robertson did not hold himself out as an expert witness on NPV analysis, and he did not make any recommendations concerning any NPV calculations. It is clear from the record that Mr. Robertson was not providing his growth rate as a challenge to the rate presented by the Public Staff. The growth rate used by the Public Staff was based on population data from 1990 to 1997. The Commission concludes that the appropriate growth rate to be used in the NPV calculation is the 1.97% rate recommended by the Public Staff and agreed to by PSNC.

The Commission has carefully reviewed the Company's application and the direct, supplemental, and rebuttal testimony and exhibits and the NPV analysis filed by the Company and the joint and revised joint testimony and exhibits of the Public Staff, and concludes that the above five adjustments recommended by the Public Staff are reasonable and appropriate and should be incorporated into the NPV analysis of the Alexander County project.

NATURAL GAS - EXPANSION

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence supporting this finding of fact is contained in the direct testimony of Company witness Baldwin, the NPV analysis filed by PSNC, the rebuttal testimony of Company witness Barkley, and the joint testimony and exhibits of the Public Staff.

The Company proposed the use of the Consumer Price Index (CPI) for the most recent calendar quarter as the inflation adjustment in the NPV study. According to her prefiled testimony, Company witness Baldwin proposed an inflation adjustment of 2.1%. Subsequently, PSNC's inflation adjustment was revised to 1.5% by Company witness Barkley in his rebuttal testimony. This 1.5% inflation rate was derived from the annual change in the CPI for the 12 months ended September 30,1998. Both of these changes in the CPI are based on historical data for relative short periods of time. PSNC witness Baldwin testified that she believed that historical CPI data is "a measure of the expected change in the prices of consumer durable goods and services." Company witness Barkley expounded on the use of historical data in the determination of the appropriate inflation adjustment to be utilized in this proceeding. He contended that since five of the six elements used to calculate the overall rate of return and hence, the discount rate, are based upon historical data, the use of historical data in determining the inflation adjustment is consistent. Company witness Barkley testified that the DRI forecasted inflation adjustment, as proposed by the Public Staff, is speculative since it is a projected rate.

The Company Panel was asked several questions regarding annual changes in and the average of annual changes over time for the CPI over the last 53 years, since the end of World War II. PSNC witness Barkley acknowledged that the compound average growth rates in the CPI were 4.3% for 1945 through 1997, a 53 year period, and 3.3% for 1988 through 1997, a 10 year period. Both of these averages are higher than inflation adjustments that were advocated by both the Company and the Public Staff in this docket. When asked about how extreme annual changes in the CPI could be, the PSNC Panel acknowledged that the change in the CPI for individual years ranged from 1.7% in 1997 to 13.3% in 1979. Company witness Barkley testified that the Company would use whatever the last 12 month CPI rate was in its NPV analysis in order to be consistent with past practice and its belief that there is no better indicator of the inflation adjustment for the future. He stated that if the year was 1979 and the annual rate was 13.3%, then that is what PSNC would use. The Company would make no effort to examine any historical data prior to the last 12 months nor to consider any forecast of future inflation.

CUCA, in its post-hearing brief, stated that PSNC's approach to predicting inflation rates is "ham-handed and devoid of logic" for two principal reasons. First, PSNC's utilization of general CPI statistics is not appropriate because the CPI is not targeted to utility structures-related inflation but instead reflects changes in prices of a broad basket of consumer goods, such as food and recreational products. Second, PSNC's decision to predict inflation for the next 40 years based upon only one quarter of historical data is nothing more than a guess as to future inflation that happened to be correct once in the past.

Public Staff witness Craig testified that he evaluated a 24 year forecast in Standard and Poor's DRI's Review of the US Economy, Long-Range Focus, Summer 1998 in order to determine the appropriate rate of inflation to be used in this proceeding. Based on his analysis, Public Staff witness

Craig concluded that a 2.7% compound average growth rate for the forecast period applied to all cash flows, including facilities charges, O&M expenses, and margins, was a reasonable approach for this proceeding. In his testimony, witness Craig explained that the DRI's Review is a more appropriate source for determining the inflation rate than very short-term historical CPI data. The DRI's Review includes a long-term forecast specifically for public utilities structures, while the CPI rate proposed by PSNC involves short-term historical data that covers consumer purchases, which are only marginally relevant to the Alexander County project. During redirect examination, he pointed out that recent declines in the CPI could be related to sharp decreases in oil prices and that investors do not expect these low rates for oil prices to continue for the next 24 years. Witness Craig testified that a long-term forecasted, industry-specific rate is more appropriate for the NPV study due to the forecasted nature and 40 year time span of such a study.

The Company cross-examined Public Staff witness Craig on forecast-to-actual comparisons for the CPI for certain years and the changes in CPI projections for certain common years of two different DRI's Reviews. For the forecast-to-actual comparisons, the DRI's Reviews' forecasts of CPI exceeded the actual CPI amounts in certain years. For some common years in two of DRI's Reviews, the projections also varied. However, for the year 1996, a 3.2% CPI growth rate was projected in the Summer 1994 DRI's Review. This was virtually the same as the actual 3.3% CPI growth rate for 1996. Further comparisons of forecast-to-actual CPI data from the Summer 1994 DRI's Review showed that for the year 1994, the forecast and actual amounts were exactly the same. DRI lowered its CPI forecast for the first several years in its Winter 1996-1997 Review when compared to its Summer 1994 Review. However, the compound average growth rate of the CPI forecasts for all forecasted years did not change between DRI's Reviews. The compound average growth rate of the forecasted CPI over 25 years was 3.7% for data in both DRI's Summer 1994 Review and DRI's Winter 1996-1997 Review. Ultimately, these comparisons of CPI data were not particularly germane in this proceeding for several reasons. First, inflation as measured by the CPI is not the most appropriate source for use in this docket since it includes only a negligible amount of utility transmission and distribution facilities. The Public Staff's inflation adjustment factor is specifically based on public utilities structures. Also, the annual forecasted-to-actual comparison for selected forecasts involves time periods that are too short to be indicative of how a 25 year forecast may impact a 40 year NPV study. Finally, DRI uses econometric models that are refined for accuracy approximately every 18 months to make its projections. This process ensures that DRI's forecast are up-to-date and relevant.

In his rebuttal testimony, PSNC witness Barkley stated that five of the six rates used in the determination of the discount rate are based on historical data. He criticized the Public Staff for not attempting to project these rates for the next 40 years to be consistent with its recommended forecasted inflation adjustment. The Commission, however, does not find PSNC's arguments on this point to be compelling. To be consistent with the calculation of the discount rate, the Company could have proposed a CPI rate that was based on a long-term historical average. Information in Public Staff Baldwin Cross-Examination Exhibit No. 1 indicates that over the last ten years the CPI has averaged 3.3% and over the past 40 years it has averaged 4.5%. The Commission notes that both of these long-term averages of the CPI are higher than the Public Staff's recommendation of 2.7%. Generally, higher inflation adjustments result in a lower NPV being computed for a project. Of course, it is difficult to know precisely the inflation rate that is reflected in the discount rate. However, it is widely accepted financial theory that debt and equity cost rates have an expectation that inflation will be recovered on a prospective basis. The Commission is satisfied that it is reasonable to assume that the Public Staff's 2.7% rate is within the range of inflation expectations that is implicit in the discount rate and that it is not necessary to forecast fluctuations in the discount rate over the 40 year time period in the NPV study.

The Commission concludes that the testimony of Company witnesses Baldwin and Barkley regarding the appropriate inflation rate should be accorded only minimal weight in this proceeding. The Company proposes the use of CPI data that measures the historical rate of change in the prices of consumer goods for a very short time period as the basis for estimating the future increase in the prices of utility transmission and distribution equipment for a 40 year study. The CPI is a volatile rate that is subject to extreme fluctuations from year-to-year. In this proceeding, the Company's proposed inflation rate fell by a relative 29% from 2.1% as of December 1997 to a 1.5% as of September 1998. This is a significant change in the Company's inflation rate over only a nine month period. Company witness Barkley testified that the Company has consistently used the most recent historical CPI inflation rate to forecast inflation in natural gas expansion projects but offers no evidence of its appropriateness for predicting future changes in the prices of utility transmission and distribution equipment, O&M expenses, and margins. The Commission is greatly concerned by the extreme variations in annual CPI changes over the past 22 years. The CPI changed by only 1.7% in 1997, yet ballooned by 13.3% in 1979. The volatility in short-term CPI changes makes the most recent 12 months CPI inflator an unreliable indicator of the inflation rate for the next 40 years.

The appropriate inflation rate for purposes of this proceeding is 2.7%. Public Staff witness Craig testified that the 24 year forecast from Standard and Poor's DRI's Review of the US Economy-Long Range Focus, Summer 1998 is the most appropriate source for determining the inflation rate for this proceeding. Public Staff witness Craig contended that the DRI forecast is a long-term forecast that is specifically based on public utilities structures. He concluded that given the forecasted nature and 40 year time frame of the NPV study, DRI's projected rate of 2.7% is the best predictor of future changes in the prices of utility transmission and distribution facilities. He testified that the CPI inflation rate as proposed by the Company contains only a negligible amount of utility property and, also, is not appropriate for this proceeding because it is based solely on historical data for a very brief period of time. Public Staff witness Craig noted under cross-examination that the DRI forecast is based on econometric modeling that involves taking historical data and regressing that data in order to predict as accurately as possible a change in a factor such as inflation for public utilities facilities over time. He further stated that the econometric models employed by DRI are reviewed and refined for accuracy every eighteen months.

Based on its review and analysis and the entire evidence of record, the Commission finds and concludes that an inflation adjustment rate of 2.7% as recommended by the Public Staff is reasonable and appropriate and should be incorporated into the NPV analysis of the Alexander County project.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence supporting this finding of fact is contained in the direct testimony of Company witness Baldwin, the NPV analysis filed by PSNC, the rebuttal testimony of Company witness Barkley, and the joint testimony and exhibits of the Public Staff.

PSNC witness Baldwin testified that she applied the inflation adjustment to construction costs only in the Company's NPV study. In his rebuttal testimony, PSNC witness Barkley acknowledged that, for purposes of this proceeding only, the application of an inflation adjustment to all cash flow items was the proper methodology for NPV analysis. The Company disagreed with the Public Staff on the inflation adjustment only.

Public Staff witness Craig testified through the Public Staff's joint testimony that the application of an inflation adjustment to margins, O&M expenses, and construction costs in the NPV study is appropriate for this proceeding. He testified that the inflationary expectations of investors are reflected in the discount rate. Therefore, it is necessary to apply the inflation rate to all cash flows in order to achieve consistency with the inflation expectations that are implicit in the discount rate.

The Commission is in agreement with the Public Staff's position, accepted by the Company, that an inflation adjustment should be applied to all cash flow items. This procedure is both theoretically and practically correct for the type of NPV analysis that is employed in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18-21

The evidence supporting these findings of fact is contained in the direct testimony of Company witness Baldwin, rebuttal testimony of Company witness Barkley and the joint testimony and exhibits of the Public Staff.

Company witnesses Baldwin and Barkley testified that the level of O&M expenses used in the NPV analysis was determined by taking a regression-based approach that estimated a portion of the margin as the project's operating and maintenance expenses. Company witness Baldwin testified that approximately 40% of the margin was the appropriate level of O&M expense for the Alexander County project. Company witness Barkley applied a regression analysis of O&M expenses and margin and testified that there is "a predictable pattern of the relationship between margin and O&M expenses." In support of his position, Company witness Barkley testified that expansion projects "can increase administrative and general expenses, such as insurance, employee benefits, non-charitable contributions, and could cause PSNC's liquefied natural gas (LNG) facility to be utilized to a greater extent."

The Public Staff determined O&M expenses based on cost-causative factors, such as customers and plant. This methodology is consistent with the Public Staff's position in every expansion project that has been filed with the Commission. The joint testimony of the Public Staff explained how the level of O&M expenses for customer related and plant related expenses were determined. A per mile maintenance expense for transmission and distribution mains was calculated by taking the most recent twelve month expense data (the period ending September 30, 1998) for these items and dividing the amount by the actual Company wide miles of distribution and transmission mains to arrive at the per mile maintenance expense level. The per mile amounts were then multiplied by the total miles of transmission and distribution mains included in the Alexander County project. The customer related expense was determined "by dividing the total expense in the accounts associated with customer related activities by the total number of customers at September 30, 1998. The resulting number was then multiplied by the number of customers that are included in the Alexander County project each year."

The Company maintained that the O&M costs to extend gas into "a new area cannot be accurately analyzed in a cost-causation manner." Company witness Barkley's rebuttal testimony maintained that the Public Staff made unsubstantiated choices of items in establishing its cost-causation method in estimating the amount of O&M expense for the project. However, PSNC witness Barkley did not testify that their regression approach showed a cost-causation, rather the Company argued that the R-square indicated a high correlation of the Company's total margins and its company-wide level of O&M expenses.

Upon cross-examination, Company witness Barkley agreed that the Company's regression-based approach was different from the approach applied by Company witness Boone in the McDowell County expansion project. PSNC witness Barkley agreed that if the Company had applied the same regression approach used in the McDowell project for this project, the R-square for margins and O&M expense would be reduced to 0.16, far less than the R-square of .98 computed by Company witness Barkley in this proceeding. Upon further cross-examination, Company witness Barkley agreed that a regression performed using the McDowell County approach would not be a good predictor for the Alexander County project.

The Public Staff and PSNC proposed different methodologies to determine the appropriate level of O&M expense that should be included in the expansion project. The Commission has examined each methodology to determine if the approach arrived at a reasonable level of O&M expense.

PSNC's regression-based approach to estimating the appropriate level of O&M expense for the project is derived from the correlation of the total Company's operations. While the Commission is mindful of the difficulties associated with using a cost causation approach, the Commission is not persuaded that the regression-based approach is superior. The reduction in the R-square in the regression equation from 0.98 to 0.16 indicates that there are other factors, such as the number of employees and customers, that influenced the level of O&M expenses over the 20 years of historical data used in the regression. Therefore, based on the foregoing and the entire evidence of record, the Commission finds and concludes that the Company's regression-based approach to estimating O&M expenses should be given only minimal weight in this proceeding.

Another factor that the Commission must address in the methodology advanced by PSNC is the logical connection between O&M expenses and margin. The Public Staff stated:

> Obviously, revenues do not cause changes in O&M expenses. However the methodology used by PSNC increases the O&M expense level whenever margins are increased. The Public Staff adjustments to reflect the new margins approved in the rate case, to apply the inflation rate to margins, and to increase the growth rate to 1.97%, all resulted in increased margins. Utilization of the PSNC model would actually increase the O&M expense level for each of these adjustments.

Public Staff witness Kibler testified that PSNC's methodology "just doesn't seem to fit." He further testified that the Public Staff's adjustment to update the NPV analysis for the new margins from the recent rate case "shouldn't affect expenses at all but because the way Public Service methodology is set up, their O&M went up just because we were updating to the new rates in the rate case."

The Commission agrees that it is not logical for O&M expenses to change simply because the margins are updated to reflect a rate increase. The O&M expenses for the Alexander County project should be determined based on the facts and circumstances associated with this project, and these O&M expenses should have been established in the Company's originally filed NPV analysis. It is logical to assume that O&M expenses will not be increased when the facts and circumstances surrounding the project have not changed. Conversely, to say that the O&M expense level will increase simply due to an increase in rates is not logical, expected, or reasonable. This, however, is precisely what happens in PSNC's NPV analysis. As Public Staff witness Kibler stated this is "a very good example of the flaw in Public Service's methodology." The Commission concurs.

Company witness Barkley stated that the Company has consistently filed the same methodology concerning the calculation of O&M expense in each of its previous expansion dockets. While recognizing this fact, the Commission notes that in no expansion docket order for PSNC, or for that matter any LDC in North Carolina, has the Commission approved the methodology requested by PSNC.

The Public Staff's cost-causation approach is based on the specific circumstances of the Alexander County project. The Public Staff based its O&M expense level on the number of customers forecasted to be connected to the system and on the number of miles of transmission and distribution mains. Expense items that were not directly affected by the project were excluded. Public Staff witness Kibler testified that he excluded storage expense related to the LNG storage plant, and "officers' salaries, the salaries of people working in Gastonia at the headquarters . . . salaries of personnel . . . in the Raleigh district, the Asheville area . . . and the related benefits, dental benefits, life insurance . . ." When asked why he excluded officers' salaries, Public Staff witness Kibler stated that he looked "at the incremental costs that the Company will incur in order to do the Alexander County project, and I haven't been provided any information that would indicate that the officers' salaries or benefits would increase because of this project." In agreement with Public Staff witness Kibler, Company witness Barkley later testified upon cross-examination that he was not expecting officers' salaries to increase solely due to the Alexander County project. In addition, Company witness Barkley agreed that his O&M expense methodology included officers' salaries. The Commission concludes that it is unreasonable to include expenses related to officers' salaries and benefits in the determination of O&M expenses for Alexander County.

Company witness Barkley criticized the Public Staff for not including administrative and general expenses or LNG storage costs. PSNC witness Barkley stated that "Expansion projects can increase administrative and general expenses such as insurance, employee benefits, non-charitable contributions, etc. It is also possible that the increased consumption associated with an expansion project could cause PSNC's LNG facility to be utilized to a greater extent than in prior years." But upon cross-examination, Company witness Barkley agreed that non-charitable contributions are not necessary to provide a customer gas service and that there would be no necessary increase in non-charitable contributions required by the Alexander County project. He further testified upon cross-examination that administrative and general expenses like expenses for the Gastonia office, officers' salaries, and Board of Directors' fee would not be increased by the Alexander county project.

CUCA, in its post-hearing brief, stated that G.S. 62-158 provides that the Commission "shall employ the net present value method of analysis on a project specific basis." Therefore, an incremental O & M cost methodology such as that supported by the Public Staff is appropriate. According to CUCA, PSNC cannot be permitted to use expansion funds to underwrite general O & M expenses such as rent for its corporate headquarters and salaries for its corporate officers. Further, CUCA argues that PSNC's methodology is clearly flawed because, as PSNC admitted upon cross-examination, under its proposed methodology O & M expenses increase whenever PSNC's revenues increase, even if such increases are unrelated to directly assignable costs.

The Commission agrees that it is reasonable to exclude administrative and general expense items that are not related to the current expansion project. The Commission is convinced that the Public Staff's cost-causative approach achieves this goal and it is clear that PSNC's method does not.

In addition, the Commission must consider the scope of the project when determining the impact a specific project will have on the level of general operating expenses. Both the Public Staff and PSNC forecast that the Alexander County project will have only 118 customers after 40 years. The Commission notes that, based on customer data from PSNC's G-100, Sub 24 monthly reports, comparing the growth from October 1997 to 1998, 118 customers is less than half of one week's growth for PSNC. The Commission concludes that it is unreasonable to establish the level of operating expenses for this project based on the Company's entire operating expenses considering the fact that witnesses for both PSNC and the Public Staff testified that many of the operating expenses will be unaffected by the project.

In determining maintenance expense, the Public Staff included an amount based on the projected number of miles of transmission and distribution mains. Public Staff witness Kibler testified that the Public Staff's methodology does take in to account the miles of pipe when determining maintenance expense. Company witness Barkley agreed under cross-examination that under PSNC's methodology maintenance expense would not increase even if the pipeline distance increased by 10 miles. It is obvious to the Commission that it is reasonable and appropriate to determine maintenance expense based on the miles of pipe included in the project. After all, maintenance expense should be based on the Company's experience with maintaining its lines, not on its revenues.

PSNC argued that it is appropriate to include expenses related to the LNG plant in the Alexander County O&M expense level. Company witness Barkley stated in his rebuttal testimony that "[i]t is also possible that the increased consumption associated with an expansion project could cause PSNC's LNG facility to be utilized to a greater extent than in prior years." (Company witness Barkley's comments were in response to the Public Staff's position that it is not appropriate to include O&M expenses, like LNG storage expenses, in the NPV computation because they "are not directly affected by the project.") Under cross-examination, Public Staff witness Kibler was asked why he had excluded the O&M costs of the LNG storage plant. Public Staff witness Kibler testified that the O&M costs of the LNG plant would not change due to the Alexander County project. When asked if the LNG plant will have to be operated more as additional customers are added, Public Staff witness Kibler stated that the operation of the LNG plant is "more of a weather related item as opposed" to being customer related. He further explained that in the recent rate case "even though the [C]ompany grew customers the plant was actually used less, and Public Service proposed an adjustment in their rate case to pick up additional costs because the plant was not operated as much as it had been in the past." In addition, Public Staff witness Kibler testified that the LNG plant "in the last couple of years has been used less because of weather." Also, Public Staff witness Kibler said that "There's no way to predict the use of that plant and try to peg it to the Alexander County customers."

The Commission agrees with the Public Staff that increased operation of the LNG plant would be based more on weather conditions than it would be as a result of the small number of additional customers that the Alexander County project would bring. The Commission concludes that it is appropriate to exclude the O&M expenses related to the operation of the LNG plant.

The discussion concerning the LNG plant strikes at the heart of the disagreement between PSNC and the Public Staff. The disagreement revolves around the question of whether only incremental costs should be considered in the NPV analysis or whether all costs should be fully allocated to an expansion project. The Public Staff's position is that only incremental costs should be considered in the NPV analysis while PSNC's methodology includes a full allocation of company-wide expenses. While the Commission has not specifically ruled on this issue in the past, it seems apparent to the Commission that only incremental costs should be included in the NPV analysis. For example, would it be appropriate to include the cost of storage facilities in the total construction cost of the Alexander County project? The answer is an obvious "no" because no new storage facility will be built for the project. Only the construction costs related to actual facilities that will be built for the Alexander County project can be appropriately included in the NPV analysis. Additionally, costs associated with building a new office would not be included in the NPV analysis because no new office building is planned for the project. It makes no sense to include the cost of facilities that will not be a part of the project. At the same time, it is also logical to exclude the operating costs of storage facilities and general offices if these expenses will not be increased due to the Alexander County project. The Commission concludes that it is appropriate and reasonable to include only incremental costs in determining the level of O&M expenses for the purposes of the NPV analysis.

When determining the level of O&M expenses to include in the NPV analysis, the Commission agrees with the Public Staff that the cost-causative approach is superior to the regression-based approach utilized by PSNC. The Commission concludes that it is appropriate to remove O&M expenses that will not be affected by the Alexander County project. Expenses that have a direct relationship to the project, like maintenance should be based on the cost-causative approach methodology proposed by the Public Staff. The Commission concludes that the appropriate level of O&M expense for use in determining the negative NPV for the Alexander County project is $5,453,392.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 22 – 23

The evidence supporting these findings of fact is contained in PSNC's application and the testimony of its witnesses, primarily the direct and supplemental testimony of Mr. Rayner.

Mr. Rayner testified that the proposed route of the pipeline is the most direct route from the terminus of an existing transmission pipeline in Statesville to North Carolina Route 90 where the majority of the potential customers are located. PSNC considered another route, but rejected it because it was longer and the available capacity was limited.

Commission Rule R6-84(a) requires that an LDC provide a "detailed description of ... the arrangements that have been made or are proposed to be made to obtain right-of-ways." PSNC witness Rayner testified that the proposed pipeline "will be constructed within a public right of way in and along [listed] roads and private right of way where necessary..."; he admitted that PSNC has not initiated contacts to acquire rights-of-way. CUCA argues that the failure to address the cost, timing, and feasibility of securing private rights of way prevents the Commission from fully assessing PSNC's proposal.

The Commission notes that witness Rayner provided a map, his Exhibit 1, and testified that the route will follow road shoulder except for 6000 feet cross-country. The Commission concludes that CUCA's argument be rejected (1) since there is very little private right-of-way and (2) since it would be unreasonable to require the right-of-way to be acquired before the project is approved.

No other party presented testimony on the appropriateness of the route proposed by PSNC or the right-of-way issue.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24 – 25

The evidence supporting these findings of fact is contained in PSNC's application, the testimony of its witnesses, particularly witnesses Barkley and Stanley, and the testimony of public witness Robertson.

Mr. Robertson testified that apart from its distance from Charlotte, the biggest drawback that Alexander County has in competing for industrial development is the lack of natural gas.

PSNC witness Barkley testified that the proposed project benefits the public because "natural gas is critical for attracting industry and that industrial growth brings commercial and residential growth and improved economic conditions to an area." However, witnesses Barkley and Stanley testified that an attempt to estimate any future growth in large industrial consumption would be speculation.

CUCA argues that the testimony shows that the proposed project will not attract any major industrial customers to Alexander County because PSNC's witnesses "assumed a zero growth rate beyond year one in the customer count and gas usage of large volume customers" and "did not include any revenue... associated with any potential large volume customer growth in its NPV analysis." CUCA argues that in the absence of any reasonably anticipated large-volume industrial growth, PSNC cannot show that the proposed project promotes the public welfare. CUCA further argues that PSNC's assumptions regarding large-volume industrial load growth are inconsistent with the position PSNC has taken regarding the size of the pipeline that it needs to install to serve Alexander County. PSNC's stated basis for installing the six inch pipeline is plainly inconsistent with its position that it does not anticipate connecting any large-volume customers after the first year of service. Further, CUCA argues that if PSNC seeks to incur costs and withdraw expansion funds based upon potential industrial load growth, it must also increase its forecasted revenues and, as a result, substantially reduce its proposed expansion fund withdrawal based upon the potential industrial load revenues.

The Commission notes that (1) there is evidence that this proposed project will benefit the area, (2) G.S. 62-2(9) states as policy that extension of gas service will promote the public welfare, and (3) the Supreme Court has upheld this policy. State ex rel. Utilities Comm. vs. Carolina Utility Customers Association, 336 NC 657 (1994). Accordingly, the Commission rejects CUCA's "no public benefit" argument. While the availability of natural gas will help attract new industrial customers to an area and while it is appropriate to size the project facilities to accomodate some such growth, the characteristics and timing of such growth cannot be predicted. Natural gas usage by industrial and large commercial customers varies widely, and it is impossible to predict or quantify now what new industrial and large commercial facilities will locate in the area to the degree of certainty appropriate for inclusion in the NPV calculation. Accordingly, loads for industrial facilities that do not presently exist cannot be included in the NPV calculation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence supporting this finding of fact is contained in PSNC's application, information available from the Commission's public files and records, and the testimony of PSNC's witnesses, particularly witness Barkley.

In its application, PSNC reported to the Commission that it had approximately $8.4 million in its Expansion Fund and was holding an additional $9.9 million for transfer to that fund. This combined amount exceeds the negative NPV of this project.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

The evidence for this finding of fact is contained in the testimony of all the witnesses taken together and their exhibits and NPV analysis filed with the Commission.

The Commission concludes that the reasonable negative NPV for the Alexander County project is $4,301,380. For the reasons set forth in the foregoing paragraphs and based upon the 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 PSNC's Expansion Fund in an amount up to the negative NPV for the project of $4,301,380 should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

The evidence supporting this finding of fact is contained in the testimony of PSNC witness Barkley and public witness Robertson.

CUCA argues that a requirement that an LDC solicit contributions from local governments can be "derived" (1) from Commission Rule R6-84(b), which obligates an LDC to prioritize proposed projects based upon several factors including "the extent of contributions from local governments" and (2) from a utility's general obligation to act in a reasonable and prudent manner. CUCA argues, "Reasonableness and prudence require that [PSNC] mitigate the adverse effects of expansion on ratepayers by soliciting funding form the entities deriving the greatest direct benefit from the economically infeasible expansion..." Since PSNC has not solicited funding from Alexander County, CUCA argues that the application should be denied.

In this proceeding, the public witness from Alexander County explained why neither Alexander County nor the Town of Taylorsville had proposed to provide financial assistance to facilitate PSNC's proposed expansion project into Alexander County. The Commission notes that Alexander County and Taylorsville have passed resolutions of support. While the Commission has viewed the willingness of the local governments to provide financial assistance to expansion projects as a "positive factor" in other expansion proceedings, there is no requirement that an LDC procure such assistance in the statute or Commission Rules or orders. The Commission will not deny a project on this basis.

IT IS, THEREFORE, ORDERED as follows:

1. That PSNC's proposed project to extend natural gas service to Alexander County is hereby approved for funding from PSNC's Expansion Fund in the amount of $4,301,380, the negative net present value of the project;

2. That disbursement of up to $4,301,380 for this project from PSNC's Expansion Fund in accordance with applicable Commission rules and this Order is hereby authorized; and

3. That PSNC shall file reports as required by Commission Rules and shall request progress payments, for reimbursement 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.

ISSUED BY ORDER OF THE COMMISSION
This the 22nd day of February, 1999

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt filed concurring opinion.

DOCKET NO. G-5, SUB 391

COMMISSIONER JUDY HUNT, CONCURRING:

What I said in Docket No. G-9, Sub 408 applies here. While I agree with the decision in this case, it would have been my preference to have an outside analysis of the negative net present value of this project. The methodology and assumptions of someone other than the gas company or the Public Staff would have been instructive.

The validity of NPV analysis for all gas companies is a continuing concern throughout this series of important gas expansion fund cases.

\s\ Judy Hunt
Commissioner Judy Hunt

NATURAL GAS - EXPANSION

DOCKET NO. G-9, SUB 408

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Natural Gas Company, Inc. for Authorization to (1) Transfer Supplier Refunds and Interest to its Natural Gas Expansion Fund and (2) Use Expansion Funds to Provide Service to Avery, Mitchell and Yancey Counties	)	ORDER APPROVING ADDITIONAL FUNDING

HEARD: March 16, 1998, at 2:00 p.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Judy Hunt, Presiding, Commissioner J. Richard Conder and Commissioner Robert V. Owens, Jr.

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Amos, Jeffries & Robinson, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

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

For the Carolina Utility Customers Association, Inc.:

James P. West, West Law Offices, P.C., Post Office Box 1568, Raleigh, North Carolina 27602

BY THE COMMISSION. On November 19, 1998, the Commission issued an Order authorizing Piedmont Natural Gas Company, Inc. (Piedmont) to transfer $8,220,807.78 in supplier refunds and interest to its natural gas expansion fund and to use up to $26,260,530 of expansion funds to provide service to Avery, Mitchell and Yancey Counties (the Three Counties). In that Order, the Commission stated that if the National Forest Service should require Piedmont to select an alternate route through or around the Pisgah National Forest and such alternate route would increase the cost of providing service to the Three Counties, Piedmont shall file an affidavit with the Commission setting forth the additional amount of expansion funds, if any, that would be required to make the project feasible.

On January 26, 1999, Piedmont filed such an affidavit requesting an additional $1,512,676 of expansion funds. On February 5, 1999, the Carolina Utility Customers Association, Inc. (CUCA) filed a motion for a hearing on Piedmont's request. On February 18, 1999, the Commission issued an Order scheduling a further hearing and requiring Piedmont to "present testimony in support of its request for additional expansion funds."

The evidentiary hearing took place on March 16, 1999, as scheduled. Kevin M. O'Hara, Vice President of Corporate Planning, and Ray B. Killough, Senior Vice President of Operations, testified for Piedmont. No other party offered a witness.

Based upon the affidavit, the testimony and exhibits presented at the hearing and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont, a North Carolina corporation with its principal office in Charlotte, North Carolina, is engaged primarily in the business of transporting, distributing and selling natural gas to customers in North Carolina, South Carolina, and Tennessee. Piedmont is a public utility as defined in Chapter 62 of the North Carolina General Statutes subject to the jurisdiction of this Commission.

2. Piedmont is properly before the Commission, pursuant to Commission Rule R6-84(e), requesting permission to use an additional $1,512,676 of funds from its expansion fund for its previously approved expansion project to provide natural gas service to the Three Counties.

3. A portion of the Three County Project will run through the Pisgah National Forest. The National Forest Service requires that a permit be received before that portion of the project can be constructed.

4. When this matter was first heard by the Commission, Piedmont advised the Commission that its estimated cost of the Three County Project and its net present value (NPV) analysis were based on the assumption that the National Forest Service would permit Piedmont to install a transmission pipeline in a more or less direct route through the Pisgah National Forest. Piedmont further advised the Commission that there was a possibility that the National Forest Service would require Piedmont to use an alternate route along Highway 181, and it estimated the additional costs associated with the alternate route at approximately $1.5 to $2 million.

5. In its November 19, 1998 Order, the Commission stated that if the National Forest Service should require Piedmont to select an alternate route through or around the Pisgah National Forest and such alternate route would increase the cost of the Three County Project, Piedmont shall file an affidavit with the Commission setting forth the additional amount of expansion funds, if any, that would be required to make the project feasible.

6. On December 12, 1998, representatives of Piedmont, the Public Staff and the County Managers from Mitchell and Avery Counties met with officials of the National Forest Service to discuss Piedmont's proposed direct route through the Pisgah Forest. At that meeting, representatives of the National Forest Service described the problems previously experienced by persons seeking easements on Forest Service lands when existing corridors were not used. The National Forest Service representatives indicated that the proposed direct route would almost certainly face

opposition from various environmental groups and that it would likely take from two to four years before a final decision could be reached with no assurance that approval would be obtained. The National Forest Service representatives further stated that Piedmont's alternative pipeline route (which makes use of the existing Highway 181 corridor) would not be as objectionable, would stand a better chance of approval, and could probably be approved in a period of six months to one year.

7. On January 26, 1999, Piedmont filed an affidavit as directed by the November 19, 1998 Order. In that affidavit, Piedmont advised the Commission of the meeting with the National Forest Service and stated that, following discussions with the Public Staff and representatives of the Three Counties, Piedmont had determined that the most reasonable course of action to take to avoid substantial delays in the provision of service to the Three Counties was to construct the pipeline along the alternate route through the Pisgah National Forest. The following table was submitted by Piedmont in its affidavit to summarize the major cost changes with respect to using the alternate route:

Contractor Labor & Materials	$1,422,907
Pipe Costs: 1.5 miles of 8" pipe	97,461
Survey/Acquisition/Construction Management	67,833
Right-of-Way (Land)	(115,294)
Total	$1,472,907

The affidavit stated that as a result of the $1,472,907 of additional costs associated with the alternative route, the negative NPV of the Three County Project will increase from $26,260,530 to $27,773,206, representing an increase of $1,512,676.

8. In response to a data request from CUCA, Piedmont provided a further breakdown of the $1,472,907 of additional costs set forth in its affidavit. That response is contained in CUCA Cross-Examination Exhibit 2.

9. The Public Staff has reviewed and concurs both with the additional costs associated with the alternative route and its impact on the project's NPV.

10. The Commission finds and concludes that the modification to the route of the previously approved Three County Project is reasonable, that the additional costs associated therewith is $1,472,907 and the increase in the negative NPV is $1,512,676, and that an increase in expansion funding should be approved.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 1-2

The evidence supporting these findings is contained in the official files and records of the Commission, Piedmont's application and exhibits, and the testimony and exhibits of Piedmont witness O'Hara. These findings are essentially informational, procedural or jurisdictional in nature and are based on evidence uncontested by any of the parties.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 3-5

The evidence supporting these findings of fact is contained in Piedmont's application and exhibits, the Commission's November 19, 1998 Order and the testimony and exhibits of Piedmont witness O'Hara in the September 23, 1998 and March 16, 1999 hearings. These findings are based on evidence uncontested by any of the parties.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 6

The evidence supporting this finding of fact is contained in the affidavit and in the testimony and exhibits of Piedmont witnesses Killough and O'Hara.

Both in his affidavit and in his testimony, witness Killough stated that he and representatives of the Public Staff and the County Managers of two of the three counties met with officials of the National Forest Service and that they were advised that pursuing the original direct route across the Pisgah National Forest was "highly environmentally sensitive" and would almost certainly face opposition from various environmental groups and that it would likely take from two to four years before a final decision could be reached and that there was no assurance that approval would be received. In addition, witness Killough stated that they were advised that the alternate route along Highway 181 was less objectionable and could probably be approved in a period of six months to one year. In view of this testimony, we conclude that Piedmont was prudent in pursuing the alternate route along Highway 181.

During the cross-examination of both witnesses Killough and O'Hara, CUCA inquired about exactly when Piedmont learned of a potential problem with the proposed direct route. The witnesses testified that Piedmont became aware of a potential problem at a meeting on September 2, 1998, and that they made the Commission aware of the potential problem at the September 23, 1998 hearing. They further testified that Piedmont did not fully appreciate the extent of the problem until the December 12, 1998 meeting. Finally, witness Killough testified that it would not have made any difference in the cost of pursuing the alternate route if Piedmont had decided to pursue the alternate route as a result of the September 2, 1998 meeting, rather than waiting for further clarification at the December 12, 1998 meeting.

The Commission concludes that Piedmont acted appropriately in obtaining further clarification at the December 12, 1998 meeting before pursuing the alternate route and that the change in route is reasonable.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 7-10

The evidence supporting these findings is contained in the affidavit of witness Killough, in CUCA Cross-Examination Exhibit No. 2, and in the testimony of witnesses Killough and O'Hara.

Evidence tends to show that the additional costs associated with the change in route is $1,472,907 and that this will increase the negative NPV from $26,260,530 to $27,773,206, an increase of $1,512,676. Evidence shows that the Public Staff reviewed and concurs with both the additional costs associated with the alternate route and its impact on the NPV as set forth in the affidavit of witness Killough and the testimony of witness O'Hara.

CUCA challenges some of the numbers used to calculate the additional costs of the alternate route. In particular, CUCA asked a number of questions on cross-examination of Piedmont's witnesses focusing on the $41.00 per linear foot for laying the additional 1.5 mile of pipeline and on the $10.50 price of 8" pipe. In its cross-examination, CUCA cited two letters sent to Piedmont by contractors and costs incurred by Piedmont on another recent project.

First, it is important to understand the way Piedmont estimated the additional costs of the alternate route. The alternate route is about 8 miles; it is 1.5 miles longer than the original route. The original route was cross-country while the alternate route is along a highway. In estimating the additional costs, Piedmont eliminated some costs (such as right-of-way and 34,320 linear feet of clearing, grading, string pipe and clean-up) that are not applicable to the new route and added new costs (including pavement removal and restoration and guardrail removal and restoration) that are applicable only to the alternate route. Piedmont added only 8,000 linear feet of new pipe, which is for the additional 1.5 miles.

CUCA cross-examined Piedmont's witnesses about the difference between the $7.39 price of 8" pipe for Piedmont's recent Spartanburg North Loop Project and the $10.50 price of 8" pipe for the alternate route of the Three County Project. Piedmont's witness Killough testified that the $7.39 applied only to the price of pipe whereas the $10.50 includes storage charges. CUCA argues in its post-hearing brief that the Commission has held it improper to allocate company-wide administrative costs to an expansion project, but the Commission concludes that that Commission decision does not prohibit inclusion of storage costs related to the pipe itself in project costs and that is what witness Killough testified was done here. Further evidence in support of the $10.50 price is found in the letter of one of the contractors who helped Piedmont estimate the cost of the Three County Project; this letter includes pipe at $10.50.

CUCA also cross-examined Piedmont's witnesses about the difference between the various prices for laying pipe shown in the two contractors' letters and the higher $41.00 per linear foot used by Piedmont in estimating the additional costs of the alternate route. Piedmont witness O'Hara testified that the prices in the contractors' letters were for "Highway 181 and we also have costs included in there for Highway 19 East," whereas the $41.00 per linear foot used by Piedmont was only for the additional 1.5 miles of laying pipe required by using the alternate route. "Like I said, the contractors provided some overall average costs for segments. However, what we're trying to represent here is a rate that represents the difficulty for the segment that we're talking about for this additional mileage." The witnesses testified that this additional 1.5 miles was the most difficult and most expensive part of the route. Furthermore, Piedmont testified that the two contractors' letters were obtained to help Piedmont estimate the costs but that Piedmont did not rely solely on the two letters but on other factors as well, such as its own experience in building pipelines. Witness Killough testified that he is a registered engineer in North Carolina, South Carolina and Tennessee and that he has been with Piedmont for 26 years, during 20 of which he has been engaged either directly or as supervisor in the construction of pipelines. He testified that, based on his experience, the estimate of additional costs of $1.47 million is "the best possible estimate that Piedmont can provide the Commission." Considering Piedmont's explanation that the estimated price of $41.00 per linear foot does not apply to the entire pipeline but only to the most difficult and expensive portion of the project, the testimony of witness Killough that he believes the $41.00 per linear foot to be the best estimate of the cost of laying the additional 1.5 miles of pipe, and the fact that Piedmont's estimate of construction costs was reviewed by, and not objected to by, the Public Staff, the Commission finds the costs to be reasonable.

CUCA also argues that there is a serious issue of credibility with respect to witness Killough because of a difference between his affidavit and his testimony as to whether the Public Staff had reviewed the numbers in his affidavit. Suffice it to say that the difference does not call into question the witness' testimony as to the numbers themselves and that Piedmont's other witness supported the affidavit, which stated that the Public Staff had reviewed the numbers.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont is hereby authorized to transfer an additional $1,512,676 in supplier refunds and interest currently in escrow to its natural gas expansion fund and

2. That the Commission's Order of November 19, 1998, is hereby amended to increase the amount of funding for Piedmont's project to extend natural gas service to Mitchell, Avery and Yancey Counties from $26,260,530 to $27,773,206, which is the negative NPV of the project.

ISSUED BY ORDER OF THE COMMISSION
This the 20th day of May, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg052099.01

NATURAL GAS - MERGER

DOCKET NO. G-5, SUB 400
DOCKET NO. G-43

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of SCANA Corporation and Public Service Company of North Carolina, Inc., for Authorization under General Statute Sections 62-111 and 62-161 to Exchange and Redeem Securities in Connection with a Business Combination Transaction	)	ORDER APPROVING MERGER AND ISSUANCE OF SECURITIES

HEARD: Community Classroom of the Gaston County Health Department, 991 West Hudson Boulevard, Gastonia, North Carolina, on Tuesday, July 13, 1999, at 7:00 p.m.;

Courtroom No. 2, Buncombe County Courthouse, Asheville, North Carolina, on Wednesday, July 14, 1999, at 7:00 p.m.;

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, August 30, 1999, at 7:00 p.m. and Tuesday, August 31, 1999, at 9:30 a.m.; and

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, September 27, 1999, through Wednesday, September 29, 1999.

BEFORE: Chairman Jo Anne Sanford, Presiding, and Commissioners Ralph A. Hunt, Judy Hunt, William R. Pittman, J. Richard Conder, and Robert V. Owens, Jr.

APPEARANCES:

For SCANA Corporation and Public Service Company of North Carolina, Inc.

Sarena D. Burch, Associate General Counsel, SCANA Corporation, 1426 Main Street, Columbia, South Carolina 29201

J. Paul Douglas, Corporate Counsel and Secretary, Public Service Company of North Carolina, Inc., Post Office Box 1398, Gastonia, North Carolina 28053

Allyson K. Duncan, Kilpatrick Stockton, LLP, 3737 Glenwood Avenue, Suite 400, Raleigh, North Carolina 27612

For Carolina Utility Customers Association, Inc.:

James P. West, West Law Offices, PC, Suite 1735, 434 Fayetteville Street Mall, Raleigh, North Carolina 27601

For the Using and Consuming Public:

Gisele L. Rankin and Amy Barnes Babb, Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Leonard Green, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629

BY THE COMMISSION: On May 3, 1999, SCANA Corporation (SCANA) and Public Service Company of North Carolina, Inc. (PSNC) (collectively Applicants), filed a joint application with the North Carolina Utilities Commission (Commission or NCUC) pursuant to G.S. 62-111, G.S. 62-161, and Commission Rule R1-16 for authorization to engage in and to issue securities in connection with a business combination transaction. In the initial application, the Applicants explained that they had agreed to a two-step merger transaction. In the first step, a wholly-owned subsidiary of SCANA formed for the purposes of the merger would be merged into SCANA and SCANA would survive. In the second step, PSNC would be merged with and into another wholly owned subsidiary of SCANA, and the SCANA subsidiary would survive. Depending on the outcome of certain regulatory proceedings, PSNC was to be merged either into a special purpose subsidiary of SCANA formed for the purposes of the merger, or into South Carolina Electric & Gas Company (SCE&G), SCANA's existing gas and electric utility. Following the receipt of the required state and federal regulatory and other approvals, PSNC was to become either a direct subsidiary of SCANA or a division of SCE&G.

By a petition dated May 14, 1999, Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene, which was allowed by the Commission. By notice dated July 20, 1999, the Attorney General filed his intervention. The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e).

On May 19, 1999, the Commission issued an order scheduling the application for public hearings in Gastonia, Asheville, and Raleigh, North Carolina. The evidentiary hearing on the application was scheduled to begin August 31, 1999, in Raleigh. The Order also established the due dates for prefiled testimony, the filing of petitions to intervene, and required PSNC to provide public notice of the application and the scheduled hearings. Notice was properly given by PSNC. The public hearings were held as scheduled.

On August 11, 1999, the Public Staff filed a motion requesting that the Commission issue an order extending the due date for the filing of Public Staff and other intervenor testimony to and including Friday, August 20, 1999, based on SCANA's notice from the Securities and Exchange Commission (SEC) that SCANA could not acquire PSNC and remain an exempt holding company under the Public Utility Holding Company Act of 1935 (PUHCA). In addition, the Public Staff requested additional time to file its testimony in order to review SCANA's and PSNC's filings pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Hart-Scott-Rodino) with the United States Department of Justice and the Federal Trade Commission (FTC). By Order dated August 11, 1999, the Commission granted the Public Staff's request for an extension of time to file testimony and extended the due date for the filing of intervenor testimony to and including August 20, 1999.

On August 19, 1999, the Applicants filed a motion to amend their application and testimony to reflect SCANA's decision to hold PSNC as a wholly-owned subsidiary of SCANA and register with the SEC as a holding company under PUHCA. As a result of this change, it was necessary to revise paragraph 9 on page 4 of the Applicants' initial application and to reflect the change in the prefiled direct testimony of William B. Timmerman and Charles E. Zeigler, Jr.

On August 19, 1999, CUCA filed a request with the Commission that the hearing be continued until at least October 5, 1999, and that the due date for intervenor testimony be extended commensurately. On August 20, 1999, the Public Staff filed a second motion for an extension of time to file testimony and requested that the Commission issue an order extending the due date for the filing of intervenor testimony to Monday, August 23, 1999, and the due date for the filing of the Applicants' rebuttal testimony to Friday, August 27, 1999. The Commission issued an Order granting the extensions requested by the Public Staff.

On August 20, 1999, CUCA filed a motion asking that the Commission reconsider the extensions of time granted in its Order of August 20, 1999. In its motion, CUCA requested that the Commission postpone the hearing by at least one month and reset the procedural schedule to accommodate additional discovery. On August 23, 1999, the Public Staff filed its response to CUCA's motion for reconsideration. SCANA and PSNC also filed on August 23, 1999, in opposition to CUCA's motion for a continuance. On August 24, 1999, the Commission issued an order allowing the Applicants' motion to amend their application and testimony and allowing CUCA's motion for a continuance. The motion for continuance was allowed "[b]ased upon the Applicants' moving to amend the application only one business day before intervenor testimony was due."[1] The evidentiary hearing was rescheduled to begin on Monday, September 27, 1999, at 1:30 p.m., intervenor testimony was made due on or before September 13, 1999, and the Applicants' rebuttal testimony, if any, was made due on or before September 20, 1999.

Numerous motions regarding discovery disputes were filed, and the Commission made rulings on these motions.

The case was heard on September 27, 1999, through September 29, 1999. Following opening statements, the Applicants presented the testimony of William B. Timmerman, Chairman and Chief Executive Officer of SCANA, and Charles E. Zeigler, Jr., Chairman, President and Chief Executive Officer of PSNC. Eugene H. Curtis, Director, Natural Gas Division; Thomas W. Farmer, Jr.,

[1]The Commission notes that Carolina Power & Light Company (CP&L) and North Carolina Natural Gas Corporation (NCNG), in their merger proceeding (Docket Nos. E-2, Sub 740 and G-21, Sub 377), similarly moved to amend their application one day before intervenor testimony was due. However, unlike the instant case, no party to the CP&L/NCNG merger proceeding requested that the hearing be delayed.

Director, Economic Research Division; and James G. Hoard, Supervisor, Natural Gas Section, Accounting Division, presented testimony as a panel on behalf of the Public Staff. CUCA presented the testimony of Dr. Mark Frankena, a Principal with Economists, Incorporated, and Kevin W. O'Donnell, President, Nova Energy Consultants, Inc. The Applicants then presented the rebuttal testimony of Kevin B. Marsh, Senior Vice President, Chief Financial Officer, and Controller of SCANA; Charles E. Zeigler, Jr., Chairman, President and Chief Executive Officer of PSNC; and Dr. Julius A. Wright, President, J. A. Wright and Associates. No other parties presented testimony, and no public witnesses testified at the hearings. Proposed orders and briefs were filed on November 3, 1999.

Based on the Applicants' 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. PSNC is a public utility company incorporated in North Carolina, and it is subject to the jurisdiction of this Commission. PSNC is engaged primarily in the business of transporting, distributing and selling natural gas to approximately 350,000 customers in 95 cities and communities within its service territories in the central and western portions of the State.

2. SCANA is an energy-based holding company duly organized and existing under the laws of the State of South Carolina with total assets, net of accumulated depreciation, of $5.3 billion at December 31, 1998. Its primary subsidiary, SCE&G, is a public utility that provides electric service to more than 517,000 electric customers in the central, southern, and southwestern portions of South Carolina and provides natural gas service to more than 256,000 retail customers in central and southern South Carolina, subject to the jurisdiction of the Public Service Commission of South Carolina. SCANA also owns South Carolina Pipeline Corporation, an intrastate pipeline; South Carolina Generating Company, which sells electricity to SCE&G and is regulated by the Federal Energy Regulatory Commission (FERC); and several nonregulated energy-related, telecommunications, and other businesses.

3. Through their application to the Commission, SCANA and PSNC seek authorization under G.S. 62-111 and G.S. 62-161 to engage in a business combination transaction and for authorization to exchange or redeem securities in connection with that transaction. The proposed transaction would make PSNC a wholly-owned subsidiary of SCANA through a two-step process. In the first step, a wholly-owned subsidiary of SCANA would be formed for the purpose of the merger; it would be merged with and into SCANA, and SCANA would survive. In step two, PSNC would be merged with and into a special purpose subsidiary of SCANA formed for the purposes of the merger, and after all approvals have been obtained, PSNC would become a direct subsidiary of SCANA. The merger would maintain the existing legal and regulatory status of PSNC.

4. If the merger is approved, shareholders of both SCANA and PSNC will have the option of electing either cash or SCANA common stock or a combination of both in return for their shares, subject to specific limitations. In exchange for each share of common stock, PSNC shareholders will be given the option of receiving either (1) $33 in cash, subject to the limitation that a maximum of 50% of the aggregate consideration to be paid to PSNC shareholders may be paid in

cash, or (2) shares of SCANA common stock based on an exchange ratio designed to distribute SCANA common stock with a market value of approximately $33 for each share of PSNC common stock, subject to specific restrictions. SCANA shareholders will have the option of electing either $30 in cash or 1.0 share of SCANA common stock for each share of SCANA common stock held, subject to the requirement that SCANA will pay a maximum of $700 million in cash in the aggregate as consideration if the merger is approved. PSNC shareholders will have the right of first refusal to receive cash from this pool, subject to the 50% limitation of total PSNC consideration.

5. Upon the closing of the merger transaction, SCANA will register with the SEC as a holding company under PUHCA. SCANA and PSNC committed in their amended application to taking all such actions as the Commission finds necessary to protect the Commission's jurisdiction from preemption. The Regulatory Conditions adopted herein, along with the commitments made by the Applicants, are adequate to protect this Commission's jurisdiction from preemption by the SEC pursuant to PUHCA.

6. After the merger is consummated, PSNC will continue to maintain and issue its own debt and will remain an entity separate from SCANA with its own Commission-approved capital structure.

7. The quantitative measures of financial strength commonly considered by bond rating agencies are expected to improve for PSNC, because SCANA and SCE&G both have stronger corporate credit and debt ratings than PSNC. Specifically, Standard & Poor's, a bond rating agency, placed the ratings for PSNC on CreditWatch with positive implications, and Moody's Investment Service confirmed the ratings and changed its outlook to positive.

8. While it is too soon to quantify the benefits of PSNC's strengthened financial position to PSNC and its ratepayers, the merger is very likely to reduce PSNC's cost of borrowing over the long-term.

9. The cost-of-capital Regulatory Conditions (Regulatory Conditions 20 through 24), adequately protect PSNC's ratepayers from any merger-related increases in the cost of capital.

10. Other significant benefits to PSNC's ratepayers would result from the merger, including, among others, the creation of a larger, more viable and more financially diverse company with a broader range of assets; the creation of a company that is better able to compete and better able to provide stable and reliable service; the implementation of operating efficiencies from economies of scale and the more efficient use of such features as SCANA's state-of-the art information system; the avoidance of future rate increases; and the implementation of an immediate rate reduction and a five-year rate cap.

11. As a condition of the merger (Regulatory Condition 30), PSNC will reduce rates by $1,043,542 within six months of the merger's closing date and then reduce rates 12 months later by an additional $1,043,542. This equates to an annual rate reduction of approximately $2.1 million, when fully implemented, that will benefit PSNC's ratepayers until at least the end of the five-year rate cap period.

12. The five-year rate cap is equivalent to three years of avoiding rate increases comparable to PSNC's most recent rate increase, which amounts to approximately $37.5 million of avoided rate increases.

13. All costs of the merger and all direct and indirect corporate cost increases attributable to the merger will be excluded from PSNC's utility accounts or costs for all purposes that affect its retail rates and charges.

14. Upon closing, the difference between the purchase price offered by SCANA and the currently recorded value of PSNC's assets and liabilities will be recorded as an acquisition adjustment. SCANA and PSNC have agreed to exclude this acquisition adjustment from PSNC's utility accounts for all purposes that could affect PSNC rates and charges.

15. Total merger costs, including the acquisition adjustment, are estimated to be $495 million. PSNC's ratepayers will bear no responsibility for these costs.

16. The commitments of the Applicants, including their absorption of all direct and indirect merger costs and the acquisition adjustment that will be created upon closing, and the rate reduction and five-year rate cap, constitute an equitable allocation of benefits and costs between ratepayers and shareholders.

17. While an evaluation of potential savings resulting from a merger may provide relevant information to consider pursuant to G.S. 62-111, neither North Carolina law nor Commission rules or precedent currently require a formal quantification of such savings in every case.

18. The Public Staff quantified all of the potential areas of material cost savings that it believed could be creditably quantified. Most of the items of potential savings that were not quantified were viewed as too speculative to quantify at this time or were viewed as imposing costs that would offset part, if not all, of the potential savings for a particular item.

19. PSNC's quality of service is expected to be maintained after the merger. Regulatory Condition 31 is designed to ensure that the quality of service received by PSNC's customers does not decline due to changes in corporate structure or because of other potential effects of the merger.

20. There is a limited amount of gas-fired generation in operation at this time in North Carolina. The approximately 4,000 MW of gas-fired combustion turbine generation under construction or in the process of being certificated will be served by a significant number of suppliers. Only 320 MW of this combustion turbine capacity is in PSNC's territory. Current and future gas-fired generators competing with SCANA have significant alternatives to PSNC for delivered gas service.

21. The FTC and the Department of Justice, which have jurisdiction over market power issues at the federal level, found no basis in SCANA's and PSNC's Hart-Scott-Rodino filings on which to request additional information or otherwise pursue market power as an issue raised by the proposed merger.

22. The appropriateness of imposing a code of conduct as a means of mitigating market power concerns is well-recognized nationwide.

23. The Regulatory Conditions and Code of Conduct adopted herein are adequate to address any market power issues which may arise in the future.

24. The Regulatory Conditions and Code of Conduct and the commitments by SCANA and PSNC in their testimony, which have been adopted herein, are adequate to ensure that there will be no adverse impact on the rates and service of PSNC's retail ratepayers, that PSNC's ratepayers are protected as much as possible from potential harm, and that they will receive sufficient benefits from the merger to offset any potential costs and harms.

25. The business combination transaction proposed by SCANA and PSNC is justified by the public convenience and necessity, and the proposed exchange and redemption of PSNC stock in connection therewith are for a lawful object, are compatible with the public interest, are consistent with the proper performance by PSNC of its service to the public, and will not impair PSNC's ability to provide that service at just and reasonable rates.

26. The Regulatory Conditions and Code of Conduct adopted by the Commission herein, construed and applied consistently with the Commission's Rules and Regulations and the laws of North Carolina, are adequate to address the potential issues and complaints that might arise. To the extent new issues or concerns require that the Regulatory Conditions and/or Code of Conduct approved herein be modified, the Commission has full authority to modify them consistent with the public interest.

27. The unbundling and/or deregulation of natural gas service and any promotions associated therewith are not relevant to a determination of whether SCANA and PSNC's proposed business combination transaction is in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

Evidence supporting these findings of fact is contained in the verified application and direct testimony and in the Commission's records. These findings of fact are essentially informational, procedural, and jurisdictional in nature and are not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding is found in the testimony of SCANA witness William B. Timmerman, PSNC witness Charles E. Zeigler, Jr., and Public Staff witnesses Eugene H. Curtis, Jr., Thomas W. Farmer, Jr., and James G. Hoard, who testified as a panel.

SCANA witness Timmerman testified that upon completion of the merger, PSNC will become a wholly-owned subsidiary of SCANA and SCANA will register with the SEC as a holding company under PUHCA. In their amended application, SCANA and PSNC committed to take all such actions as the Commission finds necessary to protect the Commission's jurisdiction from preemption. The

Applicants also committed to not seek to reflect in rates any costs incurred or revenue level earned under an agreement subject to PUHCA except to the extent permitted by this Commission.

SCANA witness Timmerman discussed in detail the consequences of becoming a registered holding company in his pre-filed testimony. He explained that PUHCA is directed at the financial operations and corporate structure of multi-state holding companies that own electric and gas public utility companies. According to witness Timmerman, PUHCA regulation focuses on protecting the interests of consumers and investors and in furthering the public interest through controlling, among other things, (1) expansions of utility systems that do not tend to form an integrated and efficient system; (2) diversification into unrelated, non-utility activities; (3) the issuance of securities that are inconsistent with sound capital structures; (4) intra-system transactions such as loans, dividends, and service, sales and construction contracts that may be detrimental to public utilities and other subsidiaries in the holding company system; and (5) the maintenance of accounts and records.

Witness Timmerman testified that PUHCA was not intended to reach the production and sale of natural gas and electricity. The FERC polices these operations at the federal level and state regulatory commissions have jurisdiction over local operations. He contended that the SEC acknowledges that the FERC and state commissions will continue to have the primary responsibility to protect consumers through their ratemaking authority and that PUHCA is simply intended to facilitate the work of other regulators by placing certain restraints on the activities of public utility holding companies. Witness Timmerman also stated, "I would note that the SEC acknowledges that in many ways its regulation under the 1935 Act is no longer necessary in light of improvements in the regulation of securities issuances under the other federal securities laws and effective state regulatory oversight of utility operations. For these reasons the SEC has recommended repeal of the 1935 Act to Congress."

The Public Staff panel testified that its major concern with the merger was SCANA becoming a registered holding company under PUHCA, which presents the risk that certain aspects of the Commission's authority to regulate PSNC could be found to be preempted by the SEC. Unless adequate protections are imposed, the Commission risks losing jurisdiction in a number of areas, including (1) affiliate charges made to and incurred by PSNC, (2) the transfer of assets between and among affiliates and PSNC, (3) the value placed on such transfers, and (4) securities issuances and financings affecting PSNC.

The Public Staff panel further testified that a registered holding company is generally prohibited from charging their utility affiliates for services. Instead, the SEC tends to favor the formation of separate affiliated service companies to be used in gaining efficiencies from centralization. SEC regulations are in place to govern the terms of transactions between service companies and affiliated utilities. After the merger is consummated, many of the goods and services PSNC currently buys or performs for itself or obtains from independent vendors could be provided by one or more affiliated companies. As a result, the Commission could lose jurisdiction over much of PSNC's cost of service. This raises the concern that PSNC's ratepayers could pay higher rates than the Commission would otherwise find appropriate. For example, if the gas supply and procurement function presently performed separately by a SCANA affiliate for SCE&G and by PSNC for itself were to be centralized in a SEC-approved service company, the Commission could be prevented from disallowing the costs of any gas purchases made by the service company unless the

SEC also disallowed such purchases. To solve this problem, the Public Staff proposed Regulatory Conditions that would protect the Commission's jurisdiction.

These Regulatory Conditions require, among other things, that PSNC not engage in any transaction that is subject to PUHCA without prior approval by this Commission of the contract memorializing the transaction. The contract itself must provide that PSNC may not incur any charges that are inconsistent with the terms and conditions approved by the Commission, nor seek to reflect in rates any cost incurred or revenue level earned except as permitted by the Commission. PSNC, SCANA, and their affiliates may not assert in any forum that PUHCA preempts this Commission from reviewing the reasonableness of any commitment entered into by PSNC, and must bear the full risk of any preemptive effects of PUHCA. In addition to the foregoing, the Regulatory Conditions provide that PSNC is not allowed to take service from an affiliate at costs which exceed fair market value, and the Applicants are required to request in their application filed with the SEC that the SEC include certain language designed to protect the Commission's jurisdiction over affiliate transactions, the transfer of assets and financings.

The recommended Regulatory Conditions were revised after the Public Staff filed its testimony, and the revised Regulatory Conditions were admitted into evidence as Public Staff Panel Exhibit 4. SCANA and PSNC indicated at the hearing that they were reserving their right to comment and oppose some of the PUHCA Regulatory Conditions. They subsequently did not take issue with any of these Regulatory Conditions.

CUCA argued that the Commission can neither control the SEC nor overcome federal preemption and will not be able to unscramble the merger if the SEC decides to assert jurisdiction. Those arguments are correct. However, they ignore both the Regulatory Conditions' focus on requiring the Applicants to come before the Commission first as well as testimony indicating that the SEC is unlikely to preempt state regulation of retail sales of natural gas.

Based on the foregoing, the Commission concludes that the Regulatory Conditions adopted herein are adequate to ensure that the Commission's jurisdiction is protected from preemption and that PSNC's ratepayers are as insulated as possible from potential adverse consequences of SCANA's PUHCA registration. However, the Regulatory Conditions require the Applicants to request that the SEC include certain language in its final order or orders approving SCANA's acquisition of PSNC. The Commission expects the Applicants to urge the SEC to include such language. In addition, the Commission strongly encourages the SEC to include the requested language.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-9

The evidence supporting these findings of fact is contained in the testimony and exhibits of SCANA witness Timmerman, PSNC witness Zeigler, and the Public Staff panel.

SCANA witness Timmerman testified that the merger will create a larger, more financially diverse company with a broader range of assets. He further testified that the merger should enable SCANA to enjoy an increased cash flow for reinvestment or growth in the competitive energy and services delivery business and provide additional resources for the expansion of natural gas service. With respect to PSNC, he testified that to a considerable extent, the benefits to PSNC mirror those to SCANA. PSNC witness Zeigler testified that SCANA's size and its aggressive and successful management team will facilitate future financial stability. He further testified that SCANA's net income for 1998 was more than ten times the amount earned by PSNC during that same period.

The Public Staff testified that PSNC's financial position will be strengthened as a result of the merger because the merged company would be much larger than PSNC alone. This benefit, plus the opportunity to reduce costs, should place PSNC in a position to avoid rate increases of the same magnitude and frequency as in the past. Public Staff witness Farmer noted that Standard & Poor's debt and common stock ratings and Value Line's financial strength and safety measures are all stronger for SCANA than they are for PSNC. In addition, he noted that PSNC also would have additional cash flow available from SCANA, its access to capital should be increased because of SCANA's higher debt rating, and some of PSNC's future requirements for capital expenditures could be included in SCANA's overall debt financing. While Mr. Farmer stated that he believed that there was insufficient data at this point in time to quantify these savings to PSNC, particularly because the debt rating agencies would not act on PSNC's ratings until after the merger is consummated, the net result should be a reduction in PSNC's cost of borrowing.

Based on the foregoing, the Commission concludes that PSNC's financial position should be strengthened as a result of the merger. In addition, PSNC's ratepayers are insulated by the Regulatory Conditions from any increases in cost of capital and other risks. Specifically, Regulatory Condition 19 requires PSNC to maintain its books and records in a manner that will allow all of the components of its cost of capital to be clearly and separately identifiable. The purpose of this Regulatory Condition is to ensure that the components of the cost of capital are isolated so that ratepayers can be held harmless from the effect of any merger-related risks. Similarly, Regulatory Condition 21 protects ratepayers from the possibility of higher borrowing costs if the merger was to have a negative impact on PSNC's credit rating. It provides that to the extent that the cost rates of long-term debt, short-term debt, or preferred stock are adversely affected by a downgrade of the stock due to the merger, a replacement cost rate will be utilized to prevent PSNC's ratepayers from paying any increased costs. The replacement cost would be used for all financings, refundings, and refinancings through PSNC's next general rate case.

Finally, under Regulatory Condition 23, the cost of capital Regulatory Conditions also apply to PSNC's determinations of its maximum allowable Allowance for Funds Used During Construction (AFUDC), the rates of return applied to any of PSNC's deferral accounts and regulatory assets and liabilities that accrues a return, and any other component of PSNC's cost of service that is affected by the cost of debt or preferred stock.

Based on the foregoing, the Commission concludes that PSNC's financial position should be strengthened as a result of the merger and that PSNC's ratepayers are adequately protected from any merger-related cost-of-capital increases and risks.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-18

The evidence supporting these findings of fact is contained in the testimony and exhibits of SCANA witness Timmerman, PSNC witness Zeigler, the Public Staff panel, and CUCA witness O'Donnell.

NATURAL GAS - MERGER

SCANA witness Timmerman testified that PSNC's ratepayers would benefit in many ways from the merger. In addition to the previously discussed cost of capital benefits, these include the availability of additional resources that will better facilitate expansion; the broadening and diversification of PSNC's customer base; the broadening of the range of the products and services offered to customers; the creation of a larger, more viable, and more financially diverse company with a broader range of assets that is better able to compete and better able to provide stable and reliable service; and operating efficiencies from economies of scale and the more efficient use of such features as SCANA's state-of-the-art information systems.

With respect to direct and indirect merger-related costs, SCANA witness Timmerman committed in his prefiled direct testimony that SCANA would exclude all costs of the merger and all direct and indirect corporate cost increases, including acquisition premiums, attributable to the merger, from PSNC's utility accounts or costs for all purposes that affect PSNC's retail rates and charges.

PSNC witness Zeigler testified that PSNC's combination with SCANA will enable PSNC to provide a greater array of products and services to more customers than it would have been able to provide as an independent company, which provides two benefits. First, it provides PSNC's customers more choices, and, second, it creates supplemental margins that will make it possible to expand PSNC's system more aggressively with fewer general rate increases. In addition, he testified that the critical mass and operating efficiencies that would result from the merger would facilitate the provision of service by PSNC at a lower cost than would have been possible otherwise. He further testified that there would be longer intervals between rate cases than in the past and that greater financial resources and sources of financing would encourage greater expansion of PSNC's system. On rebuttal, he testified that the primary financial benefit for PSNC's customers is future cost avoidance as opposed to savings. PSNC has agreed to a five-year moratorium on general rate cases. Witness Ziegler testified that PSNC's rate case cycle has been two years, and the most recent general rate case resulted in increased revenues of $12.5 million. If the next PSNC rate case was of the same magnitude as the 1998 one, the savings attributable to the five-year moratorium are equivalent to three years of avoiding a $12.5 million increase, or approximately $37.5 million. He conceded that there would be reduced costs in the specific areas identified by the Public Staff, although he believed the Public Staff overstated the number of employees that would be displaced. In addition, Mr. Zeigler elaborated on his assertion that cost avoidance was a major benefit of the proposed merger by asserting that in order to continue to provide adequate customer service, it would be necessary at some point in the future, absent the merger, for PSNC to install an updated customer information system at a cost of approximately $15 million.

PSNC witness Zeigler also testified that PSNC's annual capital budgets for the next five years will range from $46 million to $50 million. Given that PSNC now has total net assets of $640 million, PSNC's assets would be increased by almost half that amount ($300 million) over the next six to seven year period. Because PSNC had decided not to contest the Public Staff's recommended five-year rate cap, Mr. Zeigler testified that he believes that this is a tremendous savings to PSNC's ratepayers. He also testified that the acquisition premium that SCANA is paying for PSNC will be excluded from PSNC's utility accounts for all purposes that could affect its rates and charges.

The Public Staff panel testified extensively regarding the known, expected, and potential benefits of the merger, as compared to its possible costs and risks, and the need to balance any costs and risks with benefits.

The Public Staff panel testified that the benefits of the business combination for PSNC's ratepayers are the potential for cost savings that may occur as the result of consolidating PSNC's and SCANA's public utility operations and the strengthened financial position that will result because the merged company would be so much larger than PSNC alone. These benefits should enable PSNC to avoid rate increases of the same magnitude and frequency as in the past. In addition, any resulting gas costs savings would be passed through to ratepayers in purchased gas adjustment proceedings.

The Public Staff panel recommended that Regulatory Condition 30 be imposed to reduce rates for PSNC's ratepayers and impose a rate cap to ensure that PSNC's ratepayers obtain tangible benefits from the merger. Exceptions to the rate cap are provided for normal gas cost adjustments, governmental actions, and significant unexpected events over which PSNC has no control. The Public Staff panel proposed that the recommended $2,087,084 rate reduction should occur in two separate steps. Assuming the merger closes on December 31, 1999, the Public Staff panel testified that the first rate reduction would be implemented effective July 1, 2000, and the second rate reduction would be implemented effective July 1, 2001. All rate schedules (including transportation) would be reduced by the same amount to reflect the rate reduction. This equates to a reduction of $0.0151 per dt six months after the merger closes and then another rate reduction of the same amount 18 months after the merger closes. A schedule showing the calculation of the rate reduction was admitted into evidence as Public Staff Panel Exhibit 2. The rate cap prevents PSNC, with certain exceptions, from increasing its rates until July 1, 2005, at the earliest (assuming a December 31, 1999 closing date).

With respect to the costs of the merger, Public Staff witness Hoard pointed out that the treatment of acquisition premiums often has not been dealt with in merger proceedings in this State and in others. Rather, it has been determined in the context of subsequent rate cases and has been allowed in a number of states to the extent that merger savings or other benefits are achieved to offset it. Massachusetts, for example, allowed the company acquiring Bay State Gas Company to come back in and capture some of its acquisition costs at a later point in time. He further testified that while a fair number of jurisdictions have quantified savings, only some of them approved rate reductions, and most of these were small.

In addition, the Public Staff panel testified that Regulatory Conditions 26 and 27 cover all direct and indirect merger-related costs, including (1) the acquisition adjustment; (2) investment bankers' and attorneys' fees; and (3) change-of-control and salary continuation agreements and/or other severance or personnel type arrangements that are reasonably attributable to the merger. These conditions provide that the estimated $495 million cost of the merger, which includes the estimated acquisition adjustment, will be excluded from PSNC's utility accounts.

CUCA witness O'Donnell testified that he considered the benefits SCANA and PSNC claim to be largely illusory. He further testified that they had not done any analysis of merger savings and such an analysis is vital to a determination of whether the merger is in the public interest. Mr. O'Donnell criticized what he considered to be extremely high investment banker fees, material benefits to PSNC's directors, and generous severance agreements for PSNC employees. He further testified that PSNC could find savings by eliminating duplicative functions in the areas of billing, customer service, and executive management.

In addition to the controverted issues with respect to the merger's benefits and costs, there was considerable disagreement about the extent to which cost savings would occur and the necessity for the Applicants to have filed a study of merger savings.

SCANA witness Timmerman and PSNC witness Zeigler testified that cost savings were not a major reason for the merger, but that they did expect some savings to materialize from operating efficiencies. The Public Staff panel testified that it basically did its own study of savings by using the Applicants' integration team report and holding discussions with the Applicants. On cross-examination about why the Applicants' expected quantification had not been done on schedule, Public Staff witness Hoard indicated that the SEC's position that SCANA's acquisition of PSNC would make SCANA a registered holding company under PUHCA had changed the proposed organizational structure. Specifically, the need to set up a service company was a major change to the organizational structure that would change many of the assumptions about savings.

On cross-examination of the Public Staff, CUCA asked a series of questions about whether the Public Staff had quantified savings in certain specified areas. The Public Staff panel members testified that they believed all of the potential areas of material cost savings that could be credibly quantified had been quantified. Most of the items of potential savings that were not quantified were viewed as too speculative to quantify at this time or were viewed as imposing costs that would offset part, if not all, of the potential savings. For example, Public Staff witness Hoard testified that he evaluated the potential for cost savings in the information technology area and concluded that while savings could be expected, there would also be a significant amount of costs added in that area. He testified that he did not believe he could credibly argue to the Commission that there were net savings in the information technology area.

CUCA witness O'Donnell testified that one purpose of his testimony was to demonstrate that SCANA and PSNC's application was grossly inadequate compared to utility merger applications in other states, in large part because it did not include an analysis of merger savings.

Based upon all of the evidence in the record, the Commission concludes that there are benefits to PSNC's ratepayers which will result from the proposed merger. The Applicants testified at length regarding the benefits that are not easily quantified, particularly at this stage of the process. The evidence shows that the merger will provide the benefit to North Carolina of a larger, more viable and more financially diverse company with a broader range of assets and increased ability to provide stable and reliable service. The utility environment is currently characterized by a trend toward consolidation, and small- to mid-sized gas utilities such as PSNC are particularly susceptible to acquisition. As SCANA witness Timmerman testified, the proposed combination contemplates a stronger and more diverse company that is better able to compete regionally, but at the same time is committed to the maintenance of a strong corporate presence in North Carolina. The consequences of that presence, including the services of a good corporate citizen, the receipt of all corporate and other taxes, and the provision of significant employment opportunities, are benefits of the merger.

NATURAL GAS - MERGER

An issue of particular concern to this Commission is that of natural gas expansion. Both SCANA witness Timmerman and PSNC witness Zeigler testified that the merger would provide additional resources for continued expansion of service in PSNC's franchise territory. PSNC's strengthened financial position will enable it to provide natural gas to more customers without the necessity for regular rate increases. CUCA argued that this was not a benefit because expansion funds are available for infeasible projects. However, as Public Staff witness Hoard testified, even the financing of infeasible projects with expansion funds puts upward pressure on rates. Further, expansion and bond funds are generally not available to build facilities in partially served counties. PSNC witness Zeigler testified that the combined entity is committed to using its best efforts to extend natural gas service, and that commitment extends to rapidly growing areas such as the Triangle where there are neighborhoods without gas service, and to work with state government to help provide natural gas solutions statewide.

With respect to costs, the costs that would be most likely to affect PSNC's customers are those directly associated with the consummation of the merger. The Applicants committed in their testimony not to pass those costs on to PSNC's ratepayers. Regulatory Condition 26 specifically tracks that commitment by providing that all direct and indirect corporate cost increases, such as severance pay, associated with the merger will be excluded from consideration for ratemaking purposes. In addition, Regulatory Condition 27 prohibits any acquisition premium from being flowed through into PSNC's rates. While a number of other states did not resolve the issue in the merger proceeding of whether an acquisition premium is recoverable or allowed it to be recovered to the extent merger savings or other benefits could be shown in later proceedings, Regulatory Condition 27 resolves this issue in PSNC's ratepayers' favor by excluding the acquisition adjustment from rates in any subsequent proceeding.

Based on the foregoing, the Commission concludes that PSNC's ratepayers are protected from all direct and indirect merger costs. In addition to this protection, the Regulatory Conditions provide for a five-year rate cap and a rate reduction that will continue at least for the five-year rate cap period. These annual rate reductions, when fully implemented, total in excess of $2 million, an amount that exceeds five percent of PSNC's 1998 net income. This rate reduction, while small, must be considered a benefit of the merger to PSNC's ratepayers.

Accordingly, the Commission concludes that the commitments made by the Applicants, including their absorption of all direct and indirect merger costs and the acquisition adjustment that will be created upon closing, along with the rate reduction and five-year rate cap recommended by the Public Staff constitute an equitable allocation of benefits and costs between ratepayers and shareholders.

With respect to the necessity of submitting a formal analysis of merger savings with a merger application, the Commission notes that to date it has never interpreted G.S. 62-111 to require that proposed business combination transactions be based upon demonstrations of specific cost savings. While an evaluation of potential savings resulting from a merger may provide relevant information, the Commission concludes that neither North Carolina law nor Commission rules or precedent currently require that a formal quantification of such savings be filed in every case. As the record makes clear, the Public Staff quantified all of the potential areas of material cost savings that it believed could be creditably quantified, and most of the items of potential savings that were not quantified were viewed as too speculative to quantify at this time or were viewed as imposing costs that would offset part, if not all, of the potential savings for a particular item. Given the Regulatory Conditions requiring the Applicants to absorb all merger costs, implementing a rate reduction, and imposing a five-year rate cap, the Commission concludes that merger-related savings have been sufficiently quantified in this case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence for this finding of fact is found in the direct testimony of SCANA witness Timmerman, PSNC witness Zeigler, and the Public Staff panel.

The Applicants presented evidence to support their contention that existing customers will benefit from receiving service from a stronger, more diverse company that is better positioned to provide stable and reliable service in any market or economic environment and capable of offering improved customer support. PSNC witness Zeigler testified that PSNC had evaluated the price differential between natural gas and electricity in PSNC's core market and concluded that, while PSNC's prices were still less expensive than its competitors, PSNC needed to beat the "bigger, stronger" electric companies on both price and service quality. He also testified that the quality of service provided to PSNC's customers would not deteriorate in any way as a result of the proposed merger. He based that conclusion on his assessment of the strong customer service commitment and financial viability of the combined entity, as well as the proliferation of products and services that should occur as a result of the merger.

The Public Staff proposed a Regulatory Condition to address service quality concerns. As modified by the Commission, Regulatory Condition 31 requires PSNC to take steps to commit to providing superior natural gas services to North Carolina customers following the merger. This Regulatory Condition requires PSNC to file by December 31, 1999, service quality indices to measure service quality. The purpose of this Regulatory Condition is to ensure that the quality of service received by PSNC's customers does not decline due to changes in corporate structure or because of other potential effects of the merger. Public Staff witness Hoard testified that service quality would be monitored so that the quality of service at the very least would be maintained.

Based on these facts and representations, the Commission concludes that service quality should not decline as a result of the merger.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20-23

The evidence for these findings of fact is found in the direct testimony of SCANA witness Timmerman, PSNC witness Zeigler, the Public Staff panel, and CUCA witness Frankena, and in the rebuttal testimony of Applicants witness Julius A. Wright.

SCANA witness Timmerman testified that the purpose of a Hart-Scott-Rodino filing is to allow either the Department of Justice or the FTC to look at the potential for anticompetitive behavior that may result from a merger. The agency to which the filing is assigned has 30 days to review it and determine whether seeking additional information is warranted. If no action is taken or no additional information requested, the filing is then deemed approved. SCANA witness

Timmerman and PSNC witness Zeigler both testified in additional direct testimony that the FTC had been assigned to review their Hart-Scott-Rodino filings and that the waiting period for both companies expired without action at midnight on September 26, 1999.

The Public Staff testified that it assumed that a market power problem would be created in the merger proceeding involving CP&L and North Carolina Natural Gas Corporation (NCNG), and therefore it developed regulatory conditions and a code of conduct to deal with all possible identified issues. In this case, the Public Staff panel testified, it started with the assumption that the same conditions and code of conduct would apply, although market power issues were not viewed as being significant in this case compared to the CP&L/NCNG merger.

CUCA submitted the prefiled testimony of Dr. Mark Frankena, who provided a lengthy theoretical discussion of market power. Witness Frankena defined market power as the ability of a seller or group of sellers profitably to maintain prices above competitive levels by restricting output below competitive levels. A substantial market share or a market in which there are barriers to entry can create market power. He testified that it was appropriate to analyze a vertical electric-gas merger, such as the proposed SCANA/PSNC merger, by using traditional antitrust principles. This requires the identification of the relevant products and the geographic scope of the relevant market, the computation of market shares and concentration in that market, an evaluation of conditions for entry into the market, and finally, based on this information, the making of inferences about the likely extent of market power.

While witness Frankena discussed three theories that have been applied to vertical mergers between electric utilities that own generating capacity and natural gas companies, he applied only one of these theories to the proposed SCANA/PSNC merger. The theory for which he undertook a preliminary factual investigation for the Carolinas was the raising rivals' cost theory. He specifically recommended that the Commission investigate and evaluate the potential for the proposed merger to adversely affect the ability of rival electric generators to compete with incumbent generating companies in the Carolinas. He described this theory as the principal competitive theory that the FERC applies in evaluating mergers between electric generating companies and natural gas companies that are within its jurisdiction. He further asserted that if this merger required the FERC's approval, the Applicants would have been required to submit an analysis of the effects of the merger on competition using the raising rivals' cost theory.

Witness Frankena testified that, pending a thorough investigation and analysis, North and South Carolina (minus the Tennessee Valley Authority (TVA) and Virginia Electric & Power Company (Virginia Power) control areas) appeared to be a plausible relevant geographic market in which to analyze market power over electric power during periods in which the demand for electricity is relatively high. This proposed market would be highly concentrated because together, Duke, CP&L, and SCE&G own or control over 80% of the generating capacity in the Carolinas.

Under the raising rivals' cost theory, according to witness Frankena, SCANA could have the incentive to delay installation of gas-fired generating capacity by rivals in PSNC's territory in order to increase the price at which SCE&G is able to sell its own electric power. Because SCANA, CP&L, and Duke own large shares of generating capacity in the Carolinas, they may also exercise market power by reducing their output of electric power below competitive levels. Witness Frankena acknowledged that SCE&G has only 11% of the generating capacity in the Carolinas and that, acting alone, it is too small and has too little market share to exercise market power. However, he asserted it might nevertheless be able to do so by acting in unison with Duke and CP&L.

The Applicants' rebuttal witness, Dr. Julius A. Wright, took issue with witness Frankena's position that additional consideration of the issue of market power is warranted on the facts of this case, giving both market-based and regulatory reasons for his conclusions.

Witness Wright first took issue with witness Frankena's assertion that PSNC would have an incentive, or more importantly, the means to discriminate against alternative generators of electricity in either the sales or transportation of natural gas. First, a seller of any price-and-service regulated commodity, which PSNC is and will remain for the foreseeable future, has an obvious incentive to sell or transport as much of that commodity as possible. That is the primary way in which a regulated utility generates revenues and attempts to earn its allowed rate of return. To withhold sales or transportation would be ultimately self-defeating. Second, as a regulated utility, PSNC and its actions are governed by this Commission. PSNC would serve a new generator under either its filed tariff or a negotiated contract reviewed by the Commission. If the generator is served under the filed tariff, PSNC could only increase the rate through a general rate case in which it would bear the burden of proof. If the service to the new generator is rendered under a negotiated contract, then the contract will specify when and to what extent PSNC can increase the rate. If PSNC attempted to charge or increase a negotiated rate in any other manner, the generator could file a complaint with the Commission or pursue other legal alternatives. Furthermore, the interstate pipelines provide nondiscriminatory open access service, providing all customers with the same transportation rights as other similarly situated customers, and this Commission's regulations require PSNC to provide service on a non-discriminatory basis.

Any attempt to delay service, abuse affiliate relationships, or charge discriminatory prices could be addressed by the Commission through its complaint procedures according to witness Wright. More specifically, however, witness Wright testified that he believed the Public Staff's proposed Code of Conduct, which covers affiliate abuses and other market power issues in detail, directly prohibits the very activities described by witness Frankena.

Witness Wright further testified that retail electric rates (or prices) are regulated. The only way to increase these rates is through a general rate case or through the fuel adjustment mechanism for the cost of purchased power, both of which are lengthy detailed proceedings that do not allow the behavior that would be required for witness Frankena's concerns to have legitimacy.

The Department of Justice, the FTC, and in a more limited context, the FERC, all of which have jurisdiction over mergers at the federal level, have examined the facts and found that they did not warrant additional investigation.

The FTC, one of two federal agencies with antitrust jurisdiction, was assigned this case to review and considered the issue of whether the proposed merger warranted any additional investigation of market power issues. It concluded that it did not. CUCA witness Frankena argued that the FTC and the Department of Justice routinely defer to state commissions to address issues of market power and therefore the FTC's failure to act had no significance. The Commission notes, however, that market power in the wholesale market, which is the issue raised by Dr. Frankena, is more a matter of federal than state jurisdiction. Furthermore, Dr. Frankena himself acknowledged examples in which the federal agencies had taken action. The Commission is unwilling to assume, without more, that the federal agencies take their antitrust responsibilities as lightly as he suggests.

Although the FERC does not have jurisdiction to approve SCANA and PSNC's proposed merger, it was required to evaluate the extent to which SCE&G has market power in the wholesale market in the context of deciding to allow SCE&G to charge market-based wholesale rates. Obviously, the FERC at that time did not have a significant concern about the possibility of SCE&G exerting market power in the wholesale market. In addition, contrary to witness Frankena's assertion that the FERC would have required SCANA and PSNC to submit an analysis of the effects of the merger on competition, the FERC's order concerning the disposition of San Diego Gas & Electric (SDG&E) and Enova Energy's jurisdictional facilities in conjunction with the merger of Enova Corporation and Pacific Enterprises states that the applicants in that case performed no analysis of the vertical effects of the proposed transaction. (Docket No. EC97-12-000, order dated June 25, 1997, p.22) According to that order, 68% of the installed generating capacity of the utilities in southern California is gas-fired. In addition, one of Pacific Enterprises' subsidiaries, Southern California Gas Company (SoCalGas), delivered gas to 96% of that gas-fired generation (excluding qualifying facilities). The FERC performed its own analysis and concluded that if the applicants committed to the remedial mechanisms discussed in the order (and if the California Commission accepted those remedial mechanisms over which it had jurisdiction), the proposed transaction would be consistent with the public interest. These remedial mechanisms included (1) ensuring that SoCalGas and SDG&E did not inappropriately share market information, (2) imposing and/or expanding restrictions to ensure that affiliate abuses did not occur between SoCalGas's natural gas pipeline and affiliated marketers and other affiliated energy companies, (3) ensuring the transparency of transactions involving sales and purchase of gas transportation services, and (4) requiring the separation of SDG&E's purchases of transportation service from SoCalGas for gas that is used for SDG&E's generators. The Commission notes that these remedial mechanisms are similar to the mechanisms provided in the Public Staff's proposed Regulatory Conditions and Code of Conduct.

The Commission notes that there is a limited amount of gas-fired generation in operation at this time in North Carolina. The gas-fired generation that is currently being built is combustion turbines, and they are expected to run approximately 11% of the time. Witness Frankena's own testimony about newly constructed and proposed gas-fired generation in North Carolina reveals that it will be served by a number of suppliers. In fact, of the approximately 4,000 MW of gas-fired generation he discussed, only 320 MW of this capacity is in PSNC's territory.

It also appears that witness Frankena's assumption that the Carolinas form the relevant geographic market because of transmission constraints was based on erroneous information. The Applicants' witness Wright conclusively showed that witness Frankena's use of 150 MW and 14 MW as the first-contingency total and incremental transfer capability from TVA to VACAR was an error. The 1999 VAST study shows this first-contingency total and incremental transfer capability to be 2,400 MW, some 16 times the amount reported by Dr. Frankena, while the 14 MW amount was shown to be irrelevant. The only market power issue raised in this proceeding is in the wholesale electric market, and it hinges on the assumptions that the relevant geographic market can be limited to the Carolinas and that SCANA and SCE&G can effectively raise rivals' costs, despite their small share of the wholesale electricity market. The Commission therefore concludes that witness Frankena's preliminary analysis of the potential for market power resulting from the SCANA/PSNC merger is flawed and not appropriately relied upon in this proceeding.

The Commission concludes that CUCA's expressed concern about market power is too theoretical and unsupported to justify a delay in this proceeding for a more formal study to be undertaken, particularly given the very specific and detailed protections offered by the proposed Regulatory Conditions and Code of Conduct. The appropriateness of a code of conduct as a means of mitigating market power concerns is well-recognized nationwide. The FERC obviously considers codes of conduct and similar behavioral remedies to be effective means of limiting market power. In addition, CUCA witness Frankena's testimony that the FTC and the Department of Justice think behavioral remedies "won't do the job," is contradicted by Dr. Frankena's own Exhibit 3.

Frankena Exhibit 3 is a paper written by Dr. Frankena entitled "Vertical Mergers: Analysis of Competitive Effects in Markets for Electric Power." Footnote 45 on page 37 of that paper clearly states that federal antitrust agencies are more inclined to accept behavioral remedies for competitive problems raised by vertical mergers than for horizontal. The reason given is that the conduct is easier to monitor in vertical cases because there is a party involved who has a strong incentive to alert the federal agencies to the inappropriate conduct.

The Regulatory Conditions and Code of Conduct adopted by the Commission provide cost allocation and pricing standards, natural gas marketing standards, and an equal treatment standard; impose reporting requirements, requirements regarding the sharing of potentially competitively sensitive information, and requirements to file cost allocation manuals and annual reports on affiliate transactions; and provide other protective measures. The purpose of these requirements is to avoid even the possibility of affiliate abuse and, in essence, to prevent the possibility of SCANA exercising market power by raising rivals' costs. Finally, if any customer is denied access to natural gas or believes that the price for transportation service is excessive or unfair, a complaint process is available under both the Commission's rules and the Code of Conduct. Under the facts of this case, the Code of Conduct is adequate to address any market power issues which may arise.

In summary, the Commission believes that the weight of the entire evidence of record in this case with regard to the market power issue does not reach a threshold sufficient to require the Applicants to submit a market power study at this point and thereby delay the proposed merger. In this case, CUCA argued that a market power analysis should have been performed. CUCA had the option of developing its own market power analysis and presenting it to the Commission. Yet, when asked whether CUCA had even requested the data to perform such an analysis, witness Frankena acknowledged the CUCA had asked "no such question." The testimony of the Public Staff and the Applicants as discussed above present facts in this case which cause the Commission to conclude that no further examination of market power is necessary or warranted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-26

The evidence for these findings of fact is found in the direct testimony of SCANA witness Timmerman, PSNC witness Zeigler, CUCA witnesses O'Donnell and Frankena, and the Public Staff panel and in the rebuttal testimony of Applicants witness Wright.

On cross-examination by the Applicants, the Public Staff panel agreed to a number of changes to its proposed Regulatory Conditions and Code of Conduct and reserved judgment on several requested changes. (On cross-examination, counsel for the Applicants made reference to the Regulatory Conditions filed in the Public Staff's direct testimony. The Commission notes that the Regulatory Conditions were subsequently modified and renumbered in Pubic Staff Panel Exhibit 4. The Regulatory Conditions discussed below are numbered as in Public Staff Panel Exhibit 4.) Changes agreed to by the Public Staff panel were as follows:

(1) With respect to Regulatory Condition 5, the Public Staff agreed that it does not apply to interstate pipeline capacity or storage rights that PSNC releases through an interstate pipeline electronic bulletin board or Internet site, when the Internet site becomes the communications mode under the regulations of the FERC.

(2) With respect to Regulatory Condition 32, which requires PSNC and SCANA and their affiliates to file a current five-year plan for new or expanded pipeline facilities in North Carolina, the Public Staff agreed that such plans would be limited to projects costing $100,000 or more. Also, the Public Staff agreed that the first report would be due ninety (90) days after the issuance of the Commission's Order in this proceeding rather than on October 31, 1999, and all subsequent reports will be due on October 31.

(3) With respect to Regulatory Conditions 29 and 31, which provide for future changes to the Regulatory Conditions and the Code of Conduct, some of which might not be acceptable to PSNC and SCANA, the Public Staff agreed that PSNC and SCANA would retain their rights to file exceptions and seek judicial review as provided by statute.

(4) The Public Staff agreed to modify the definition of "Similarly Situated" in the Code of Conduct to strike "or relevant Standard Industrial Classification" and place a period after "swing."

(5) In Part II of the Code of Conduct, the Public Staff agreed to strike the phrase "while not wholly inclusive or totally encompassing."

(6) With respect to Paragraphs II(E)(3) and (4) of the Code of Conduct, the Public Staff agreed that PSNC would have to report the price of the gas commodity itself in addition to the rate for the transportation only if PSNC is selling the gas as well as providing the transportation. If PSNC only provides transportation, it will report only the transportation rate charged.

(7) With respect to Paragraphs II(E)(5) of the Code of Conduct, the Public Staff agreed to change "two months" to "three months" as long as PSNC advised the Public Staff by facsimile or other immediate communication (e.g., Internet e-mail) of such transactions.

(8) With respect to the Code of Conduct generally, the Public Staff agreed with PSNC that the activities of Sonat Public Service Company, LLC, would be governed by the Commission's Order in Docket No. G-5, Sub 366, rather than the Code of Conduct. This exception applies only to Sonat Public Service Company. It does not apply to any other marketing affiliate of PSNC, including any affiliate to which the activities of Sonat Public Service Company might be transferred as a result of the merger approved herein.

The Public Staff and PSNC disagreed as to Paragraph II(C)(1) of the Code of Conduct, which prohibits joint calls by PSNC North Carolina jurisdictional operations and any affiliate, including any North Carolina non-jurisdictional operations. PSNC has requested that it be allowed to engage in such joint calls when the customer, primarily a large commercial and industrial customer, requests such calls as long as (1) the request is in writing and (2) PSNC agrees to engage in such joint calls with any non-affiliated marketer at either the request of the customer or the marketer. The Public Staff indicated in its Proposed Order that it did not disagree with this request. The Commission concludes that it will allow such joint calls on the following conditions: (a) the customer must request the joint call in writing, which can be sent by facsimile; (b) PSNC must participate in similar joint calls with non-affiliated marketers at the written request of either the customer or the non-affiliated marketer; (c) PSNC must post the procedures for such calls on its Internet site and otherwise reduce those procedures to writing and make them available to all customers (large commercial and industrial customers eligible for transportation) and non-affiliated marketers; and (d) PSNC must keep a log, which identifies the customer, the marketer (affiliated or not), and the PSNC personnel participating, of all such joint calls, which will be available upon request by the Public Staff, any customer, or any nonaffiliated marketer.

As the previous findings and discussions of the evidence in the record in this docket clearly establish, the Regulatory Conditions and Code of Conduct, as adopted herein, and the commitments by SCANA and PSNC in their testimony are adequate to ensure that there will be no adverse impact on the rates and service of PSNC's retail customers, that PSNC customers are as protected as much as possible from potential harm, and that they will receive sufficient benefits from the merger to offset any potential risks and harms.

The Commission concludes that the business combination transaction proposed by SCANA and PSNC is justified by the public convenience and necessity and that the proposed exchange and redemption of PSNC stock in connection therewith are for a lawful object, are compatible with the public interest, are consistent with the proper performance by PSNC of its service to the public and will not impair PSNC's ability to provide that service at just and reasonable rates.

Furthermore, the Regulatory Conditions and Code of Conduct adopted by the Commission herein, construed and applied consistently with the Commission's Rules and Regulations and the laws of North Carolina, are adequate to address any issues and complaints that might arise. To the extent new issues or concerns require that the Regulatory Conditions and/or Code of Conduct approved herein be modified, the Commission has full authority to modify them consistent with the public interest.

Throughout cross-examination of the Public Staff witnesses and Applicants witness Wright, CUCA questioned the efficacy, adequacy and expeditiousness of the Commission's complaint proceeding in remedying potential discrimination or other market power abuses. For example, CUCA's counsel asked questions regarding the Commission's ability to order an award of money damages to a party that is alleging discrimination and the possible length of time required to resolve a dispute. The Commission notes that the proposed Code of Conduct contains a provision specifically requiring complaint procedures to be established to resolve potential complaints that arise in the context of affiliate relations. These procedures, however, do not affect a party's right to file a formal complaint with the Commission or otherwise communicate concerns directly to the Public Staff. The Commission endeavors to address all complaints as comprehensively and expeditiously as possible.

While all possible risks and harms cannot be predicted, the Commission has full authority to deal with problems and issues as they arise. Chapter 62 of the North Carolina General Statutes grants the Commission such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation and any and all such other powers and duties as may be necessary or incident to the proper discharge of the Commission's duties. The Commission also has been granted the power to establish such rules as are reasonable and necessary in order to administer and enforce Chapter 62. Chapter 62 and the Commission's Rules and Regulations also establish the procedures to be followed in proceedings before the Commission to ensure that all interested or aggrieved parties are given notice and an opportunity to be heard.

It is the Commission's intention to enforce all of the Regulatory Conditions approved herein consistently with their intended goals. In addition, the Commission has inherent authority, consistent with the appropriate procedural mechanisms, to amend the Regulatory Conditions and Code of Conduct should circumstances warrant. To the extent that a party has a concern or complaint with respect to the actions of SCANA or PSNC or with the Commission's interpretation of the Regulatory Conditions and Code of Conduct, that party may seek relief from the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

This finding of fact is based on the testimony of CUCA witness O'Donnell and the rebuttal testimony of SCANA witness Kevin B. Marsh.

In discussing what he termed the vital need to analyze merger savings in order to determine whether the merger is in the public interest, CUCA witness O'Donnell offered what he termed a "real world example." He then segued into an endorsement of the deregulation of natural gas retailing by discussing the gas market in Georgia. He testified that when a SCANA marketing subsidiary entered the deregulated gas market in Georgia, it offered a one-time $50 discount and an additional 5% discount off Atlanta Gas Light Company's rates. Witness O'Donnell argued that if SCANA offered North Carolina residential customers of PSNC the same level of savings it offered the Georgia residential customers, then the aggregate savings to PSNC's residential ratepayers would be at least $23.2 million in the first year and at least $9.2 million per year after that. Witness O'Donnell questioned if Georgia customers are benefiting more from deregulation than North Carolina customers are from a merger, then why is North Carolina not moving toward deregulation of the natural gas industry.

SCANA rebuttal witness Marsh testified that it is inappropriate to compare the Georgia natural gas market to the natural gas market in North Carolina. In 1998, the State of Georgia enacted legislation giving natural gas utilities the option of unbundling natural gas sales from their regulated utility operations, thereby giving the customers the ability to choose a natural gas provider. The deregulated retail natural gas market in Georgia is still very immature, and many of the incentives and programs result in prices below cost for the purpose of enticing customers to switch to unregulated suppliers. He further testified that pricing has been very volatile since deregulation began in Georgia and that it is too early for meaningful comparisons or conclusions to be drawn. Witness Marsh concluded that Mr. O'Donnell's computations for savings for customers in Georgia are not accurate due to his reliance on and convenient selection of one-time, introductory pricing levels that do not consider the impact of changing market conditions or current market pricing.

The Commission concludes that a determination of the relative benefits and detriments of the unbundling of natural gas is not before the Commission at this time. Whether SCANA's natural gas customers in the newly competitive gas market in Georgia have realized savings is irrelevant to the merger-related issues pending in this proceeding.

CONCLUSIONS OF LAW

1. The relevant statutes, G.S. 62-111 and G.S. 62-161, give the Commission broad authority to review all aspects of proposed merger and securities transactions and to balance all potential benefits and costs of the transactions to determine if they should be authorized. Factors to be considered include such things as the maintenance of or improvement in service quality, the extent to which costs can be lowered and rates can be maintained or reduced, the extent to which the merger could have anticompetitive effects, and the continuation of effective state regulation.

2. These statutes do not require the applicants for approval of a proposed business combination transaction to file a formal analysis of merger cost savings in every case. Cost savings are just one of the potential benefits to the public utility's jurisdictional ratepayers and one way of ensuring that those ratepayers are adequately protected from cost increases related to the merger.

3. Approval should be given to SCANA and PSNC's proposed merger and securities transactions only if sufficient conditions are imposed to ensure that (1) the merger transactions will have no known adverse impact on the rates and service of PSNC's ratepayers; (2) PSNC's ratepayers are protected as much as possible from potential harm; and (3) these ratepayers will receive sufficient benefit from the merger to offset any potential costs, risks, and harms.

4. Based on its application of the foregoing standards to the facts of this case, with particular attention paid to the Regulatory Conditions and Code of Conduct approved herein, the Commission concludes that the requirements of G.S. 62-111 and G.S. 62-161 have been met, and the proposed merger and securities transactions should be approved. Specifically, the Commission concludes that the business combination transaction proposed by SCANA and PSNC is justified by the public convenience and necessity, and that the proposed exchange and redemption of PSNC stock

in connection therewith are for a lawful object, are compatible with the public interest, are consistent with the proper performance by PSNC of its service to the public, and will not impair PSNC's ability to provide that service at just and reasonable rates.

5. It is the intent of the foregoing Regulatory Conditions and attached Code of Conduct that PSNC's ratepayers shall be held harmless from any adverse effects of the merger, including potential actions by other regulatory jurisdictions relating to the merger, and that ratepayers shall receive benefits from the merger that are at least commensurate with the potential adverse effects of the merger.

IT IS, THEREFORE, ORDERED as follows:

1. That SCANA and PSNC's application to engage in a business combination transaction and to exchange and redeem securities in connection therewith, as described herein and in the application, is approved upon the commitments made by SCANA and PSNC and upon the following Regulatory Conditions with which SCANA and PSNC are hereby ordered to comply:

(1) With respect to any transaction that is subject to Section 13 of the Public Utility Holding Company Act of 1935 (PUHCA), the following procedures shall apply:

(a) PSNC shall not engage in any such transaction without first obtaining from the NCUC such authority as is required under North Carolina law accepting the contract that memorializes such a transaction and authorizing the payment of compensation or fees pursuant thereto. Proposed contracts must first be submitted to the Public Staff for informal review at least ten days before filing with the NCUC.

(b) Any such contract shall provide that PSNC

(i) may not make or incur a charge under any such contract except in accordance with North Carolina law and the rules, regulations, and orders of the NCUC promulgated thereunder; and

(ii) may not seek to reflect in rates any cost incurred or revenue level earned under an agreement subject to the 1935 Act to the extent disallowed by the NCUC.

(c) The SEC shall have found that such contract is not inconsistent with PUHCA except that no such finding by the SEC shall be required if no SEC approval of such contract is required under PUHCA.

(2) Neither PSNC, SCANA, nor any affiliate thereof shall assert in any forum, with respect to any transaction to which PSNC is involved and which is subject to Section 13 of PUHCA, that PUHCA in any way preempts the NCUC from reviewing the reasonableness of any commitment entered into by PSNC and from disallowing costs of or imputing revenues to PSNC. Should any other entity so assert, PSNC, SCANA,

or other affiliates shall not support any such assertion and shall, upon learning of such assertion, so advise and consult with the NCUC and the Public Staff regarding such assertion.

(3) PSNC and SCANA shall request the SEC to include the following language in any order issued approving SCANA's acquisition of PSNC (the acquisition):

> Approval of this application in no way precludes the North Carolina Utilities Commission from scrutinizing and disallowing charges incurred or made or allowing or imputing a different level of such charges when setting rates for services rendered to customers of affiliated public utilities in North Carolina.

(4) PSNC shall not take any service from an affiliate under circumstances where its costs incurred for that service (whether directly or through allocation) exceed fair market value.

(5) With respect to the voluntary transfer by PSNC or any affiliate thereof to nonjurisdictional operations, an affiliate, and/or a nonaffiliate of the control or ownership of any asset or portion thereof used for the transmission, distribution, or other provision of natural gas service to customers in North Carolina:

(a) SCANA and PSNC shall not commit to or carry out such a transfer except in accordance with North Carolina law and the rules, regulations and orders of the NCUC promulgated thereunder; and

(b) PSNC may not reflect in rates the value of any such transfer subject to PUHCA except as allowed by the NCUC.

(6) SCANA and PSNC shall include in their application for approval of the acquisition filed with the SEC pursuant to PUHCA the commitment set forth in paragraph 5 above.

(7) SCANA and PSNC shall include in their application for approval of the acquisition filed with the SEC pursuant to PUHCA a request that the SEC include the following statement in its approval order(s):

> SCANA and PSNC recognize that the NCUC wishes to preserve its state law authority, under present or future state law, to require approval of transfers of control or ownership of any asset or portion thereof from PSNC or one or more of its affiliates to nonjurisdictional operations, affiliates, or nonaffiliates. Without conceding their right to assert that the NCUC does not and should not have such authority, SCANA and PSNC request the SEC to state, in its order approving the instant acquisition, that the SEC does not intend its approval of

the acquisition to preclude a future state commission order mandating or otherwise exercising state authority over such a transfer of assets.

(8) Any filing with the SEC in connection with asset transfers involving PSNC shall request that the SEC include the following language in its approval order(s):

> Approval of this application in no way precludes the North Carolina Utilities Commission from scrutinizing and establishing the value of the asset transfer for purposes of determining the rates for services rendered to PSNC's customers. It is the SEC's intention that the North Carolina Utilities Commission retain the right to review and determine the value of such asset transfer for purposes of determining rates.

(9) Neither PSNC, SCANA, nor any affiliate thereof shall assert in any forum, with respect to any asset transfer transaction to which PSNC is involved and which is subject to PUHCA, that PUHCA in any way preempts the NCUC from (a) exercising such authority as it may have under North Carolina law to mandate, approve, or otherwise regulate a transfer of assets by or to PSNC, or (b) scrutinizing and establishing the value of the asset transfers for purposes of determining the rates for services rendered to PSNC's customers. Should any other entity so assert, PSNC, SCANA, or other affiliates shall not support any such assertion and shall, upon learning of such assertion, so advise and consult with the NCUC and the Public Staff regarding such assertion.

(10) With respect to any financing transaction entered into between PSNC and SCANA or among PSNC and/or any one or more of its other affiliates, any contract memorializing such transaction shall provide that PSNC:

(a) may not enter into any such financing transaction except in accordance with North Carolina law and the rules, regulations, and orders of the NCUC promulgated thereunder; and

(b) may not reflect in rates the effect of any capital structure or debt and/or equity costs except as allowed by the NCUC.

(11) PSNC and SCANA shall include in their application for approval of the acquisition filed with the SEC pursuant to PUHCA a request that the SEC include the following statement in its approval order(s):

> The SEC further finds that its approval of this acquisition or future financing arrangements does not preclude the NCUC or other regulatory authority from setting rates based on the assumption of a capital structure, a corporate structure, debt costs or equity costs that varies from the structure(s) or cost(s) approved in this Order.

(12) Neither PSNC, SCANA, nor any other affiliate thereof shall assert in any forum, with respect to any financing transaction with which PSNC is involved and which is subject to PUHCA, that PUHCA in any way preempts the NCUC from exercising any lawful authority it may have over such financings or that the NCUC is precluded from setting rates based on the capital structure, corporate structure, debt costs, or equity costs that it finds to be appropriate for ratemaking purposes. Should any other entity so assert, PSNC, SCANA, or other affiliates shall not support any such assertion and shall, upon learning of such assertion, so advise and consult with the NCUC and the Public Staff regarding such assertion.

(13) With respect to the above-described affiliate transactions, asset transfers, and financings, PSNC, SCANA, and their affiliates shall bear the full risk of any preemptive effects of PUHCA. The previous sentence includes, but is not limited to, agreement by PSNC, SCANA, and their affiliates to take all such actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases, or other effects of such preemption. Such actions include, but are not limited to, filing with and obtaining approval from the SEC of such commitments as the NCUC deems reasonably necessary to prevent such preemptive effects.

(14) If PUHCA is amended or replaced by future legislation, the parties shall meet promptly after the passage of such legislation and negotiate in good faith whether and how these conditions have been affected by such legislation and whether they should be revised or removed. In the event the parties are unable to reach agreement within a reasonable time after passage of such legislation, the unresolved issues shall be submitted to the NCUC for resolution.

(15) PSNC is required to seek out and buy all goods and services from the lowest cost provider of comparable goods and services. To this end, PSNC must conduct an annual market price study for goods and services it receives from SCANA or other affiliates, which allows assessment of whether PSNC could have acquired the services at a lower market cost from nonaffiliated providers, or whether PSNC could have provided the service itself at lower cost.

(16) PSNC shall file a cost allocation manual with the NCUC within six months after closing. The cost allocation manual shall describe how all direct, indirect, and other costs will be charged to capital projects, nonjurisdictional operations, and affiliates. In that connection, PSNC will perform a detailed review of the common costs to be allocated and allocation factors to be used. Within six months after closing, PSNC shall provide a list of items considered to be the shared services of PSNC and the basis for each determination.

(17) SCANA and PSNC shall file with the NCUC, within six months after closing, a cost allocation manual for each service company or other affiliate providing goods and services to PSNC. Each cost allocation manual shall describe how all direct, indirect, and other costs of a service company or other affiliate will be charged among PSNC

and its affiliates. In that connection, a detailed review must be performed of the common costs to be allocated and the allocation factors to be used. Within six months after closing, a list of the services and goods that are provided or are anticipated being provided shortly thereafter by a service company or other affiliate shall be filed with the NCUC. PSNC shall not commit to any cost allocation affected by any changes to such cost allocation manual or list of services and goods unless PSNC has submitted such changes to the NCUC and received its approval.

(18) SCANA and PSNC shall file an annual report of affiliated transactions with the NCUC in a format prescribed by the NCUC. The first report on affiliated transactions shall be filed on March 31, 2001, for activity through December 31, 2000, and annually thereafter on March 31. Transactions affecting PSNC's regulated operations shall be reviewed regularly by its internal auditors. All workpapers shall be available for review by the Public Staff and the NCUC Staff.

(19) PSNC shall keep its accounting books and records in a manner that will allow all components of the cost of capital to be identified easily and clearly on a separate basis.

(20) SCANA and PSNC will identify at the time of PSNC's next rate case the amount of SCANA's equity investment in PSNC that is reflected in accounting records.

(21) To the extent the cost rates of SCANA's or PSNC's long-term debt (more than one year), short-term debt (one year or less) or preferred stock are or have been adversely affected by the merger, through a downgrade or otherwise, a replacement cost rate to remove the effect will be used for all purposes affecting PSNC's rates and charges. This replacement cost rate will be applicable to all financings, refundings, and refinancings. This procedure will be effective through PSNC's next general rate case. As part of PSNC's next general rate case, any future procedure relating to a replacement cost calculation will be determined. This Regulatory Condition does not indicate a preference by any party for any specific debt rating or preferred stock rating for SCANA or PSNC on current or prospective bases.

(22) SCANA and PSNC will identify as clearly as possible long-term debt (of more than one year duration) issued by PSNC or SCANA, as appropriate, with either (1) the assets that are or will be utilized to provide service to PSNC's regulated utility customers or (2) SCANA's or PSNC's existing debt to be replaced with the new debt issuance.

(23) The cost of capital Regulatory Conditions also will apply to PSNC's determinations of its maximum allowable AFUDC rates, the rates of return applied to any of PSNC's deferral accounts and regulatory assets and liabilities that accrue a return, and any other component of PSNC's cost of service impacted by the cost of debt and/or preferred stock. PSNC will continue to apply an annual interest rate of 10% to its Deferred Gas Cost Accounts.

NATURAL GAS - MERGER

(24) These Regulatory Conditions do not supersede any orders or directives that have been or will be issued by the NCUC regarding the issuance of specific securities by SCANA and PSNC. As with securities issuances prior to the announcement of the merger, the issuance of securities after the announcement of the merger does not restrict the NCUC's right to review, and if deemed appropriate, adjust SCANA's or PSNC's cost of capital for ratemaking purposes for the effect of these securities.

(25) SCANA, PSNC, and their affiliates shall file with the NCUC a copy of all documents or reports filed with the SEC and provide a copy to the Public Staff. In addition, SCANA and PSNC shall provide a copy of all orders issued by the SEC.

(26) All costs of the merger and all direct and indirect corporate cost increases (including those that may be assigned to SCANA, a service company or any affiliate), if any, attributable to the merger, will be excluded from PSNC's utility accounts, and shall be treated for accounting and ratemaking purposes so that they do not affect PSNC's natural gas rates and charges. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level that PSNC would have incurred using prudent business judgment had the merger not occurred.

(27) Any acquisition adjustment that results from the business combination of SCANA and PSNC will be excluded from PSNC's utility accounts and treated for accounting and ratemaking purposes so that it does not affect PSNC's natural gas rates and charges.

(28) In accordance with North Carolina law, SCANA and PSNC will provide the NCUC and the Public Staff full access to the books and records of SCANA and PSNC, their affiliates, and nonutility operations.

(29) SCANA, PSNC, their affiliates, and PSNC's nonregulated operations shall be bound by the Code of Conduct approved by the NCUC in this proceeding. This Code shall be considered the minimum conditions to which the merged company is agreeing and shall not preclude the NCUC from amending the Code later to incorporate additional conditions. If necessary, the Code will be modified if there is a change in the merged company's organizational structure or if other changes occur that warrant such amendments.

(30) PSNC shall reduce rates by $1,043,542 within six months of the closing date of its proposed business combination with SCANA and by an additional $1,043,542 within eighteen months of that closing date. In addition, none of the margin rates for gas sales and transportation services provided by PSNC will be increased for five years from the date the first rate reduction takes effect, except for the following reasons: (1) gas cost adjustments or changes in increments or decrements pursuant to G.S. 62-133.4 or NCUC Rule R1-17(k); (2) to reflect the financial impact of governmental action (legislative, executive, or regulatory) having a substantial specific impact on the gas industry generally or on a segment thereof that includes PSNC, including but not limited to major expenditures for environmental compliance; (3) to implement natural

gas expansion surcharges imposed pursuant to G.S. 62-158; or (4) to reflect the financial impact of major expenditures associated with *force majeure.*

For purposes of this Regulatory Condition, the term *force majeure* means an occurrence that is beyond the control of PSNC and not attributable to its fault or negligence. Without limiting the foregoing, *force majeure* includes acts of nature, like earthquakes, cyclones, rain, tornadoes, hurricanes, flood, fire, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring *force majeure* which such party is unable to prevent by exercising reasonable diligence. To qualify as an exception, a *force majeure* event must be reported within 15 working days of its occurrence.

Any request pursuant to these exceptions will include a specification of the reasons for the request and an accurate quantification of the financial impact of the request. For purposes of this condition, the "margin rate" is defined as the tariffed sales rate less the benchmark commodity cost of gas, fixed gas cost rate, and temporary increments and/or decrements imposed pursuant to G.S. 62-133.4 or NCUC Rule R1-17(k).

(31) PSNC will take steps to implement its commitment to providing superior natural gas service to North Carolina customers following the merger. PSNC shall file with the Commission by December 31, 1999, the Service Quality Indices that it proposes to use to measure service quality. PSNC will work with the Public Staff to ensure that these indices are appropriate and to revise them if and when such revisions are necessary.

(32) SCANA, PSNC, and their affiliates shall file a current five-year plan for new or expanded North Carolina gas pipeline facilities costing $100,000 or more with the NCUC 90 days after the date the Commission issues its final order in this proceeding, and updates shall be filed with the NCUC by October 31 every other year thereafter. Such plans shall incorporate details to the extent known or projected regarding the pipeline routing, specifications, and costs of the new or expanded gas pipeline facilities. The filing shall also describe each inquiry received from a party interested in locating gas-fired electric generation in North Carolina and report on the status of each inquiry (confidentially if necessary). To the extent substantial changes occur in any plans or proposals to expand or extend facilities, notice of such changes shall be promptly filed with the NCUC. To the extent customers want to have input into the pipeline expansion planning process, SCANA, PSNC, and their affiliates shall develop a process to encourage such input on an on-going basis.

(33) Neither SCANA, PSNC, nor any affiliate will begin the construction of natural gas facilities in North Carolina, including a pipeline, to serve an electric generating plant without filing a notice of intent with the NCUC. The notice of intent shall be filed well in advance of any construction-related activity, including the acquisition of any

rights-of-way. Any application for a certificate of public convenience and necessity filed with the NCUC by SCANA or an affiliate shall incorporate details with respect to the routing of any new or expanded gas pipeline or other facilities required to serve the proposed electric generating plant and details about any proposed pipeline routing and specifications related to any new or expanded natural gas facilities needed to provide gas and/or transportation service to the proposed electric generating plant.

(34) PSNC shall pursue the expansion of gas service to unserved areas of its franchise territory consistent with the gas expansion policy of the State as enunciated in G.S. 62-2(9) and the NCUC's policies pursuant thereto.

(35) PSNC shall utilize competitive solicitation procedures to determine future long-term sources of interstate pipeline capacity and supply. The determination of the appropriate source(s) for the interstate pipeline capacity and supply shall be made by PSNC on the basis of the benefits and costs of such source(s) specifically to PSNC's gas customers.

(36) PSNC shall not recover from ratepayers the margins lost as the result of bypass by an interstate gas pipeline in which SCANA or any affiliate has an ownership interest.

2. That the Code of Conduct attached hereto as Appendix A is hereby approved, and SCANA and PSNC are hereby ordered to comply therewith.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of December, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mb120799.01

Chairman Jo Anne Sanford filed a concurring opinion.
Commissioner Judy Hunt joins in Chairman Jo Anne Sanford's concurring opinion.
Commissioner Sam J. Ervin, IV did not participate.

DOCKET NO. G-5, SUB 400
DOCKET NO. G-43

Chairman Jo Anne Sanford Concurring:

I have voted for the majority order in these dockets and I fully support it. However, I write this concurring opinion to call attention to a particular concern of mine, that service quality not suffer as a result of this merger. I recognize that this was a concern of the Public Staff and that the Public Staff recommended a Regulatory Condition to the effect that PSNC would continue its commitment to providing superior service. However, only weeks after the Public Staff filed this recommendation, PSNC's customers experienced service problems so severe that they were the subject of television and newspaper reports. The problems related to PSNC customers' inability to contact company representatives by telephone. I recognize that this is not a part of the record in this case, and I have not let it influence my vote herein. I simply want to emphasize that I view PSNC's commitment to service quality as an important aspect of the public convenience and necessity that must be served by the merged companies. Regulatory Condition 31 as adopted by the Commission requires PSNC "to take steps to implement its commitment to provide superior natural gas service to North Carolina customers following the merger," and I urge PSNC to give this Condition its highest priority.

\s\ Jo Anne Sanford
Chairman Jo Anne Sanford

APPENDIX A

CODE OF CONDUCT GOVERNING THE RELATIONSHIP AMONG PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC., AND ITS AFFILIATES

I. DEFINITIONS

For purposes of this Code of Conduct, the terms listed below shall have the following definitions:

Affiliate: Any company, including SCANA, that has ownership in common with PSNC, with ownership being ten percent (10%) or more of the outstanding voting securities owned, controlled, or held with the power to vote, directly or indirectly.

Confidential Systems Operation Information: Interstate pipeline transportation, storage, distribution, gas supply, or other similar information that pertains to the NC Jurisdictional Operations.

Customer: Any natural gas sales or natural gas transportation customer of the NC Jurisdictional Operations located within PSNC's franchised service area.

Customer Information: Any and all customer specific information obtained by the NC Jurisdictional Operations.

Foreign Regulated Operations: The public utility activities of the affiliates that are regulated by the South Carolina Public Service Commission, the Federal Energy Regulatory Commission, or other regulatory bodies.

Fully Distributed Costs: All direct and indirect costs, including overheads and the cost of capital, incurred in providing the goods and services in question.

Gas Marketing Affiliate: An affiliate, the business unit of an affiliate, or nonjurisdictional operation of PSNC that is engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

NATURAL GAS - MERGER

Gas Marketing Affiliate Personnel: An employee or other representative of the gas marketing affiliate that is involved in fulfilling the business purpose of the gas marketing affiliate. An officer or director of both the NC Jurisdictional Operations and a gas marketing affiliate shall not be considered gas marketing affiliate personnel unless that individual is directly involved in fulfilling the business purpose of the gas marketing affiliate.

NC Jurisdictional Operations: The public utility operations of Public Service Company of North Carolina, Inc., as defined in N.C.G.S. 62-3(23).

NC Nonjurisdictional Operations: All activities engaged in by Public Service Company of North Carolina, Inc., that are not a public utility operation as defined in N.C.G.S. 62-3(23).

Natural Gas Services: NCUC-regulated natural gas sales and natural gas transportation, and other related services, including, but not limited to, metering and billing.

NCUC: The North Carolina Utilities Commission.

PSNC: Public Service Company of North Carolina, Inc.

PSNC Operating Personnel: An employee or other representative of the NC Jurisdictional Operations that is involved in the acquisition, marketing, pricing, or scheduling of gas supply, interstate pipeline capacity, or gas storage facilities on behalf of NC Jurisdictional Operations. PSNC operating personnel also includes personnel involved in managing the NC Jurisdictional Operations's facilities or responsible for determining which customers to curtail, or involved in selling products and services to the NC Jurisdictional Operations' customers eligible to purchase gas, products, and services from persons other than the NC Jurisdictional Operations.

Nonaffiliated Gas Marketer: An entity, not affiliated with PSNC or SCANA, that is engaged in the unregulated sale, arrangement, brokering or management of gas supply, pipeline capacity, or gas storage.

SCANA: The holding company that owns PSNC, which is an affiliate of PSNC.

Service Company: An affiliate that provides shared goods and/or services to PSNC and other affiliates.

Shipper: A gas marketing affiliate, nonaffiliated marketer, a municipal gas customer, or end-user of gas.

Similarly Situated: Possessing comparable characteristics, such as, the type and delivered price of alternative fuel used, gas curtailment priority, daily usage and daily load swing.

II. CODE OF CONDUCT

This Code of Conduct establishes the minimum guidelines and rules that apply to transactions involving PSNC and/or one or more of the affiliates and/or one or more of the NC Nonjurisdictional Operations. This Code of Conduct will become applicable on the date that it is approved by the NCUC.

A. GENERAL STANDARDS

1. Equal Treatment - PSNC shall not show any preference to: customers of the affiliates or NC Nonjurisdictional Operations; and/or requests for service from affiliates or NC Nonjurisdictional Operations, as compared to nonaffiliated entities and their customers.

2. Cross-subsidies involving PSNC and one or more of the affiliates and/or one or more of the NC Nonjurisdictional Operations are prohibited.

3. Separation - PSNC and the affiliates shall operate independently of each other (except for sharing of services under Section II.D.3). PSNC and each of the affiliates shall maintain separate books and records. The NC Nonjurisdictional Operations shall maintain separate records to ensure appropriate cost allocations and any requirements of arm's length transactions. PSNC and the affiliates shall conduct business from physically separate offices located on different floors or in different buildings. However, PSNC and the affiliates may share offices to the extent necessary to perform those shared corporate functions permitted under Section II.D.3 of this Code of Conduct.

4. Disclosure of Confidential System Operations Information - Confidential System Operations Information shall not be disclosed to an affiliate or NC Nonjurisdictional Operation without approval from the NCUC. Notwithstanding the prohibitions established by this subsection, the NC Jurisdictional Operations may disclose Confidential System Operations Information to a Service Company but only pursuant to a Service Agreement filed with the NCUC. Such Confidential System Operations Information shall only be disclosed to those Service Company employees performing the functions that utilize the information and the information shall be stored in such a manner that only the Service Company employees that utilize the information shall have access to the information. Every effort must be made to prevent the use of such information in an anticompetitive or otherwise inappropriate ways.

5. Disclosure of Customer Information - Upon request, the NC Jurisdictional Operations shall provide natural gas Customer Information to the affiliates and the NC Nonjurisdictional Operations under the same terms and conditions that such information is provided to all nonaffiliates. Customer Information shall not be disclosed to any person or company without the Customer's

consent except to the extent provided for in Section II.D.3. If disclosed, it must be done with advance public notification, in a manner determined by the NCUC to ensure that the opportunity to receive the disclosed information is made available to nonaffiliates at the same time that it is made available to affiliates and/or NC Nonjurisdictional Operations. Notwithstanding the prohibitions established by this subsection, the NC Jurisdictional Operations may disclose Customer Information to a Service Company without Customer consent and without making the information available to any other person or company in order to allow a Service Company to perform billing services for the NC Jurisdictional Operations. Such Customer Information shall only be disclosed to those Service Company employees performing billing operations and shall be stored in such a manner that only the Service Company employees that perform billing operations and employees in a Service Company who are responsible for responding to customer inquiries concerning customer service and billing matters may access the information.

B. NONDISCRIMINATION AND INFORMATION STANDARDS

1. The NC Jurisdictional Operations shall process all similar requests for Natural Gas Services in the same manner and timely fashion, whether requested on behalf of an affiliate, a NC Nonjurisdictional Operation or a nonaffiliated entity. The NC Jurisdictional Operations shall apply the provisions of its tariffs equally to affiliates, NC Nonjurisdictional Operations and nonaffiliates.

2. The NC Jurisdictional Operations will not represent to any Customer that any affiliate and/or NC Nonjurisdictional operation will receive any preference from the NC Jurisdictional Operations relative to providing Natural Gas Services over any unaffiliated service provider, nor will the NC Jurisdictional Operations provide any affiliates and/or any NC Nonjurisdictional operations with any preference over nonaffiliates in the provision of Natural Gas Services.

3. The NC Jurisdictional Operations shall not condition or otherwise tie the provision or terms of any Natural Gas Services to the purchasing of any goods or services from an affiliate and/or a NC Nonjurisdictional Operation.

4. When any NC Jurisdictional Operations employee receives a request for information from or provides information to a Customer about an affiliate and/or a NC Nonjurisdictional Operation service, the employee must advise the Customer that such services may also be available from nonaffiliated suppliers.

C. MARKETING STANDARDS

1. The NC Jurisdictional Operations, the affiliates, and the NC Nonjurisdictional Operations may engage in joint sales, joint sales calls, joint proposals, and/or

joint advertising, subject to any conditions or restrictions that the NCUC may hereafter establish, provided the NC Jurisdictional Operations agrees to engage in similar activities with nonaffiliates under the same terms and conditions. However, the NC Jurisdictional Operations and a gas marketing affiliate collectively may not engage in joint sales, joint sales calls, joint proposals and/or joint advertising except as provided for herein. NC Jurisdictional Operations and a gas marketing affiliate collectively may engage in joint sales calls only if the following conditions are met: (a) the customer must request the joint call in writing, which can be sent by facsimile; (b) PSNC must participate in similar joint calls with nonaffiliated marketers at the written request of either the customer or the nonafilliated marketer; (c) PSNC must post the procedures for such calls on its web site and otherwise reduce those procedures to writing and make them available to all customers (large commercial and industrial customers eligible for transportation) and nonaffiliated marketers; and (d) PSNC must keep a log of all such joint calls that identifies the customer, the marketer (affiliated or not) and the participating PSNC personnel, with such log being available upon request by the Commission, Public Staff, any customer, or any nonaffiliated marketer. PSNC operating personnel must not provide sales leads to its gas marketing affiliate. The NC Jurisdictional Operations shall post certain information regarding the joint marketing programs/calls on the corporate internet web site at least 14 days prior to commencing a joint marketing arrangement and the information shall remain posted on the web site for the duration of the arrangement. The information disclosed on the web site shall include a description and terms for the joint marketing arrangement. Posting of the terms for the joint marketing arrangement shall include an offer by the NC Jurisdictional Operations to engage in joint marketing on such terms with nonaffiliates.

2. Affiliates may not use PSNC's name and/or logo in any communications unless a disclaimer is included that states the following:

   (a) "[Affiliate] is not the same company as [Utility], and [Affiliate] has separate management and separate employees;"

   (b) "[Affiliate] is not regulated by the North Carolina Utilities Commission or in any way sanctioned by the Commission;"

   (c) "there is no advantage to customers of [Utility] if they buy products or services from [Affiliate];" and

   (d) "a customer does not have to buy products or services from [Affiliate] in order to continue to receive the same safe and reliable natural gas service from [Utility]."

The NC Nonjurisdictional Operations may not use PSNC's name and/or logo in any communications unless a disclaimer is included that states the following:

(a) "[Nonjurisdictional operation] is not part of the regulated services offered by [Utility] and is not in any way sanctioned by the North Carolina Utilities Commission;"

(b) "there is no advantage to customers of [Utility] if they buy products or services from [Nonjurisdictional operation]," and

(c) "a customer does not have to buy products or services from [Nonjurisdictional operation] in order to continue to receive the same safe and reliable natural gas service from [Utility]."

The required disclaimer must be sized and displayed in a way that is commensurate with the name and/or logo so that the disclaimer is no smaller than the larger of one-half the size of the type that first displays the name and logo or the predominant type used in the communication.

3. Personnel of an affiliate or a NC Nonjurisdictional Operation shall not give the appearance that the affiliate or the NC Nonjurisdictional Operation speaks on behalf of the NC Jurisdictional Operations.

4. Personnel of PSNC, an affiliate, or a NC Nonjurisdictional Operation shall not indicate to a third party that any advantage exists as the result of that third party dealing with an affiliate or a NC Nonjurisdictional Operation as compared with a nonaffiliate.

D. COST ALLOCATION AND TRANSFER PRICING STANDARDS

1. As a general guideline, with regard to the transfer prices charged for goods and services, including the use and/or transfer of personnel, exchanged between and among the NC Jurisdictional Operations, the affiliates and the NC Nonjurisdictional Operations, the following conditions shall apply:

a) For untariffed goods and/or services provided by the NC Jurisdictional Operations to an affiliate and/or a NC Nonjurisdictional Operation, the transfer price shall be the higher of market value or fully distributed cost.

b) For untariffed goods and/or services provided by an affiliate and/or a NC Nonjurisdictional Operation to the NC Jurisdictional Operations, the transfer price charged by the affiliate and/or the NC Nonjurisdictional Operation to the NC Jurisdictional Operations shall be the lower of market value or the affiliate's or the NC

Nonjurisdictional Operations' fully distributed cost. If the NC Jurisdictional Operation does not engage in competitive solicitation and instead obtains the goods and/or services from an affiliate and/or a NC Nonjurisdictional Operation, the NC Jurisdictional Operations shall implement adequate safeguards to ensure utility customers receive service at the lowest cost in each case.

c) For jurisdictional gas sales and/or transportation services provided by the NC Jurisdictional Operations to the affiliates and/or the NC Nonjurisdictional Operations, the NC Jurisdictional Operations shall provide service to the affiliates and/or the NC Nonjurisdictional Operations at the same price and terms that are made available to other similarly situated customers.

2. All permitted transactions between the NC Jurisdictional Operations and the affiliates, and the NC Nonjurisdictional Operations shall be recorded and accounted for in accordance with PSNC's cost allocation manual.

3. A Service Company may provide the NC Jurisdictional Operations, the affiliates and the NC Nonjurisdictional Operations with certain corporate services and functions on a joint basis. Such shared services shall be charged among the NC Jurisdictional Operations, the affiliates and the NC Nonjurisdictional Operations. Shared services shall be those provided in response to Regulatory Condition 17, subject to approval by the NCUC.

4. The NC Jurisdictional Operations may participate with one or more Foreign Regulated Operations in joint purchases of goods and services. All joint purchases, including leases, shall be priced in a manner that permits clear identification of each participant's portion of such purchases or leases. The NC Jurisdictional Operations shall not engage in joint purchases with affiliates and/or NC Nonjurisdictional Operations, except Foreign Regulated Operations, unless specifically permitted in advance by NCUC order upon a finding that it is in the best interest of ratepayers.

5. Any costs the NC Jurisdictional Operations incurs in assembling, compiling, preparing and/or furnishing requested customer information to an affiliate, a NC Nonjurisdictional Operation or a nonaffiliate shall be recovered from the requesting party pursuant to Section II.D.1 of this Code of Conduct.

6. Any technology or trade secrets developed by the NC Jurisdictional Operations will not be transferred to any of the affiliates and/or the NC Nonjurisdictional Operations without just compensation from the affiliate and/or the NC Nonjurisdictional Operation, and shall file notice with the Public Staff and NCUC at least 60 days prior to the transfer.

7. The NC Jurisdictional Operations shall receive compensation from the affiliates and the NC Nonjurisdictional Operations for intangible benefits, if appropriate.

E. **REGULATORY OVERSIGHT**

1. The State's existing requirements under N.C.G.S. 62-153 for reporting of affiliate transactions shall apply.

2. The books and records of PSNC, the affiliates and the NC Nonjurisdictional Operations shall be open for examination by the NCUC, its staff, and the Public Staff consistent with the provisions of N.C.G.S. 62-34, 62-37, and 62-51.

3. The NC Jurisdictional Operations shall identify the volumes and prices for deliveries to any electric generating facilities owned or operated by the affiliates in its monthly negotiated loss report to the NCUC.

4. When requested, the NC Jurisdictional Operations shall disclose on a confidential basis to nonaffiliated electricity generators on its system the gas supply and transportation prices, characteristics, and other terms of service for gas deliveries to the affiliates for electric generation.

5. All gas supply and/or transportation arrangements between the NC Jurisdictional Operations and the affiliates, and/or the NC Nonjurisdictional Operations of more than three months shall be filed with the NCUC in advance, provided that the Public Staff is advised of transactions of shorter durations by facsimile or other means of immediate communications.

F. **COMPLAINT PROCEDURE** - The NC Jurisdictional Operations shall establish complaint procedures to resolve potential complaints that arise due to the relationship of the NC Jurisdictional Operations with the affiliates and/or the NC Jurisdictional Operations. These complaint procedures do not affect a complainant's right to file a formal complaint with or otherwise address questions to the NCUC. The complaint procedures shall provide for the following:

1. Verbal and written complaints shall be referred to a designated representative of the NC Jurisdictional Operations .

2. The designated representative shall provide written notification to the complainant within 15 days that the complaint has been received.

3. The NC Jurisdictional Operations shall investigate the complaint and communicate the results of the investigation to the complainant within 60 days of receiving the complaint.

4. The NC Jurisdictional Operations shall maintain a log of complaints and related records for inspection by the NCUC, its staff or Public Staff.

5. If the complainant is not satisfied, the NC Jurisdictional Operations shall inform the NCUC, its staff and/or Public Staff of the complaint.

G. **UTILITY BILLING FORMAT** - To the extent the Customer's bill includes charges for unregulated services, such charges shall be separated from all regulated Natural Gas Services and contain the following introductory notice in bold print: Your natural gas service may not be terminated for failure to pay for the following unregulated services.

H. **NATURAL GAS MARKETING STANDARDS**

1. The NC Jurisdictional Operations shall treat similarly situated shippers in the same manner with respect to the delivery of gas on distribution facilities, contract terms, the scheduling of gas supplies, balancing provisions, and allocation of gas supplies and capacity at city gate stations.

2. All NC Jurisdictional Operations information pertaining to interstate pipeline transportation, storage, distribution, or gas supply that is provided to a gas marketing affiliate shall be made available to all shippers on a contemporaneous, nondiscriminatory and nonpreferential basis by posting the information on the corporate internet web site and provided in a written form upon the request of a shipper. Aggregate customer information and market data made available to shippers shall be made available on a similar basis.

3. The NC Jurisdictional Operations shall not disclose information provided by nonaffiliated marketers and customers to its marketing affiliate, unless such parties specifically authorize disclosure of the information.

4. A gas marketing affiliate shall function independently of the NC Jurisdictional Operations and gas marketing affiliate personnel must be located in a facility that is physically separate from that used by the PSNC Operating Personnel performing similar functions.

5. PSNC Operating Personnel may not perform any of the following functions on behalf of a gas marketing affiliate:

   (a) Purchase gas, pipeline capacity or storage capacity.
   (b) Market or sell gas and related services.
   (c) Price or administer products and services.
   (d) Hire and/or train marketing affiliate personnel.
   (e) Offer consulting services regarding gas functions.

6. An individual may be an officer or director of both PSNC and a gas marketing affiliate provided that the individual does not obtain or use knowledge of

market-sensitive information for more than one of the entities. PSNC shall post on the corporate internet web site the identity, job title and responsibilities for each officer or director that falls within the definition of PSNC Operating Personnel.

7. The NC Jurisdictional Operations shall post its criteria for evaluating proposals from shippers on the corporate internet web site. The NC Jurisdictional Operations shall not give one shipper any form of preference over other similarly situated shippers in matters relating to assignment, release, or other transfer of capacity rights on interstate pipeline systems.

8. The NC Jurisdictional Operations shall post on the corporate internet web site a current list of contact persons and telephone numbers of all gas marketers that are active on its system.

DOCKET NO. G-21, SUB 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proceeding to Determine Whether North	)	
Carolina Natural Gas Corporation Is	)	ORDER ON
Providing Adequate Service to Each	)	FORFEITURE
County in Its Franchise Territory	)	PROCEEDING

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and in Courtroom A, Pasquotank County Courthouse, 206 East Main Street, Elizabeth City, North Carolina, on October 27, 1998, and in Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 7 and 8, 1998.

BEFORE: Chair Jo Anne Sanford, Presiding, and Commissioners Judy Hunt, Ralph A. Hunt, William R. Pittman, J. Richard Conder, and Robert V. Owens, Jr.

APPEARANCES:

For North Carolina Natural Gas Corporation:

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

For Frontier Energy, LLC:

M. Gray Styers, Jr., Kilpatrick Stockton, LLP, 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For the Counties of Camden, Chowan, Currituck, Pasquotank, and Perquimans, the Towns of Edenton, Hertford, and Winfall, and the City of Elizabeth City:

Allyson K. Duncan, Kilpatrick Stockton, LLP, 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For Weyerhaeuser Company:

Benjamin R. Kuhn, Kilpatrick Stockton, LLP, 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For Carolina Power & Light Company:

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

For the Using and Consuming Public:

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

BY THE COMMISSION: In June 1989, the North Carolina General Assembly enacted G.S. 62-36A, which requires the natural gas local distribution companies to file biennial expansion reports. The Commission and the Public Staff are to independently summarize those reports and report on the status of natural gas service in North Carolina to the Joint Legislative Utility Review Committee of the General Assembly. Subsection (b) directs the Commission to adopt rules to carry out the intent of the statute. On June 15, 1995, the General Assembly amended G.S. 62-36A(b) to add the following:

> These rules shall provide for expansion of service by each franchised natural gas local distribution company to all areas of its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, and shall provide that any local distribution company that the Commission determines is not providing adequate service to at least some portion of each county within its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, shall forfeit its exclusive franchise rights to that portion of its territory not being served.

This amendment is commonly referred to as the "use-it-or-lose-it" legislation.

The Commission instituted a rulemaking proceeding to implement this amendment, and on March 19, 1996, the Commission issued an order amending certain existing Commission Rules and adopting a new Commission Rule R6-63.

By Order dated July 28, 1998, the Commission initiated this proceeding pursuant to G.S. 62-36A(b) and Commission Rule R6-63 and scheduled a hearing to determine whether North Carolina Natural Gas Corporation (NCNG) was providing adequate service to at least some portion of each county in its franchise territory as of July 1, 1998, and, if not, to order that NCNG forfeit its exclusive franchise rights to that portion of its territory not being served.

In addition to the Public Staff, the following parties intervened: Frontier Energy, LLC; the Counties of Camden, Chowan, Currituck, Pasquotank, and Perquimans, the Towns of Edenton, Hertford, and Winfall, and the City of Elizabeth City, subsequently organized as the Albemarle Regional Energy Authority (hereinafter AREA) and such, by this order, substituted as intervenor; Weyerhaeuser Company (Weyerhaeuser); and Carolina Power & Light Company (CP&L).

On October 12, 1998, in response to motions from the Public Staff and Jimmie Dixon of AREA, the Commission issued an order providing that the hearing originally scheduled in Raleigh for October 27, 1998, would be for public witnesses only; scheduling a new hearing for public witnesses in Elizabeth City on October 27, 1998; and rescheduling the evidentiary hearing to begin on December 7, 1998.

The public hearing was held as scheduled in Elizabeth City on October 27, 1998. Seventeen public witnesses testified. These included the following: Randy Harrell, Director of Economic Development for Elizabeth City and Pasquotank County, who testified on behalf of himself and on behalf of Representative William C. Owens, Jr., whose letter to the Commission he read into the record; Jimmie Dixon, Pasquotank County Commissioner and Chair of AREA; Horace Pritchard, Chairman of the Pasquotank County Commissioners and the Elizabeth City/Pasquotank Economic Development Board; Don Cherry, a member of the City Council of Elizabeth City and its representative for AREA; Bill Lehmann, a member of the North Carolina Northeast Economic Development Partnership; Roger Lambertson, the new Economic Development Director for Currituck County; Roland Vaughn, Mayor of Edenton and the Edenton representative for AREA; Ben Rose, the Director of Social Services for Chowan County, who testified on behalf of Cliff Copeland, County Manager for Chowan County, and read letters from the County's three largest employers that urged the Commission not to allow NCNG to keep its franchise rights; Jerry Downum, a Chowan County Commissioner; Carl Classen, the Planning Director for Camden County; Robert Baker, the Economic Development Director for Perquimans County; Randy Keaton, County Manager for Pasquotank County; Vernon James, former member of the General Assembly; Ollin Sykes, president of the Edenton/Chowan County Development Corporation; Carlton Davenport, a member of the Town Council of Hertford and its representative for AREA; John Krebs; and Fred Yates, Mayor of Winfall and its representative for AREA. The public witnesses generally recommended that NCNG forfeit its exclusive franchise rights to the northeastern North Carolina counties.

The evidentiary hearing in Raleigh began on December 7, 1998. Representative William C. Owens, Jr., and Norma Mills, who appeared on behalf of Senate President Pro Tem Marc Basnight, testified as public witnesses. NCNG presented the direct testimony of Terrence D. Davis. The Public Staff presented the testimony of a panel consisting of Eugene H. Curtis, Jr., Director of the Natural Gas Division of the Public Staff, and James G. Hoard, Supervisor of the Natural Gas Section of the Accounting Division of the Public Staff. NCNG then presented the rebuttal testimony of Gerald A. Teele.

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. NCNG is a public utility engaged in the business of owning and operating transmission and distribution lines and other facilities for furnishing natural gas service to the public in its franchise territory in North Carolina, pursuant to the certificates of public convenience and necessity granted by this Commission on December 7, 1955, March 29, 1959, September 14, 1967, and August 16, 1996.

2. NCNG's franchise territory includes the following 47 counties, all of which are subject to this proceeding: Union, Stanly, Anson, Montgomery, Richmond, Moore, Scotland, Hoke, Harnett, Cumberland, Robeson, Bladen, Columbus, Brunswick, New Hanover, Pender, Sampson, Johnston, Wayne, Duplin, Lenoir, Jones, Onslow, Carteret, Pamlico, Craven, Pitt, Greene, Wilson, Nash, Edgecombe, Martin, Beaufort, Hyde, Washington, Bertie, Halifax, Northampton, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden, Currituck, Dare, and Tyrrell.

3. July 1, 1998, is the applicable date by which NCNG had to be providing adequate service to at least some portion of each county in its franchise territory to avoid the loss of its exclusive franchise rights to that portion of its territory not being served.

4. Thirty of the 47 counties in NCNG's franchise territory had active natural gas facilities in place as of July 1, 1998, and no forfeiture will be ordered as to those counties. The remaining 17 counties are as follows: Bertie, Camden, Carteret, Chowan, Currituck, Dare, Gates, Hyde, Jones, Martin, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington Counties. The issue in this proceeding is whether NCNG was providing adequate service to at least some portion of each of these counties as of the applicable date of July 1, 1998.

5. Commission Rule R6-63(d) provides that a natural gas utility will be deemed to be "providing adequate service," even though it "has not actually begun providing service," if the following conditions are met:

(i) the natural gas utility has completed a substantial amount of design process/service for the construction of natural gas facilities into at least some portion of the county, such as the preparation of engineering design for pipe size and capacity parameter, rectifier facilities, route location, materials specifications, construction specifications and drawings by an engineer sufficient to indicate the facilities to be built; or

(ii) the natural gas utility has begun to acquire rights-of-way for the construction and operation of natural gas facilities in the county; or

(iii) by at least six months before the applicable date set forth in subsection (b)(i) or (ii) above, the natural gas utility filed an application that complies with the Commission's applicable orders and rules for use of expansion funds for the construction of facilities into at least some portion of the county; and

(iv) it appears likely that the construction of the facilities will be completed and service will be provided within two years of the applicable date set forth in subsection (b)(i) or (ii) above.

If these conditions are met, no forfeiture will be ordered and the natural gas utility will be given two years to complete construction and begin providing service.

Onslow

6. NCNG applied for approval of an expansion fund project to Duplin and Onslow Counties in Docket No. G-21, Sub 330 in December of 1994. By orders of August 28, 1995, and August 7, 1998, the Commission approved the project. The status of this project is well-documented by filings in Docket No. G-21, Sub 330. Facilities in Duplin County were activated before July 1, 1998. Although the project is far behind its original schedule, construction should begin soon in Onslow County, and it appears likely that NCNG will complete construction of the facilities and provide service in Onslow County by July 1, 2000. No party advocated that NCNG forfeit its exclusive franchise rights to Onslow County. In the sense of Rule R6-63(d), NCNG was providing adequate service to Onslow County as of July 1, 1998.

Bertie and Martin

7. NCNG filed for approval of an expansion fund project to serve Bertie and Martin Counties in Docket No. G-21, Sub 371, on April 29, 1998. The Commission issued an order on November 29, 1998, approving the project. It appears likely that NCNG will complete construction of the facilities and provide service in Bertie and Martin Counties by July 1, 2000. No party argued that NCNG should forfeit its exclusive franchise rights to Bertie and Martin Counties. In the sense of Rule R6-63(d), NCNG was providing adequate service to Bertie and Martin Counties as of July 1, 1998.

Pasquotank and Camden

8. In its biennial expansion report filed on October 31, 1997, NCNG listed service to Pasquotank County as a potential project. The report stated that if natural gas was available from Columbia Gas of Virginia (CGV) and if sufficient expansion funds were available, NCNG "would consider" extending a 15.8 mile six-inch line to Elizabeth City. NCNG subsequently applied for another expansion fund project, Bertie and Martin, which committed nearly all its available expansion funds.

9. NCNG's October 1997 report stated that industrial customer surveys conducted in Pasquotank County during the previous year showed that "available loads do not justify the necessary investments at this time." This was consistent with NCNG's previous biennial expansion reports.

10. On March 30, 1998, at a hearing on NCNG's expansion report, NCNG's President stated to the Commission that "we have worked a number of times looking at ways to serve the northeastern counties...," that the "economics just are not there to get into those counties but we are still looking...," and that "we would be more than happy to work with [a gas district], be a supplier to it, be an operator for that system."

11. At the hearing in this docket, NCNG's witnesses testified that even though NCNG still considered the project economically infeasible, NCNG had decided to build facilities with its own funds that would interconnect with CGV at the North Carolina-Virginia State line, cross northern Camden County, and terminate in Elizabeth City in Pasquotank County. As of July 1, 1998, NCNG had done some preliminary work with respect to such a project. This work included engineering

drawings, market studies, conversations with North Carolina Department of Transportation (NCDOT) personnel about using road rights-of-way, and discussions with CGV about natural gas supply.

12. NCNG's proposal to serve Elizabeth City in Pasquotank County with its own funds is expressly contingent upon two things: (a) Elizabeth City signing a franchise agreement, which was delivered to Elizabeth City officials on September 2, 1998, but which had not been signed as of the hearing and (b) NCNG being able to work out the interconnection logistics and a gas supply contract with CGV. NCNG signed a letter of intent with CGV on December 3, 1998, a few days before the hearing. By this letter, they agree to proceed with gas supply arrangements for the project to Pasquotank County, subject to required regulatory approvals. Timely approvals are needed from the Virginia State Corporation Commission and from the Federal Energy Regulatory Commission, neither of which had been applied for as of the hearing. CGV requires approximately eighteen months from the time it begins its internal efforts to complete the construction from its existing facilities in Virginia to the proposed interconnection with NCNG at the North Carolina-Virginia State line. This interconnection is necessary for the proposed service in Pasquotank County.

13. As of July 1, 1998, NCNG's studies, drawings and meetings were of a preliminary nature and are not sufficient to meet the standard of condition (i) or condition (ii) of Rule R6-63(d).

14. Independent of the conclusion that NCNG has not met the standard of condition (i) or (ii), the Commission concludes that NCNG has not met the standard of condition (iv) given Elizabeth City's failure to sign a franchise agreement, given the uncertainty of necessary regulatory approvals in Virginia and at FERC, and given CGV's eighteen-month schedule for its interconnection facilities. In light of this uncertainty, the Commission cannot conclude that it is likely that construction of NCNG's proposed facilities into Pasquotank County can be completed and service provided by July 1, 2000.

15. Construction of facilities through northern Camden County and the possibility of providing service there was proposed by NCNG only in conjunction with construction of facilities from the North Carolina-Virginia State line to Elizabeth City in Pasquotank County. The issue of NCNG's exclusive franchise rights for Camden County is linked to its exclusive franchise rights for Pasquotank County.

<u>Washington, Carteret, and Pender</u>

16. NCNG has no immediate plans to serve Washington, Carteret, or Pender County. As of July 1, 1998, NCNG's plans for Washington, Carteret, and Pender Counties were very preliminary in nature. NCNG had not made substantial commitments and had not invested significant capital toward providing natural gas service in Washington, Carteret, or Pender County.

17. NCNG considers it economically infeasible to extend service to these three counties. Virtually all of the money in NCNG's expansion fund has been committed to NCNG's two currently approved expansion fund projects. In its proposed order, NCNG concedes that money from the newly approved natural gas bonds will not be available in time for NCNG to complete construction

into these counties by July 1, 2000. It is not likely that construction can be completed and service provided in Washington, Carteret, or Pender County by July 1, 2000.

Chowan, Currituck, Dare, Gates, Hyde, Jones, Pamlico, Perquimans, and Tyrrell

18. NCNG identified no immediate plans to provide service to any portion of Chowan, Currituck, Dare, Gates, Hyde, Jones, Pamlico, Perquimans, or Tyrrell County.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

The evidence for these findings is in the records of the Commission and in the applicable statutes and rules.

Pursuant to G.S. 62-36A(b) and Commission Rule R6-63(b), July 1, 1998 is the applicable date as to those counties franchised for three years as of that date. All of the counties in NCNG's territory had been franchised for three years as of July 1, 1998, except Camden, Currituck, Dare, and Tyrrell Counties, which were franchised on August 16, 1996. However, July 1, 1998 is also the applicable date as to Camden, Currituck, Dare, and Tyrrell Counties by virtue of Chapter 8 of the 1998 Session Laws, entitled "An Act to Provide That A Franchised Natural Gas Distribution Company That Is Not Providing Service To At Least Some Portion Of Camden, Currituck, Dare, Or Tyrrell Counties By July 1, 1998, Shall Lose Its Exclusive Franchise Rights To The County Not Being Served."

There was no controversy as to 30 of the 47 counties in NCNG's franchise territory. The focus of this proceeding is on the other 17 counties.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The Commission conducted a rulemaking proceeding in 1996 and adopted new Commission Rule R6-63 to implement G.S. 62-36A(b). Rule R6-63(d) deals with the meaning of "adequate service." There was general agreement among the parties to the Commission's 1996 rulemaking proceeding that a gas utility would not have to actually be serving a county to avoid forfeiture. Although there is no such provision in the statute, the parties proposed a "grace period," and the Commission adopted their proposal. Therefore, Rule R6-63(d) provides that if a gas utility is working on providing service to a portion of a county as of the applicable date, it may under certain conditions get a two-year grace period to complete the work. The Commission reasoned that, otherwise, a gas utility might not even start on a project that could not be completed by the forfeiture deadline, or a gas utility might rush into a poorly designed project just to protect its claim on a county.

Rule R6-63(d) provides that a gas utility will be deemed to be "providing adequate service," even though it "has not actually begun providing service," if the following conditions are met:

(i) the natural gas utility has completed a substantial amount of design process/service for the construction of natural gas facilities into at least some portion of the county, such as the preparation of engineering design for pipe size and capacity parameter, rectifier facilities, route location, materials specifications, construction specifications and drawings by an engineer sufficient to indicate the facilities to be built; or

(ii) the natural gas utility has begun to acquire rights-of-way for the construction and operation of natural gas facilities in the county; or

(iii) by at least six months before the applicable date set forth in subsection (b)(i) or (ii) above, the natural gas utility filed an application that complies with the Commission's applicable orders and rules for use of expansion funds for the construction of facilities into at least some portion of the county; and

(iv) it appears likely that the construction of the facilities will be completed and service will be provided within two years of the applicable date set forth in subsection (b)(i) or (ii) above.

If these conditions are met, the gas utility will be given two years from the applicable date to complete construction of its proposed project and begin providing service, or be subject to a show cause proceeding at that time on forfeiture of its exclusive franchise rights. The gas utility has to meet one of the first three conditions, plus the fourth condition to get the grace period.

This is the first Commission proceeding to apply these conditions to a fact situation. The conditions are obviously subject to widely differing interpretations. NCNG says that there is no requirement that it make substantial commitments or invest significant time or capital by July 1, 1998. NCNG argues that the conditions only require that it undertake "certain preliminary pre-construction activities" by July 1, 1998, and that it show that it is "more probable than not" to have some service, but not necessarily the entire project, completed by July 1, 2000. The Public Staff, on the other hand, reads the conditions strictly and would only allow a grace period in very special cases -- only in special circumstances where a gas utility has invested a significant amount of time and capital and made substantial commitments towards extending gas service to an area and it is highly probable that the project will be completed within two years. NCNG, in turn, argues that the Public Staff is advocating a standard that cannot be found in the Rule.

In interpreting the conditions of the Rule, the Commission must be cognizant not only of the language of the Rule, but also the language of G.S. 62-36A(b). The Commission has only the authority granted to it by statute, and the Commission's Rule can only be valid if it in fact implements the statute. The statute makes no provision for a grace period; it only provides for forfeiture based on events as of July 1, 1998. Thus, the Public Staff reasons that when the Commission adopts a Rule that defines statutory language in such a way as to create an exception to the forfeiture provided for in the statute, a very narrow interpretation of the Rule is required. The Commission agrees. The Commission continues to believe that a grace period is appropriate under the conditions set forth in the Rule; however, these conditions must be interpreted in a way consistent with the legislative intent behind G.S. 62-36A(b). G.S. 62-36A(b) was part of a long, continuing effort by the General Assembly to get natural gas service into unserved areas of the State. It would be inconsistent with this intent to grant a grace period for a utility merely to continue "looking at ways" of serving an area. The flaw in NCNG's interpretation of the Rule is illustrated by its testimony with respect to Washington County. Tracking the language of the Rule, NCNG witness Davis testified that NCNG had done the "design process/service" work necessary to meet condition (i) for Washington County. However, he also testified that NCNG has no immediate plans to serve Washington County and has made no commitment to serve Washington County. The Commission did not intend for condition (i) to apply in such a situation. Implicit throughout Rule R6-63(d) is an understanding that the grace period will only be granted to allow a utility to complete a project to which the utility is in fact committed. This is not re-writing the Rule, as suggested by NCNG. It is merely interpreting the Rule to accomplish the purpose of G.S. 62-36A(b). To interpret the Rule otherwise would circumvent G.S. 62-36A(b), rather than implement it. The Commission's interpretation of the conditions in Rule R6-63(d) requires that a utility make substantial commitments and invest significant time and capital toward a project by the forfeiture date in order to get the grace period.

Two other points are appropriate here. First, as stated in the Chair's order of December 4, 1998, ruling on pre-hearing evidentiary motions, evidence of events after July 1, 1998, may be relevant to condition (iv), i.e., such evidence may help to show that it is likely that construction will be completed within two years; however, conditions (i), (ii), and (iii) must be decided on the basis of events as of July 1, 1998. Second, although much of NCNG's evidence dealt with the reasonableness of its past actions and decisions, a forfeiture under G.S. 62-36A(b) is not based on any finding of fault. The Commission cannot make an exception to forfeiture even if the failure to serve was understandable and prudent.

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

The evidence in support of these findings is contained in the testimony of NCNG witnesses Davis and Teele and Public Staff witnesses Curtis and Hoard and in the Commission's records. No party asserts that NCNG should forfeit its exclusive franchise rights to Onslow, Bertie, or Martin County.

NCNG witness Davis testified that NCNG should be allowed the two-year grace period for Onslow County based on its extensive efforts to construct a transmission line from Duplin County into Onslow County, which are documented in Docket No. G-21, Sub 330, the docket in which the Commission approved the Duplin-Onslow expansion fund project filed in late 1994. In addition, he testified that NCNG expects construction to be completed by the end of 1999. With respect to Bertie and Martin Counties, witness Davis testified that NCNG filed an application on April 29, 1998, in Docket No. G-21, Sub 371, for permission to use its expansion fund for a project to serve these two counties. Based on the detailed information contained in that application and on NCNG's reasonable expectation that construction will be completed by the end of 1999 or early 2000, witness Davis testified that NCNG should be allowed the two-year grace period.

The Public Staff witnesses testified that NCNG has made significant investments and commitments towards providing gas service to Onslow, Bertie, and Martin Counties. With respect to Onslow County, NCNG's most recent Project Monthly Progress Report, filed on October 30, 1998, details NCNG's progress in receiving the environmental approvals and permits required for extending gas service to Onslow County and states that construction of the pipeline to Onslow County is expected to be completed in mid-1999. With regard to Bertie and Martin Counties, the Public Staff witnesses testified that NCNG has filed for approval of an expansion project and that based on the construction schedule provided by NCNG in that proceeding, gas service is expected to be available in Bertie and Martin Counties by the end of 1999. The Public Staff witnesses further testified that they believe that NCNG has made significant investments and commitments towards extending natural gas service to these three counties and that the probability is good that these counties will be receiving service by July 1, 2000.

The Commission concludes that NCNG has met the showing required under Commission Rule R6-63(d) for a grace period as to Bertie, Martin, and Onslow Counties. NCNG has satisfied conditions (iii) and (iv) of Rule R6-63(d) as to Onslow County. NCNG filed an expansion fund project for that county six months before July 1, 1998, and, although NCNG is behind its original schedule, it appears likely that construction of the facilities will be completed and service will be provided to Onslow County by July 1, 2000.
NCNG did not file its application for an expansion fund project to Bertie and Martin Counties at least six months before July 1, 1998, so as to meet condition (iii), but it did file such an expansion project two months before July 1, 1998, and NCNG's work on that expansion project met condition (i) as of July 1, 1998. Further, as of July 1, 1998, it appeared likely, and still does, that construction of the facilities in Bertie and Martin Counties will be completed and service will be provided by July 1, 2000, thus satisfying condition (iv). The Commission determines, pursuant to Rule R6-63(d), that NCNG should be allowed a two-year grace period as to these three counties. These situations illustrate why the grace period was written into the Rule and why it is appropriate in certain cases.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-15

The evidence supporting these findings of fact with respect to Pasquotank and Camden Counties is contained in the testimony of NCNG witnesses Davis and Teele and the Public Staff panel and in the records of the Commission.

NCNG's last biennial expansion report, which was filed October 31, 1997, in Docket No. G-21, Sub 363, stated that during the previous year NCNG had conducted industrial customer surveys in Pasquotank, Perquimans, and Washington Counties to determine their existing potential natural gas load and that the "available loads do not justify the necessary investments at this time." The report listed Pasquotank County as a potential project and stated that NCNG would consider extending a line to Elizabeth City if natural gas is available from Virginia and if sufficient expansion funds are available. In addition, at the March 30, 1998 public hearing on its biennial expansion report, NCNG's President stated as follows:

> Over the last several years we have worked a number of times looking at ways to serve the northeastern counties up around...Elizabeth City and Chowan County. The economics just are not there to get into those counties but we are still looking at ways to get down to Elizabeth City and perhaps we can work out something in that area but it's a very difficult area to get into. You have a lot of wetlands, you have just a long distance to get to any potential gas loads. There has been discussion of a gas district perhaps a government-financed gas district and if that comes about we would be more than happy to work with that district, be a supplier to it, be an operator for that system.

NCNG witness Davis testified that NCNG has many studies of a project to serve Elizabeth City and that NCNG has been working on these for many years. NCNG began work on its current proposal in June of 1997. NCNG witnesses Davis and Teele testified about NCNG's proposal to construct a pipeline from the North Carolina-Virginia State line across Camden County to Elizabeth City in Pasquotank County. Witness Davis testified about specific conversations, meetings, studies, and drawings, some of which occurred before July 1, 1998, and some of which occurred after. Although NCNG still considered service to Pasquotank County economically infeasible, NCNG's witnesses testified that NCNG had decided to proceed with the proposal to serve Pasquotank County with its own funds.

On cross-examination, witness Davis admitted that no contracts for construction in Pasquotank County had been entered, that no bids had been received, and that a survey needed to be done and an environmental permit requested, neither of which had not been done as of the hearing. The engineering drawings that NCNG professes to have completed were not presented into evidence, even though NCNG clearly had the burden of proof as to the conditions in Rule R6-63(d).

NCNG witness Teele testified that NCNG's proposal to serve Elizabeth City was expressly contingent upon two things: (a) Elizabeth City signing a franchise agreement, which was delivered to Elizabeth City officials on September 2, 1998, and (b) NCNG being able to work out the interconnection logistics and a gas supply contract with CGV. NCNG introduced no evidence that Elizabeth City had signed a franchise agreement. Davis Exhibit 1 is an letter of intent signed by CGV and NCNG on December 3, 1998, a few days before the hearing. It indicates that CGV will proceed with design work, regulatory filings, permitting and right-of-way acquisition per the terms of an October 1997 letter. In exchange, NCNG agreed to enter into definitive agreements with CGV for firm transportation. The letter cites no deadline for the interconnection.

The testimony of both NCNG and the Public Staff indicated that completion of the Elizabeth City project by July 1, 2000, was based upon the assumed cooperation of CGV and approvals from the Virginia State Corporation Commission, which had not been applied for as of the hearing. In addition, CGV would also need a waiver from the Federal Energy Regulatory Commission, the timing of which was unknown. Application for such a waiver had not been filed. To NCNG's knowledge, no permits and no rights-of-way had been obtained for the CGV's construction work in Virginia. Public Staff witness Curtis testified that CGV requires approximately eighteen months from the time it begins its internal efforts to complete the construction from its existing facilities in Virginia to the proposed interconnection with NCNG at the North Carolina-Virginia State line. This interconnection is necessary for the proposed service in Pasquotank County.

With respect to whether NCNG had begun to acquire rights-of-way, as provided in condition (ii), witness Davis only stated that NCNG had had discussions with NCDOT. NCNG did not have a written agreement with NCDOT as of July 1, 1998.

The Public Staff witnesses testified that NCNG's plans for Pasquotank County are simply preliminary in nature and are not of sufficient form, detail, and commitment for the Commission to allow NCNG a grace period. In addition, the Public Staff testified that the cost of the Elizabeth City project was not included in NCNG's budget. Although NCNG got concessions from the Public Staff witnesses on cross-examination, it is for the Commission to weigh all of the evidence and to determine whether NCNG carried its burden of proof as to the conditions for a grace period.

Based on the foregoing, the Commission concludes that, as of July 1, 1998, NCNG's plans to serve Pasquotank County were preliminary and contingent upon actions by others. Although it had conducted certain discussions about rights-of-way, it had not begun to acquire rights-of-way. As of July 1, 1998, NCNG had not made substantial commitments and had not invested significant capital toward providing natural gas service in Pasquotank County. Although both NCNG witnesses testified that NCNG was committed to serve Pasquotank County with its own funds, it is not clear when such a decision was made. Witness Teele stated, in response to questions from the Chair, that "prior to July 1,... we had made the decision to go to Elizabeth City. It was indicated as early as October '97 through our biennial filing." At another point he testified that "we have Elizabeth City firmly in our sights now and we have had for some time, as evidenced by the filing we made last October 31..." However, the October 1997 biennial expansion report indicates no such thing: it lists Pasquotank as a potential project that NCNG "would consider" if certain conditions are met, including the availability of expansion funds. At a third point, witness Teele testified that NCNG had made the corporate decision "to do Elizabeth City regardless of economic feasibility...sometime in 1997." However, on March 30, 1998, NCNG's President stated that he was "still looking at ways to get down to Elizabeth City" and that he would be "more than happy" to work with a gas district in the area. The Commission concludes that, as to Pasquotank County, NCNG did not carry its burden of proof as to either condition (i) or (ii). Further, the Commission concludes that NCNG did not carry its burden of proof as to condition (iv), which is a separate and independent requirement of the grace period. Given Elizabeth City's failure to sign a franchise agreement, given the uncertainty of necessary regulatory approvals in Virginia and at FERC, and given CGV's eighteen-month schedule for its interconnection facilities, the Commission cannot conclude that it is likely that construction of NCNG's proposed facilities into Pasquotank County can be completed and service provided by July 1, 2000. The Commission concludes that NCNG was not providing adequate service to Pasquotank County as of July 1, 1998, and that its exclusive franchise rights to that county must be forfeited.

NCNG witness Davis testified that NCNG has not been able to identify sufficient potential gas customers in Camden County to attempt to provide service at this time; however, NCNG's proposal to provide gas service in Pasquotank County involves the construction of a transmission line through northern Camden County. Consistent with its recommendation as to Pasquotank County, the Public Staff recommended that NCNG's exclusive franchise rights for Camden County be forfeited.

The Commission concludes that the potential construction of a transmission line through and the possibility of service in northern Camden County was considered by NCNG only in conjunction with the route to Elizabeth City in Pasquotank County. Since the Commission has concluded that NCNG must forfeit its exclusive franchise rights for Pasquotank County, it must also forfeit them for Camden County. These conclusions leave these two counties unassigned.

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

The evidence supporting this finding of fact is contained in the testimony of NCNG witness Davis and the Public Staff witnesses and in NCNG's proposed order filed after the hearing.

In its prefiled testimony, NCNG sought to preserve its right to serve within Washington, Carteret, and Pender Counties by reliance on the availability of the newly approved natural gas bonds to finance the infeasible portion of these projects and thereby to be able to place the projects in service by July 1, 2000. However, unresolved issues exist with respect to whether these bonds will be issued as tax-exempt or taxable bonds. In its post-hearing filings, NCNG stated that it now appears relatively certain that bond funds will not be available soon enough to allow NCNG to complete facilities within any of these counties by July 1, 2000. NCNG stated that it must agree that the likelihood of meeting the test of condition (iv) is insufficient for the Commission to determine that NCNG has preserved its exclusive right to serve within these three counties. The Commission concludes that NCNG must forfeit its exclusive franchise rights to Washington, Carteret, and Pender Counties.

However, NCNG requests that the Commission immediately and in this docket reassign the three counties to NCNG if the conditions Rule R6-63(d) are not met. It argues that no other party proposes to serve in Washington, Carteret, or Pender County, that these counties are located in areas surrounded by NCNG facilities and far from the facilities of any other natural gas supplier, and that NCNG has plans in place to serve these counties should it receive sufficient commitments from customers with industrial and commercial loads or should it obtain access to cost-free capital.

No procedure is in place for reassigning a county once it is declared unassigned as a result of a proceeding conducted pursuant to G.S. 62-36A. Neither the statute nor the Rule addresses this matter. However, the purpose of the use-it-or-lose-it legislation is to cancel franchises that are not being used so that new franchises can be awarded for unserved areas. While the Commission will entertain applications for new exclusive franchises for any area where exclusive franchise rights are forfeited, it would clearly defeat the purpose of the legislation to immediately reassign an unserved area to the same utility in the same proceeding in which the exclusive franchise rights were declared forfeited, before anyone else has had a chance to apply. Thus, the Commission will make no reassignment to NCNG in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence supporting this finding of fact is contained in the testimony of NCNG witness Davis and the Public Staff witnesses and in NCNG's proposed order filed after the hearing.

NCNG witness Davis testified that NCNG's other nine counties are economically infeasible to serve and that NCNG has no immediate plans to serve them. NCNG "does not assert" the right to retain its exclusive franchise rights to these counties. Accordingly, the Commission determines that NCNG must forfeit its exclusive franchise rights to these nine counties. As a result, these counties are now unassigned.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG shall hereby forfeit its exclusive franchise rights to Pasquotank, Camden, Washington, Carteret, Pender, Chowan, Currituck, Dare, Gates, Hyde, Jones, Pamlico, Perquimans, and Tyrrell Counties, and

2. That as to Onslow, Bertie, and Martin Counties, NCNG is hereby given until July 1, 2000, within which to complete construction of its proposed projects for these counties and to begin providing service, or be subject to a show cause proceeding on forfeiture of its exclusive franchise rights as provided in Rule R6-63(d).

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of March, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg031799.01

DOCKET NO. G-21, SUB 381
DOCKET NO. G-100, SUB 75

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition by North Carolina Natural Gas	)	
Corporation for Declaration that	)	ORDER ON PETITION
Partially Served Counties are Eligible	)	FOR DECLARATION
For G.S. 62-159 Expansion Funds	)	

BY THE COMMISSION: The Petition in these dockets relates to the new natural gas infrastructure bonds authorized by the General Assembly in Session Laws 1998-132 and approved by voters in November 1998.

Summary of Petition

G.S. 62-159(a) provides that the gas bonds are to be used "to facilitate the construction of facilities in and the extension of natural gas service to unserved areas..." North Carolina Natural Gas Corporation (NCNG) filed this Petition on July 2, 1999, asking for a Commission order declaring that "an existing LDC is eligible and may apply for funding [from the gas bonds] to finance the negative NPV of the cost of a natural gas expansion project to extend natural gas service into unserved areas of a partially served county." NCNG went on to ask the Commission to declare that Columbus, Montgomery and Robeson Counties are eligible for bond funds, although they already have some natural gas service. In support, NCNG notes that G.S. 62-159 uses the phrase "unserved areas." NCNG argues that the General Assembly has decided to base eligibility not on unserved counties, but on areas without service irrespective of county boundaries. NCNG acknowledges that Commission

Rule R6-91 mentions "the number of unserved counties" as a factor to be considered in allocating gas bond funds, but NCNG argues that the Rule "throws in unserved counties as a relevant factor, but not necessarily a dispositive one." NCNG provides information about the three counties at issue. It appears that Columbus County has an existing gas line to Whiteville "in the extreme northwestern corner..." and that there are about 130 natural gas customers in the county now. Montgomery County has an existing gas line to Mount Gilead "in the extreme southwestern corner..." and has 192 natural gas customers. Robeson County has existing gas service in Maxton, Pembroke, Lumberton, Red Springs and St. Pauls and has 7,910 natural gas customers. There are areas in each of the three counties that have no natural gas service.

The Commission issued an Order on August 4, 1999 providing for comments to be filed. Comments have been filed by Piedmont Natural Gas Company, Inc. (Piedmont), the Public Staff, and Carolina Utility Customers Association (CUCA). Letters of support for the Petition have been filed with the Commission by several officials from the three counties.

Comments of Parties

Piedmont comments that funding should not discriminate against a community that does not have natural gas service simply because another community in the same county does. Piedmont argues that county lines were drawn years ago and may have little relevance to current conditions.

The Public Staff reviews the legislative history behind the gas bond legislation and concludes that the General Assembly intended for gas bond funds to be used in "virtually unserved counties." It argues that the subcommittee of the General Assembly that proposed the legislation focused on 20-plus counties with no natural gas service at all, and the $200 million amount of gas bond funds authorized was based on rough estimates to provide service to these 20-plus counties, which are among the poorest in the State. Thus, the Public Staff concludes that the General Assembly intended to get some natural gas service into all counties. The Public Staff believes that "unserved areas" must be interpreted case-by-case "within the context of the legislative goal of obtaining for as many counties as possible at least some natural gas infrastructure within reasonable proximity to a significant part of the population of those unserved counties." Turning to the three counties at issue, the Public Staff concludes that Robeson is quite different from Columbus and Montgomery in terms of existing service and number of customers. The Public Staff also notes that Robeson may get additional gas facilities anyway, since two recent interstate pipeline proposals would pass through Robeson. Finally, the Public Staff notes that gas bond funds are limited and will only become available in increments over the years. Therefore, the Public Staff feels that "the 20-plus totally unserved counties, along with Columbus and Montgomery Counties, should take priority."

CUCA comments that any interpretation of "unserved areas" that allows gas bonds to be used for infill projects in counties with existing gas service would be inconsistent with legislative intent. CUCA argues that NCNG should simply file applications to use gas bond funds in these three counties and let the Commission evaluate each application on its merits. CUCA comments that if NCNG's petition only asks that the Commission not foreclose NCNG from submitting specific proposals, then it is unnecessary since the Commission has already stated that it will define "unserved areas" case-by-case. If, on the other hand, NCNG's petition seeks a ruling that it can use bond funds in Columbus, Montgomery and Robeson Counties, CUCA argues that the petition is premature since NCNG must identify specific proposals before that kind of decision can be made.

Conclusions of Commission

The Commission has carefully considered the Petition and all comments. It is not entirely clear what NCNG wants from the Commission. The Petition asks for a ruling that "an existing LDC is eligible and may apply [for gas bond funds for] unserved areas of a partially served county." In another paragraph of the same Petition, NCNG asks the Commission to declare that Columbus, Montgomery and Robeson Counties are eligible for bond funds. In later comments, NCNG acknowledges that it must file applications for specific projects in these counties and states that its Petition "requests only that the Commission not foreclose NCNG from submitting petitions for the counties at issue because some portion of the counties has natural gas service."

The gas bond fund legislation provides guidance with respect to NCNG's Petition. In Section 16 of Session Laws 1998-132, the General Assembly made certain findings justifying the natural gas bonds. The General Assembly found that the special funding for gas expansion authorized in 1991 had been successful, but that more needed to be done since "there are still counties with no gas service or virtually no gas service" (emphasis added). In Section 17, the General Assembly enacted G.S. 62-159. G.S. 62-159(a) states that the natural gas bonds are to be used "to facilitate the construction of facilities in and the extension of natural gas service to unserved areas..."(emphasis added). However, G.S. 62-159(b) provides that in determining whether to approve a particular project, the Commission will consider the following factors: "the scope of the proposed project, including the number of unserved counties and the number of anticipated customers that would be served, the total cost of the project, the extent to which the project is considered feasible, and other relevant factors affecting the public interest" (emphasis added). The different terms used in these sections, "counties" in some places and "areas" in others, is significant. It was the existence of "counties with no gas service or virtually no gas service" that prompted the legislation. While the gas bond funds may be used to provide service to "unserved areas," the existence of "unserved counties" is an important factor to be considered in allocating the limited monies available.

In order to maintain flexibility, the Commission declined to elaborate on the meaning of "unserved areas" when it adopted Rules to implement the gas bond legislation. The Commission stated, "Experience has shown that 'unserved areas' is a difficult term to define and is best left to determination case-by-case." However, Commission Rule R6-91(b) tracks the language in G.S. 62-159(b) with respect to the factors that the Commission will consider in passing on individual applications, including service to "unserved counties."

Thus, the Commission has never foreclosed any county from applying for gas bond funds, but whether a particular proposal will in fact get such funding is another matter, one which the Commission cannot decide in the abstract, without a specific application. It would be unfair for the Commission now to indicate approval or disapproval in the abstract. Other applicants are working on specific proposals and applications. Already, the Commission has received an application from Frontier Energy, LLC, seeking approximately $3.2 million in gas bond funds for Warren County, which has no natural gas service at all, and an application from Albemarle Pamlico Economic Development Corporation and Carolina Power & Light Company seeking $186 million for fourteen eastern counties with no present natural gas service. The Commission has made no decision on these applications, but their filing emphasizes that funds are limited and that the Commission will receive more requests for funds than it will have funds to distribute.

IT IS, THEREFORE, SO ORDERED

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg112399.05

Commissioner Ervin did not participate.

DOCKET NO. G-3, SUB 186
(ON REMAND)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Pennsylvania & Southern Gas	)	
Company, a Division of NUI Corporation, for	)	ORDER ON REMAND
(1) an Increase in Its Rates and Charges, and	)	
(2) Approval of a Mechanism for the Future	)	
Recovery of Manufactured Gas Plant Costs	)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 9, 1999, at 9:30 a.m.

BEFORE: Chairman Jo Anne Sanford, Presiding, and Commissioners Ralph A. Hunt, Judy Hunt, William R. Pittman, J. Richard Conder, Robert V. Owens, Jr., and Robert K. Koger

APPEARANCES:

For NUI North Carolina Gas:

James H. Jeffries IV, Amos, Jeffries & Robinson, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For Carolina Utility Customers Association, Inc.:

James P. West, Attorney at Law, Suite 1735, 2 Hannover Square, 434 Fayetteville Street Mall, Raleigh, North Carolina 27601

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: This matter was previously before the Commission on NUI North Carolina Gas' (NUI NC Gas or the Company) February 17, 1995 application for an increase in its rates and charges pursuant to G.S. 62-133. In those proceedings, a stipulation was reached resolving all matters at issue between the Public Staff and the Company prior to the date set by the Commission for the filing of testimony by the Public Staff.

Carolina Utility Customers Association, Inc. (CUCA), the only other party to the case, did not join in the stipulation between the Company and the Public Staff. As a result, the case came on for hearing before Commissioners Laurence A. Cobb, Charles H. Hughes, and Judy Hunt on June 27, 1995. Following that hearing, and the submission of proposed orders, the Commission issued its Order Granting Partial Rate Increase in which it adopted the rate base, expenses, capital structure, throughput, rate of return, rate design, and other matters set forth in the stipulation between the Company and the Public Staff.

CUCA subsequently appealed three aspects of the Commission's Order Granting Partial Rate Increase to the North Carolina Supreme Court. These were: (1) the Commission's adoption of the stipulated return on common equity of 11.4%; (2) the Commission's failure to adopt a specific cost-of-service study and its approval of the stipulated rate design; and (3) the Commission's continued use of full margin transportation rates.

On July 9, 1998, the North Carolina Supreme Court issued its opinion on CUCA's appeal. This opinion was certified to the Commission on July 29, 1998. In its opinion, the Supreme Court approved the Commission's continued use of full margin transportation rates but rejected the Commission's adoption of the stipulated return on common equity on the grounds that, in adopting the stipulation, the Commission "failed to adduce its own independent conclusion as to the appropriate rate of return on equity" as required by Chapter 62 of the General Statutes. In part, the Supreme Court wrote that:

> [I]t is clear that the Commission adopted wholesale, without analysis or deduction, the 11.4% rate from the partial stipulation, as opposed to considering it as one piece of evidence to be weighed in making an otherwise independent determination.

The Supreme Court also found the Commission's findings on cost of service and rate design inadequate and stated:

> [T]he Commission's insufficient findings regarding cost of service undermine its formulation of the rate of return under section 62-133 and its ultimate adoption of the stipulated rate design.

As a result of these findings, the Supreme Court reversed and remanded the case to the Commission for further proceedings on the cost of common equity and rate design/cost of service.

On December 28, 1998, after receiving and considering recommendations from the parties regarding how to proceed on remand, the Commission issued its Order Scheduling Proceedings on Remand in which it established testimony filing dates, limited such testimony to the issues remanded by the Supreme Court and the test period established for the rate case, and set the remanded issues for hearing before the full Commission on March 9, 1999.

On March 9, 1999, the matter came on for hearing as scheduled in Raleigh, North Carolina.

At the evidentiary hearing, the remand testimony and exhibits of the following witnesses were offered and accepted into evidence:

> For the Company: Raymond A. DeMoine, Director of Rates and Compliance for NUI Corporation, and Robert F. Lurie, Vice President of Corporate Development and Treasurer of NUI Corporation.

For CUCA: Kevin W. O'Donnell, President of Nova Utility Services, Inc.

For the Public Staff: Jan A. Larsen, Utilities Engineer, and John Robert Hinton, Financial Analyst, Economic Research Division, adopting the prefiled testimony of Thomas W. Farmer, Jr., Director, Economic Research Division.

On April 22,1999, the Company filed a Proposed Order and CUCA filed a brief.

Based upon the testimony and exhibits received into evidence at the March 9, 1999, hearing of this matter, the testimony and exhibits received into evidence at the previous hearing of this matter on June 27, 1995, and the record of this proceeding as a whole, the Commission makes the following

FINDINGS OF FACT

1. NUI Corporation, which does business in North Carolina under the name NUI NC Gas, is a corporation organized under the laws of the state of New Jersey and duly registered to do business in North Carolina.

2. NUI NC Gas 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. NUI NC Gas 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. NUI NC Gas' 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 adequate 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. Witness Lurie's testimony and exhibits reflecting his discounted cash flow (DCF) analysis of the cost of common equity capital to NUI NC Gas are credible and should be accorded some weight in establishing the appropriate allowed return on common equity for the Company in this proceeding.

8. Witness O'Donnell's testimony and exhibits reflecting his DCF and comparable earnings analyses of the cost of common equity to NUI NC Gas should be accorded only minimal weight because of numerous flaws and ambiguities in those analyses.

9. Witness Hinton's DCF analysis and supporting comparable earnings study, regression analysis, and comparative return analysis constitute the most compelling evidence of and should be accorded the greatest weight in determining the appropriate cost of common equity to NUI NC Gas for purposes of this proceeding.

10. The stipulation between the Company and the Public Staff constitutes credible evidence of and should be accorded some weight in determining the appropriate cost of common equity to NUI NC Gas for purposes of this proceeding.

11. The Commission's considered judgment based on all of the evidence is that the appropriate cost of common equity for use in this proceeding is 11.4%.

12. The overall weighted cost of capital and fair rate of return to the Company appropriate for use in this proceeding is 9.16%. This overall rate of return is just and reasonable.

13. No allowance for selling and issuance expense is appropriate in this case.

14. NUI NC Gas, the Public Staff, and CUCA presented cost-of-service study results reflecting various customer class rates of return under existing, proposed, and stipulated rates.

15. The primary difference between the cost-of-service studies prepared by NUI NC Gas and the Public Staff on one hand and CUCA on the other were (1) the method used for allocating 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. The other significant differences between these cost-of-service studies were whether they were based on existing end of period rates, the Company's initial proposed rates, or the stipulated rates.

16. CUCA advocated the adoption of and utilized a 100% peak-day allocation method in its cost-of-service study and treated firm service fees and sales differential charges as pipeline capacity charges chargeable solely to peak-day customers. Using its cost-of-service methodology, CUCA calculated the following rates of return for NUI NC Gas' 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%

17. NUI NC Gas and the Public Staff utilized the Seaboard method for allocating fixed gas costs in their respective cost-of-service studies attributing 50% of fixed gas costs on a peak-day basis and 50% of fixed gas costs on an average annual sales basis. NUI NC Gas also treated firm service fees and sales differential charges as gas supply costs. Using its cost-of-service methodology, NUI NC Gas calculated the following rates of return for its various customer classes under the stipulated 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%

Under its cost-of-service study, which incorporated the approved revenue, rate base and expense figures previously approved by the Commission, the Public Staff calculated the following rates of return for various customer classes under the stipulated rates:

Rate Schedule		Return on Stipulated Rates
101	Residential	5.19%
102	Small General	14.35%
104	Large General	8.65%
105	Interruptible	17.76%

18. 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, including differentials between the various classes of customers; the revenue stability of the utility; and economic and political factors, including the encouragement of system expansion.

19. 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, the Public Staff, and NUI NC Gas.

20. The appropriate methodology for allocating fixed gas costs, firm service fees, and sales differential costs is the method utilized by the Company and the Public Staff, and those studies should, therefore, be given the greatest weight in assessing the appropriate rate design to be adopted in this case.

21. The most appropriate allocation of revenues, rate base, and expenses in this proceeding for use in evaluating the cost to serve the various customer classes of NUI NC Gas is that found in the cost-of-service study conducted by Public Staff witness Larsen.

22. Because the cost-of-service study results offered by CUCA are based on an improper allocation of fixed gas costs, firm service fees, and sales differential charges, the results of that study should be accorded only minimal weight in assessing the appropriate rate design to be utilized in this case.

NATURAL GAS - RATES

23. The cost-of-service studies utilizing the appropriate fixed gas cost allocation methodology presented in this proceeding show that higher rates of return exist under the stipulated rates for small general, large general, and interruptible customers than for residential customers and that the rate of return on the residential customer class is below the Company's overall rate of return. Testimony provided by Company witness Carl and Company witness DeMoine clearly show that the vast majority of rate increase granted in this case falls on residential customers and that interruptible customers receive a decrease in rates under the stipulated rates.

24. CUCA advocates moving to a rate design where the difference in rates of return between residential and interruptible customer classes would be no more than 2.5%.

25. NUI NC Gas does not oppose some movement toward greater equalization of the rates of return for the various customer classes and has pursued such equalization in its prior two rate proceedings resulting in lower rates for industrial customers and increased rates for residential customers. In this proceeding, NUI NC Gas and the Public Staff have agreed to further equalization in the stipulated proposed rates shown on Schedule II to the Stipulation. These rates result in the following percentage changes in NUI NC Gas's existing rates:

Rate Schedule		% Increase from Existing Rates
101	Residential	6.21%
102	Small General	0.98%
104	Large General	0.50%
105	Interruptible	0.00%

26. NUI NC Gas' residential customers, unlike its large commercial and industrial customers, have very little ability to switch to alternate fuels without incurring prohibitive expenses. NUI NC Gas' 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. Further, many industrial customers have the ability to switch between sales and transportation service on short notice in order to take advantage of pricing differentials in the purchased cost of gas which is not possible for residential customers. These factors, among others, justify higher rates of return from commercial and industrial customers and lower rates of return from residential customers.

27. Rates based solely on equalized rates of return or the costs of providing service to the various customer classes are not reasonable for purposes of this proceeding.

28. Based upon the Commission's analysis and independent determinations, the proposed rates set forth in the Stipulation are appropriate for purposes of this proceeding, are just and reasonable, and do not subject any customer or class of customers to rate shock or unjust or discriminatory rates.

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

The findings of fact and conclusions set forth in Findings and Conclusions 1-5 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, 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 12 months ended September 30, 1994. In its Order of March 14, 1995, the Commission ordered the parties to use a test period consisting of the 12 months ended September 30, 1994, with appropriate adjustments. This test period was not contested by any party.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-13

The starting point for the Commission's determination of the appropriate cost of common equity for NUI NC Gas in this proceeding is G.S. 62-133(b)(4). This provision, as one step in the process of establishing rates for public utility services, requires the Commission to:

> Fix such rate of return on the cost of the property ascertained [to be used and useful in providing service to the public] pursuant to subdivision (1) as will enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are fair to its customers and to its existing investors.

While public utilities are subject to rate of return regulation by the Commission, the Commission's authority in this respect is not plenary. To the contrary, the Commission's discretion in establishing an allowed rate of return for NUI NC Gas is bounded by the legal duty to ensure that such rate is neither too high nor too low.

The duty to ensure an adequate allowed return on equity is incorporated into the express terms of G.S. 62-133(b)(4). Moreover, such duty has constitutional underpinnings. Failure to establish an adequate return would both violate G.S. 62-133 and constitute an unlawful taking under both the United States and North Carolina Constitutions. This requirement to establish an adequate return on common equity was recognized by the Supreme Court in its opinion reversing our prior Order Granting Partial Rate Increase in this proceeding. In that opinion, and after noting that public utilities are subject to the substantial regulatory requirements of Chapter 62 of the General Statutes, the court stated that:

> While Public Utilities are subject to such regulation, in all other respects they are private, investor-owned companies, and they must be allowed to attract from volunteer investors, within our free enterprise system, such additional capital as is

periodically required for the expansion or improvement of services. Utilities accomplish this by offering their shareholders and other potential investors the opportunity to earn a return on investment that, in light of the potential risk, outweighs or is at least comparable to returns available in other investment options.

Thus, in determining the cost of common equity to NUI NC Gas, this Commission must establish such cost at a level that permits NUI NC Gas both to maintain its facilities and services and to compete for capital on terms that are fair to its shareholders.

The Commission has a concurrent duty, however, to ensure that the rate of return allowed for NUI NC Gas is no higher than is necessary to meet the standards of G.S. 62-133:

> [t]he legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the due process clause of the Fourteenth Amendment of the Constitution of the United States, those of the State Constitution, Art. I, Sec. 19, being the same in this respect.

State ex rel. Utilities Comm'n v. Public Staff -- North Carolina Utilities Comm'n, 323 N.C. 481, 490, 374 S.E.2d 361, 366 (1988) (quoting State ex rel. Utilities Comm'n v. Duke Power Co., 285 N.C. 377, 388, 206 S.E.2d 269, 276 (1974)).

The question of what constitutes a fair rate of return on equity for NUI NC Gas in this case is "a conclusion of law that must be predicated on adequate factual findings." State ex rel. Utilities Comm'n v. Carolina Utility Customers Assoc., Inc., 342 N.C. 452, 500 S.E.2d 693 (1988). Notwithstanding this fact -- and assuming the presence of an adequate factual predicate for its findings -- the Commission's determination of this issue involves the exercise of some degree of subjective judgment on its part. The subjective nature of the Commission's determination of this issue as part of its ratemaking responsibilities is well established. State ex rel. Utilities Comm'n v. Duke Power Co., 305 N.C. 1, 23, 287 S.E.2d 786, 799 (1982) ("Under G.S. Sec. 62-133 the determination of what constitutes a fair rate of return requires the exercise of a subjective judgment by the Commission."); State ex rel. Utilities Comm'n v. Public Staff -- North Carolina Utilities Comm'n, 323 N.C. 481, 490, 374 S.E.2d 361, 366 (1988) ("Under N.C.G.S. Sec. 62-133 the determination of what is a fair rate of return requires the exercise of subjective judgment."); State ex rel. Utilities Comm'n v. Public Staff -- North Carolina Utilities Comm'n, 322 N.C. 689, 693, 370 S.E.2d 567, 570 (1988) ("What constitutes a fair rate of return on equity . . . is ultimately a matter of judgment. Matters of judgment are not factual; they are conclusory and based ultimately on various factual considerations."); State ex rel. Utilities Comm'n v. Mebane Home Telephone Co., 298 N.C. 162, 178, 257 S.E.2d 623, 634 (1979) ("The setting of rates which are reasonable and . . . fair to both the public and the investor requires an exercise of judgment.").

Mindful of its obligations both to keep rates as low as is constitutionally permissible, and to allow the Company a sufficient return on common equity to permit it to maintain it facilities and services and compete in the capital markets on terms that are fair to the Company, its shareholders, and customers, the Commission has determined on the evidence presented in this proceeding that the Company should be permitted the opportunity to earn an 11.4% return on its common equity. The evidentiary and legal basis upon which the Commission bases its conclusion in this regard is discussed below.

The evidence presented in this proceeding on the issue of the appropriate cost of common equity for NUI NC Gas is contained in the testimony and exhibits of Robert Lurie, Kevin O'Donnell, and Robert Hinton. An additional material piece of evidence on this subject is the Stipulation submitted by the Company and the Public Staff. The Commission has carefully considered each of these and has concluded that 11.4% is the appropriate cost of common equity for use in this proceeding.

Company witness Lurie submitted a DCF analysis of the cost of capital to NUI NC Gas in his direct testimony in this proceeding. That analysis was contained in exhibits RFL-1 through RFL-7. The results of this analysis reflected a cost of common equity to NUI NC Gas of 12.97% and an adjustment for selling and issuance expense of 0.37%. In formulating his DCF analysis, witness Lurie utilized a proxy group of comparable companies which he selected based on two factors: (1) derivation of similar percentages of overall revenues from local natural gas distribution and (2) similar levels of total capitalization. Using these criteria, witness Lurie selected a proxy group of eight comparable companies. Consistent with the DCF methodology, witness Lurie then calculated the dividend yield and estimated growth rates for the common stock of these companies using information obtained from Value Line Investment Survey, Utility Compustat II, and the Wall Street Journal. The individual DCF cost of equity for each of these companies ranged from 11.75% to 15.79%. The average dividend yield for the proxy group as a whole was 6.58%, and the average estimated growth rate was 6.40%. The average DCF cost of common equity for the proxy group as a whole was 12.97% which witness Lurie adopted as his recommended cost of common equity. Witness Lurie also recommended a 0.37% adjustment for costs associated with issuing and selling securities.

Following the submission of the Stipulation between the Company and the Public Staff, witness Lurie filed rebuttal testimony in which he supported the stipulated return on equity of 11.4% as a reasonable compromise in the context of an overall settlement of the case with the Public Staff.

In his remand testimony, Company witness Lurie testified that, in his view, his initial DCF analysis was valid and continued to be sound evidence on the cost of common equity for purposes of this proceeding.

The Commission has reviewed witness Lurie's testimony and exhibits, including his DCF analysis, and finds them to be credible evidence of the cost of capital to NUI NC Gas for purposes of this proceeding. His DCF analysis is consistent with DCF studies considered by the Commission in other rate proceedings. Further, the methodology used by witness Lurie to arrive at each component of his DCF analysis is clear from his testimony and exhibits and the results of his analysis are mathematically derived and readily comprehensible.

CUCA witness Kevin O'Donnell utilized the DCF and comparable earnings approaches in arriving at his recommendation as to the cost of common equity. On the basis of these studies, witness O'Donnell recommended a common equity cost rate of 10.4%. He further recommended a flotation adjustment for the cost of issuing securities of 15 basis points or 0.15%. These recommendations were based on a range of cost rates that witness O'Donnell considered appropriate based on his DCF and comparable earnings studies. The range selected by witness O'Donnell in conjunction with his DCF study was 9.9% to 10.4%. This range included a growth rate of 4.0% to 4.5% and a corresponding dividend yield of 5.9%. On the basis of his comparable earnings study, witness O'Donnell concluded that a range of 10.0% to 11.0% was appropriate for the projected cost of common equity to NUI NC Gas.

In conducting his DCF analysis, witness O'Donnell used a proxy group of 17 comparable companies, which he selected based on their inclusion in the Natural Gas Distribution Industry Group listed in *The Value Line Investment Survey* and provided their Standard and Poor's stock ratings were either B+, B, or B-. In constructing his DCF analysis, witness O'Donnell calculated multiple dividend yield figures and multiple growth rates utilizing a variety of methods and sources of information. Dividend yields were distinguished based on 26, 13, and 4 week averages, and the growth rates were calculated based on historical, plowback, and forecasted figures. Depending on which growth rate was matched with which dividend yield figure, the resulting DCF cost of equity for the individual companies in witness O'Donnell's proxy group ranged from -6.2% to 14.6%. The overall average DCF cost of equity for witness O'Donnell's proxy group as a whole varied from 6.5% to 11.2% depending on which average dividend yield was matched with which average growth rate.

In witness O'Donnell's comparable earnings analysis, he analyzed the actual historical reported returns on equity achieved by a wide variety of industries over a 10-year period and then presented similar information for his DCF proxy group of companies. Based on these figures, witness O'Donnell concluded that the cost of equity capital for NUI NC gas appropriate for use in this proceeding was between 10% and 11%.

The Commission has carefully reviewed witness O'Donnell's DCF analysis and his comparable earnings study and is troubled by a variety of factors which, in the Commission's opinion, reduce the overall credibility and persuasiveness of those studies.

With respect to witness O'Donnell's DCF study, the Commission has a number of concerns. First, the Commission is concerned with the preponderance of historical figures utilized in witness O'Donnell's DCF study. While some use of historical figures is appropriate in a DCF study, it is primarily a forward looking economic methodology aimed at determining the cost of equity capital in the future. That goal is consistent with the Commission's task in this proceeding. In his rebuttal testimony, Company witness Lurie criticized witness O'Donnell's reliance on historical figures as contrary to the theoretical basis of DCF studies and also noted that witness O'Donnell did not adjust historical figures to account for known facts, such as the issuance date of future dividends. Notably, witness O'Donnell himself indicated in his testimony that recent financial problems experienced by NUI NC Gas and other companies in his proxy group required investors to discount historical performance and concentrate on future prospects. The Commission finds merit in witness Lurie's observations regarding witness O'Donnell's DCF analysis and is concerned, in this instance, that over-reliance on historical information in witness O'Donnell's analysis may have resulted in inaccurate or skewed results.

Second, the wide range and number of dividend yields and growth rates shown in witness O'Donnell's study and the number of methodologies he used to arrive at those figures tend to obfuscate rather than clarify the appropriate cost of common equity for NUI NC Gas. By way of example, witness O'Donnell utilized four different methods of calculating growth rates for each of the 17 companies in his proxy group. These calculations, which are shown on Exhibit KWO-3, result in 68 individual growth rate figures. These individual company specific figures vary significantly but even the average growth rates for all 17 companies under each of the four methodologies range from a low of 0.4% to a high of 5.0%. Further, only 5 of the 68 growth rate figures for witness O'Donnell's proxy group shown on Exhibit KWO-3 fall within his recommended growth rate range of 4.0% to 4.5%, and none of the calculated growth rates for NUI NC Gas fall within that range. As Company witness Lurie testified, the choice of methodology used to calculate growth rates can have a significant impact on the resulting figures and that phenomenon is readily apparent from CUCA witness O'Donnell's DCF analysis. With respect to dividend yields, witness O'Donnell utilized 3 different methods -- a 26-week average, a 13-week average and a 4-week average -- to arrive at values for his proxy group. Only 3 of these 51 values correspond to his recommended dividend yield for NUI NC Gas of 5.9%. In short, the Commission is much concerned with respect to the wide range of dividend yields and growth rates produced by witness O'Donnell's analysis and the lack of a clear connection between those rates and the ultimate recommendations of witness O'Donnell regarding the cost of common equity for NUI NC Gas.

Third, witness O'Donnell's conclusion that a range of 4.0% to 4.5% is appropriate for use as the Company's growth rate is not consistent with his own DCF calculation of that rate (5.1% for the Company and 5.0% for the proxy group). Moreover, as acknowledged by witness O'Donnell, his adjustments to the calculated rates are derived from his unsubstantiated personal opinions regarding future developments in the market for equity capital. Inasmuch as his calculated results are based on information provided by *The Value Line Investment Survey* and other respected reporters of actual and projected economic performance, the Commission is hesitant to accept significant adjustments to those figures without concrete substantiation of the basis for such adjustments. We do not find witness O'Donnell's uncorroborated and subjective beliefs regarding investor expectations and future market performance to meet this standard.

Fourth, witness O'Donnell's ultimate calculation of the DCF cost of common equity for NUI NC Gas does not match his ultimate, and substantially lower, recommendation of an allowed return on equity for the Company of 10.4 %. The Commission notes that if the mathematical results of witness O'Donnell's DCF study are used, the resulting DCF cost of common equity for NUI NC Gas is 11.0% based on a dividend yield of 5.9% and a dividend growth rate of 5.1%. Rather than rely on this number, however, witness O'Donnell makes what appears to be a speculative and substantial downward adjustment based in part on the results of his comparable earnings analysis.

Fifth, witness O'Donnell's calculated DCF cost of common equity of 11% for the Company is itself materially lower than his proxy group calculated DCF cost of 11.2%, which was based on a dividend yield rate of 6.2% and a forecasted growth rate of 5.0%. No explanation is provided by witness O'Donnell as to why he appears to have relied exclusively on the Company's DCF results in formulating his recommended return. It appears to the Commission that witness O'Donnell has used the proxy group computations solely as a check on his Company specific calculations.

Sixth, the Commission is concerned about the effect that adopting a 10.4% cost rate for common equity would have on NUI NC Gas' financial stability. Witness O'Donnell's testimony indicates that his recommended cost of common equity would result in a pretax interest coverage ratio of 2.63 times. Witness Lurie testified that the Standard & Poor's ratings standards call for a ratio of 2.75 times for BBB rated companies, like NUI NC Gas, and that a pretax interest ratio below 2.75 times would endanger NUI NC Gas' current bond rating and ability to attract capital.

Seventh, witness O'Donnell's proxy group contains companies that are either significantly larger than NUI NC Gas or receive a significant percentage of their revenues from activities other than natural gas distribution, both of which indicate that these companies may not be comparable in risk to NUI NC Gas.

Eighth, in witness O'Donnell's calculation of growth rates he uses a value of zero for dividend growth rates reported as not meaningful in his analysis. As noted by Company witness Lurie, "Not Meaningful" dividend growth rates are not equivalent to growth rates of zero and when used as such in averaging calculations in the DCF process artificially deflate the resulting growth rate figures.

In sum, the Commission accepts witness O'Donnell's DCF study as of some evidentiary value in determining the future cost of common equity to NUI NC Gas in this proceeding; however, because of the factors identified above, the Commission attaches only minimal weight to this study.

The Commission is also concerned about the consistency and validity of witness O'Donnell's conclusions derived from his comparable earnings analysis. For example, and as witness O'Donnell acknowledged on cross-examination, this study reveals that the industry average achieved return on equity for natural gas utilities in 1994 was 10.9%. For his DCF proxy group, however, witness O'Donnell calculated a four-year average achieved return of 10.0%. The disparity between these two numbers suggests to the Commission either that witness O'Donnell's proxy group is not representative of natural gas distribution companies generally or that the results of his comparable earnings analysis are skewed downward by the use of aged data. While the Commission perceives no harm from examining comparable earnings data, that data may or may not be ultimately helpful to the determination of an allowed return on equity. In this case, the Commission believes that witness O'Donnell's comparable earnings analysis, and particularly the conclusions and recommendations that he makes based on that study, are not significantly helpful to the Commission.

Despite its criticism of witness O'Donnell's study, the Commission acknowledges that comparable earnings studies have value in the ratemaking process. In the circumstances of this case, however, and as discussed herein, the Commission does not believe that witness O'Donnell's comparable earnings study should be accorded more than minimal weight in determining the appropriate cost of common equity for purposes of this proceeding.

Public Staff witness Hinton also submitted a DCF analysis of the cost of common equity for NUI NC Gas. This analysis was contained in the testimony and exhibits of Public Staff witness Farmer which was adopted by Public Staff witness Hinton at the time of the hearing. The results of this analysis reflected a cost of common equity to NUI NC Gas of 11.4%. Witness Hinton also utilized a comparable earnings analysis, a regression analysis, and a comparison of allowed returns on equity in various states as a check on the reasonableness of his DCF results. Finally, witness Hinton considered the results of his DCF analysis by comparing it to the Standard & Poor's bond rating criteria.

In selecting his proxy group, witness Hinton identified natural gas distribution companies with comparable risk factors to those faced by NUI NC Gas. Witness Hinton used four risk factors in his screening for comparable companies. These were the Value Line Beta Coefficient (a measure of stock sensitivity to overall fluctuations in the market), the Value Line Safety Ranking (a measure of potential risk associated with a company's stock), the Standard & Poor's Common Stock Ranking (a measure of the stability and growth of earnings and dividends), and Standard & Poor's Debt Rating (a measure of the risk associated with holding general debt obligations). Based on his evaluation of these factors, witness Hinton selected a proxy group for his DCF analysis consisting of 15 gas distribution companies out of the 25 natural gas distribution companies listed in *The Value Line Investment Survey*. Notably, this group included all but one of the companies included in witness Lurie's proxy group but only 7 of the 17 companies in witness O'Donnell's proxy group. Witness Hinton then utilized a variety of financial reports to arrive at a dividend yield and various projected growth rates for the individual companies. The dividend yields for the proxy group companies ranged from 4.9% to 6.9% and averaged 6.0%. The company growth rates averaged between 3.3% and 5.8%. Based on this analysis, witness Hinton concluded that the cost of common equity to NUI NC Gas was in the range from 10.6% to 11.6%, based on a dividend yield of 6.0% and a growth rate of 4.6% to 5.6%. From this range, witness Hinton recommended 11.4% as the best point estimate of the cost of common equity to NUI NC Gas. The average growth rates calculated by witness Hinton in his DCF analysis excluded all negative individual growth rates. He testified that negative growth rates are inconsistent with the expectations of rational investors. Furthermore, he testified that CUCA witness O'Donnell's use of individual negative growth rates in the calculation of his average growth rates was inappropriate since negative returns would be counter to investors' rational expectations.

Witness Hinton then evaluated the reasonableness of his DCF analysis by conducting a comparable earnings study of both his proxy group and the 26 companies contained in *The Value Line Investment Survey*. In doing so, however, witness Hinton recognized several factors inherent in comparable earnings studies that require the exercise of caution in relying on these studies. These factors were: (1) that earned returns on equity are rarely equal to allowed returns and (2) that earned returns are often affected by factors beyond the control of the company including weather, interest rates, and inflation. The results of witness Hinton's study revealed that average and median rates of earned returns for both his proxy group and *The Value Line Investment Survey's* 26 companies have been relatively stable and have been distributed largely within the range of 10.6% to 11.6%.

Witness Hinton then conducted a further check on his DCF results using a regression analysis, which was the method used by the Commission to set the cost of common equity for Public Service Company of North Carolina, Inc., in the immediately prior natural gas distribution company rate case. That analysis resulted in an indicated cost of common equity of 11.91%.

Witness Hinton also examined recently allowed returns on common equity by other state public service commissions as a check on the reasonableness of his DCF analysis. The results of this check showed that the average allowed return on common equity reported by witness Hinton for the years 1992 through 1994 was 11.53%. This analysis was consistent with information previously provided by Company witness Lurie in his rebuttal testimony, which indicated that the average approved return on common equity for natural gas local distribution companies on a nationwide basis for the last quarter of 1994 - based on 16 separate rate cases - was in the range of 11.64%.

Finally, witness Hinton compared his DCF result to Standard & Poor's pretax interest coverage ratio standards and concluded that his recommended cost of common equity would allow the Company to qualify for a BBB+ rating, which would assist the Company in accessing the capital markets on reasonable terms.

In his remand rebuttal testimony, CUCA witness O'Donnell advocated *The Value Line Investment Survey's* forecasted return on equity over the period 1998 through 2000 of 10.5% as supportive of his recommendation of 10.4% for the cost of common equity. In the summary of his remand testimony, witness Hinton provided *The Value Line Investment Survey's* forecasted returns on equity for both his and witness O'Donnell's comparable groups of companies. He stated that *The Value Line Investment Survey's* average forecasted return on common equity for his comparable Group A for 1998 through 2000 was 12.5%. The average of all forecasted returns for his Group A for 1995, 1996, and 1998 through 2000 was 11.8%. For witness O'Donnell's comparable group, the average forecasted return on common equity for 1998 through 2000 was 12.7%. The average of all forecasted returns for 1995, 1996, and 1998 through 2000 was 11.7% for witness O'Donnell's group. Public Staff witness Hinton reiterated that NUI must compete in the capital markets with companies in his and CUCA witness O'Donnell's comparable groups. Witness Hinton believed that an allowed return on equity of 11.4% would allow NUI NC Gas an opportunity to attract capital at reasonable rates.

The Commission has considered witness Hinton's DCF analysis and supporting studies and believes that they are sound and constitute the best evidence of the cost of common equity to NUI NC Gas presented in this case. While there are similarities in the approaches of witness Hinton and witness O'Donnell in calculating the cost of common equity to NUI NC Gas, the Commission notes that witness Hinton's studies reveal dividend yields and projected growth rates that are flatter and more stable than those contained in witness O'Donnell's studies. Further, the subjective and uncorroborated nature of several of the adjustments in witness O'Donnell's studies are not present in witness Hinton's studies nor is the reliance on a comparable earnings analysis as part of the basis for establishing NUI NC Gas' cost of capital. Finally, the Commission concludes that the criteria used by witness Hinton to select his group of comparable companies is the most reasonable.

The last evidence considered by the Commission in determining the cost of common equity to NUI NC Gas is the Stipulation entered into between the Company and the Public Staff. As the Supreme Court discussed in its opinion in this case, the Commission should and must consider the Stipulation between the Public Staff and the Company as part of the evidence in this case. That Stipulation provided for a return on common equity of 11.4%, which constituted a substantial reduction from the Company's requested return on equity of 12.97%. It is clear from the testimony of Public Staff witness Hinton that the DCF analysis ultimately presented by witness Hinton was completed prior to the date the Stipulation was reached with the Company and formed the basis for the Public Staff's willingness to enter into that portion of the Stipulation dealing with the cost of common equity to the Company. In light of the duty of the Public Staff to represent the using and consuming public, including industrial ratepayers, the completion of the Public Staff's DCF analysis prior to its entry into the Stipulation, the much greater persuasiveness of the evidence offered by the Public Staff, the substantial reduction in the cost of common equity reflected in the Stipulation as compared to the Company's requested cost rate, and the similarly substantial reduction in overall revenue requirement for the Company that resulted from the Stipulation, the Commission concludes that the Stipulation constitutes credible evidence as to the appropriate cost of common equity that should be adopted for purposes of this proceeding.

Based on each of the factors and all of the evidence discussed above and in consideration of the entire evidence of record, it is the Commission's considered judgment that 11.4% is the reasonable and appropriate cost of common equity to NUI NC Gas for purposes of this proceeding. Therefore, such cost rate is hereby adopted for use by the Commission herein. This 11.4% cost of common equity is well within the middle of the range of allowed returns supported by the evidence in this proceeding (and is, in fact, the precise return recommended by the Public Staff), is consistent with allowed returns for other natural gas local distribution companies in North Carolina and elsewhere, will permit the Company to compete in the capital markets on terms that are fair to its customers and shareholders. Utilizing this allowed return on common equity and the previously approved capital structure and cost rate for debt yields an overall rate of return for the Company of 9.16%, which the Commission finds to be just and reasonable.

The Commission declines to provide an allowance for selling and issuance expense for the reason that no such expenses were incurred during the test period in this case.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14-28

The evidence relating to the cost of service and rate design appropriate for use in this proceeding can be found in the testimony and exhibits of James W. Carl, Raymond A. DeMoine, Kevin W. O'Donnell, and Jan A. Larsen. In addition, the Commission has also considered the provisions of the Stipulation between the Company and the Public Staff as to rate design. On the basis of this evidence, as discussed below, the Commission concludes that the rates set forth in the Stipulation are just and reasonable and appropriate for use in this proceeding.

NUI NC Gas witness Carl filed several cost-of-service studies with the Company's initial application in this proceeding. These studies, which varied only as to the method of determining the demand and customer cost components were based on the "minimum pipe size" theory or the "zero-intercept" method. Witness Carl's minimum pipe size study utilized a two inch minimum pipe size whereas his "zero intercept" study relied on a regression analysis to arrive at a theoretical cost model for a distribution pipe with no diameter. As testified to by witness DeMoine, the studies were very complex and contained 25 to 30 separate allocation factors for various costs. The purpose of both these studies was to provide information on cost allocation between customer classes as part of the rate design process. The results of witness Carl's cost-of-service studies, which are reflected in Exhibits JWC-3 through JWC-6 and RAD-1 through RAD-4, reflect cost apportionment and rate of return across the Company's various customer classes for both the existing approved rates and the Company's proposed rates. The rates of return reflected in the results of witness Carl's cost-of-service studies are as follows:

Two Inch Minimum Pipe Size Study

Rate Schedule		Rate of Return On Existing Rates	Rate of Return On Proposed Rates
101	Residential	0.13%	5.08%
102	Small General	16.97%	15.59%
104	Large General	16.50%	21.06%
105	Interruptible	23.74%	22.61%

Zero Inch Study

Rate Schedule		Rate of Return On Existing Rates	Rate of Return On Proposed Rates
101	Residential	2.05%	8.08%
102	Small General	12.78%	11.63%
104	Large General	8.31%	11.39%
105	Interruptible	12.47%	11.74%

In his cost-of-service studies, witness Carl allocated fixed gas costs based on the Seaboard method. This method generally assigns half of the Company's fixed gas costs on a peak-day demand basis and the other half on an annual usage basis. According to witness Carl, this method was consistent with the methodology used by the Company and adopted by the Commission in prior rate proceedings and more fairly allocates costs on the basis of how the gas was actually used. Witness Carl also 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 highly subjective in nature and that they were not the sole factor the Commission should consider in setting rates.

Subsequent to the filing of the results of witness Carl's initial cost-of-service study results, the Company and the Public Staff entered into a Stipulation resolving all issues in this case between them. This Stipulation called for a different rate design than that proposed by the Company in its original application. Witness Carl did not republish his cost-of-service study results based on the new stipulated rate design. He did, however, testify that the rates of return for the various customer classes resulting from the stipulated rates were as follows:

Rate Schedule		Return on Stipulated Rates
101	Residential	3.68%
102	Small General	23.67%
104	Large General	18.12%
105	Interruptible	19.02%

Because witness Carl no longer is employed by NUI NC Gas, witness DeMoine adopted witness Carl's testimony and republished his exhibits in the remand proceedings. CUCA attempted to impeach witness DeMoine's sponsorship of the Company's allocation methodology by referring to testimony filed by witness DeMoine on behalf of Elizabethtown Gas Company in a New Jersey gas cost recovery proceeding. The Commission has considered this testimony but finds it to be of little consequence to this proceeding because of the numerous and obvious differences between a gas cost recovery docket for Elizabethtown Gas Company in New Jersey and the submission of a cost-of-service analysis for an NUI NC Gas rate case in North Carolina.

CUCA witness O'Donnell did not conduct or file a complete cost-of-service study in this proceeding. Instead, he adopted the Company's two inch study and simply reallocated several components of the Company's fixed costs. This reallocation resulted in the assignment of all responsibility for fixed costs on a peak-day basis and also involved the reallocation of firm service fees and sales differential charges to peak-day customers as well. In his testimony, CUCA witness O'Donnell also urged the Commission to adopt a single cost-of-service study and utilize it for setting rates in this proceeding. Witness O'Donnell calculated rates of return for the various customer classes utilizing the Company's proposed rates and witness O'Donnell's reallocation of fixed costs, firm service fees, and sales differential charges as follows:

Rate Schedule		Return on Proposed Rates
101	Residential	2.67%
102	Small General	11.20%
104	Large General	25.20%
105	Interruptible	39.78%

Witness O'Donnell also calculated the rates of return by customer class under the Stipulation again allocating fixed costs on a peak-day method and allocating firm service fees and sales differential charges to peak customers. The results of this calculation are as follows:

Rate Schedule		Return on Stipulated Rates
101	Residential	1.10%
102	Small General	16.54%
104	Large General	24.25%
105	Interruptible	38.98%

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 minimize the differences in 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 customer classes did not justify the current rate of return differentials. Witness O'Donnell's risk analysis compared the projected rates of return for the various customer classes to the returns associated with various financial instruments. This approach, according to witness O'Donnell's own testimony, is based on assuming away such issues as the Company's duty to serve customers that request and qualify for service from the Company.

Witness Carl criticized witness O'Donnell's approach on the grounds that it was too narrowly focused 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. Witness Carl also demonstrated that the suggested rate differential which witness O'Donnell proposed would result in a significant shortfall in the operating revenues which witness O'Donnell testified the Company should receive under his return on equity analysis.

Witness 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. Witness Carl indicated that the stipulated rates resulted in no increase in the rates paid by Interruptible customers and increases of less than one percent for small general and large general customers.

Finally, witness 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 customer classes, along with a number of other factors, justified varying rates of return. Witness Carl noted that he specifically examined industrial throughput in looking at rate design issues in this case and noted that industrial usage of NUI NC Gas' system had increased by 58% over the previous seven-year period for customers that had the ability to negotiate rates.

Public Staff witness Larsen also submitted a cost-of-service study. That study utilized the zero intercept method and assigned fixed gas cost responsibility on a basis similar to that utilized by Company witness Carl. Witness Larsen described the fixed cost allocation methodology he used as follows:

> [T]hose services used only on peak day are allocated on peak-day send-out. If the service is utilized in the winter, it is allocated based on normalized winter sales. Costs associated with services utilized all year, such as Firm Transportation (FT), are allocated on a combination of peak day and annual sales. The Public Staff has consistently recommended this method of allocating fixed gas costs based on system utilization, and the Commission has historically concurred with this method of allocating fixed gas costs.

Public Staff witness Larsen calculated the following rates of return based on his zero intercept cost-of-service methodology and assignment of fixed gas costs and the stipulated rates.

Rate Schedule		Rate of Return On Existing Rates	Rate of Return On Stipulated Rates
101	Residential	2.13%	5.19%
102	Small General	13.52%	14.35%
104	Large General	8.17%	8.65%
105	Interruptible	17.81%	17.76%

The final evidence regarding cost of service and rate design is the Stipulation between the Company and the Public Staff. The Stipulation represents a comprehensive agreement between the Public Staff and the Company regarding all issues in this case, including rate design, and results in roughly a 50% decrease in the Company's initially proposed revenue requirement. The testimony of Public Staff witness Larsen indicates that his cost-of-service study was completed prior to submission of the stipulation and formed the basis for the stipulated rate design.

The Commission has carefully examined all of the evidence presented by the parties regarding cost of service and rate design and has reached a number of conclusions regarding that evidence and appropriate rate design for use in this proceeding. These conclusions are set forth below.

First, as the evidence in this case demonstrates, cost-of-service studies are highly subjective in nature notwithstanding their appearance of mathematical certainty. The various studies presented in this proceeding indicate that the results of such studies can vary dramatically depending upon the methodology used, the approach to allocating fixed costs, the overall revenues to be collected from each customer class, the assignment of costs other than fixed gas costs to the various customer classes, the overall rate of return reflected in the customer class rates of return, and other factors. This phenomenon is easily demonstrated in this case where CUCA witness O'Donnell calculated a rate of return for interruptible customers of more than 38% on the stipulated rates while Public Staff witness Larsen's rate of return calculation for exactly the same customers using exactly the same rates is less than 18%. In light of the subjective and highly variable nature of these studies, the Commission has consistently held that it is not appropriate to adopt a specific study in conjunction with establishing rates for natural gas companies and declines to do so in this case. The Commission does believe that such studies provide useful information to the rate design process and has considered each of the studies and study results presented in this proceeding.

Second, the Commission has historically authorized higher rates of return on industrial and commercial customers than on residential customers with respect to virtually every public utility service regulated by the Commission, including natural gas distribution. This historical trend has been changing over the last decade as electricity, telephone, and natural gas services tend toward more market driven regulation. Public Staff witness Larsen testified that all natural gas rate cases before the Commission in the last 10 years have shifted costs from industrial customers to residential customers. The trend toward more levelized rates of return between the various customer classes of NUI NC Gas was testified to by Company witnesses Carl and DeMoine. The net effect of the stipulated rates on the relationship between residential and commercial/industrial rates as a result of the stipulated rates in this case is best illustrated by Company witness Carl's calculation of the net effect of the rate changes resulting from the Stipulation.

Rate Schedule		% Increase from Existing Rates
101	Residential	6.21%
102	Small General	0.98%
104	Large General	0.50%
105	Interruptible	0.00%

This chart indicates that roughly 81% of the revenue increase allowed by the Commission in this proceeding will be assigned to residential customers under the stipulated rates.

Third, the Commission does not believe that it is appropriate to establish rates for various customer classes on the basis of cost alone. 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 witnesses Carl and DeMoine. The Commission continues to believe that factors such as fuel switching, the ability to negotiate discounted rates, and the ability to switch between sales and transportation services in order to take advantage of price differentials in the commodity cost of gas justify higher rates of return for industrial customers. And while these factors should be considered in setting rates, the relative value of these factors is subjective in nature. Further, the Commission does not find witness O'Donnell's "economic risk" analysis completely meaningful in the context of selecting appropriate rates for various customer classes because it focuses solely on his perception of the risk to serve various customer classes and does not take into consideration NUI NC Gas' service obligations or the factors identified above.

Fourth, the Commission believes that the fixed gas cost allocation methodology recommended by the Public Staff most properly allocates these costs on the basis of how and why they are incurred. The Commission also believes that Public Staff witness Larsen's cost-of-service studies are the best and most credible cost-of-service evidence presented because they are based on the appropriate fixed gas cost allocation methodology and incorporate the previously approved rate base, revenue requirements, and other figures from the unchallenged portions of the Commission's prior Order Granting Partial Rate Increase in this proceeding. The Commission also believes that adoption of the peak-day methodology recommended by CUCA is inappropriate because it would fail to allocate any fixed gas cost responsibility to customers that are responsible for a large percentage of the annual throughput on NUI NC Gas' system. Accordingly, the Commission rejects CUCA's proposal to allocate fixed costs on a peak-day basis. This decision by the Commission, as testified to by Public Staff witness Larsen, is consistent with its prior decisions on allocation of fixed gas costs. As a result of this decision, the customer class rates of return provided by witness O'Donnell are not meaningful because they are based on a peak-day, fixed-gas cost allocation methodology.

In light of the foregoing, and after careful consideration of the arguments, testimony, and exhibits of CUCA, the Public Staff, and the Company relating to cost-of-service studies and rate design, and in consideration of all other evidence of record, the Commission concludes that the rates and rate design contained in the Stipulation are just and reasonable and do not subject any customer class to either rate shock or unfair or discriminatory rates.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates placed into effect subsequent to the Commission's Order Granting Partial Rate Increase, issued in this docket on September 20, 1995, are hereby affirmed.

2. That NUI NC Gas shall file with the Commission for its approval, not later than 10 days from the date of this Order, a proposed customer notice informing its customers of this decision. Upon approval by the Commission, NUI NC Gas shall send such notice to its customers as a bill insert in the next billing cycle first following the date of the Order approving said bill insert.

ISSUED BY ORDER OF THE COMMISSION

This the 18th day of August, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mb081799.01

Commissioners Robert K. Koger and Sam J. Ervin, IV did not participate in this decision.

DOCKET NO. G-3, SUB 218

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of NUI Corporation d/b/a	)	
NUI North Carolina Gas, for Approval of	)	ORDER ON ANNUAL REVIEW
Gas Costs and Gas Purchasing Policies	)	OF GAS COSTS
for the Period May 1, 1998 through	)	
April 30, 1999.	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on September 14, 1999

BEFORE: Commissioner William R. Pittman, Presiding; Commissioner Ralph A. Hunt and Commissioner Judy Hunt

APPEARANCES:

For NUI North Carolina Gas:

James H. Jeffries IV, Amos, Jeffries & Robinson, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On July 1, 1999, NUI Corporation d/b/a NUI North Carolina Gas ("NUI North Carolina Gas" 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) for the period May 1, 1998 through April 30, 1999.

On July 14, 1999, the Commission issued its Order Scheduling Hearing and Requiring Public Notice. This Order established a hearing date of Tuesday, September 7, 1999, set prefiled testimony dates, and required NUI North Carolina Gas to give notice to its customers of the hearing on this matter. On July 15, 1999, the Commission issued its Order Rescheduling Hearing in which it rescheduled the hearing of this matter until Tuesday, September 14, 1999.

On July 29, 1999, Carolina Utility Customers Association, Inc. ("CUCA") filed a Petition to Intervene in this proceeding, and the Petition was subsequently granted by the Commission on August 3, 1999.

The direct testimony and exhibits of Company witnesses Raymond A. DeMoine and John Gornick were filed on July 1, 1999. Company witnesses DeMoine and Gornick presented the annual gas cost information required by Commission Rule R1-17(k)(6), testified to the prudence of the Company's gas costs and gas purchasing practices during the review period, and proposed new temporary decrements in the Company's rates.

The direct testimony of Public Staff witnesses Jan A. Larsen and Kirk Kibler was filed on August 30, 1999. Public Staff witnesses Larsen and Kibler noted a number of adjustments to NUI North Carolina Gas' gas costs, testified that the Company's gas costs (as adjusted) and gas purchasing practices during the review period were prudent, and proposed new temporary decrements for the Company's rates based on the Company's adjusted deferred account balances at May 31, 1999.

Company witness DeMoine prefiled rebuttal testimony on September 8, 1999, in which he agreed with the adjustments in the Company's gas costs noted by the Public Staff as well as the Public Staff's proposed temporary decrements in the Company's rates based on deferred account balances at May 31, 1999. No other party filed testimony.

On September 13, 1999, the Company, the Public Staff and CUCA filed a Stipulation which resolved all issues in the case as between the Company and the Public Staff and reserved CUCA's and all other party's rights to contest post review period costs in NUI NC Gas' next annual prudence review. As part of the Stipulation, all parties waived hearing, the appearance of witnesses and cross-examination.

On September 14, 1999, the matter came on for hearing as scheduled in Raleigh. No public witnesses appeared. Consistent with the Stipulation, the prefiled testimony and exhibits of the following witnesses were admitted into the record without their appearance on the stand:

For the Company: (1) Raymond A. DeMoine, Director of Rates and Compliance for NUI North Carolina Gas and (2) John Gornick, Manager -- Financial Reporting for NUI North Carolina Gas.

For the Public Staff: (1) Jan A. Larsen, Utilities Engineer and (2) Kirk Kibler, Staff Accountant.

NATURAL GAS - RATES

Based on the testimony and exhibits received into evidence and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. NUI North Carolina Gas 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. NUI North Carolina Gas is engaged in the business of transporting, distributing, and selling natural gas in a franchised area which consists of all of Rockingham County and part of Stokes County in the northern piedmont region of North Carolina.

3. NUI North Carolina Gas 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. NUI North Carolina Gas' 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, 1999.

6. During the period of review, the Company incurred total gas costs of $7,758,145 which consisted of fixed gas costs of $2,217,122, commodity gas costs of $3,980,712, and other gas costs of $1,560,311.

7. At the end of the review period, the balances in the Company's deferred accounts were, respectively, a credit of $303,188 in the Sales Customer Only account and a credit of $108,094 in the All Customers account.

8. NUI North Carolina Gas' gas purchasing policies are prudent and NUI North Carolina Gas' gas costs during the review period were prudently incurred and, after adjustment by the Public Staff, properly accounted for.

9. NUI North Carolina Gas should be permitted to recover 100 percent of its prudently incurred gas costs.

10. Use of the Company's deferred account balances at May 31, 1999, is appropriate for purposes of establishing temporary rate decrements in this proceeding. The respective balances in those accounts as of May 31, 1999, were a credit balance of $38,326 in the All Customers deferred account and a credit balance of $51,368 in the Sales Customer Only deferred account.

11. NUI North Carolina Gas currently has in place a temporary decrement of ($0.1365/dt) relating to sales only customers and the following temporary decrements relating to all customers:

Rate Schedule 101 (Residential) - ($0.0841/dt); Rate Schedule 102 (Small General) - ($0.0822/dt); Rate Schedule 104 (Large General) - ($0.0457/dt); Rate Schedule 105 (Interruptible) - ($0.0242/dt).

12. Based upon the balances of the Company's deferred accounts at May 31, 1999, the current temporary decrements in NUI North Carolina Gas' rates should be discontinued and a decrement of ($0.0138/dt) for sales only customers should be implemented and temporary decrements should be implemented for all customers as follows: Rate Schedule 101 (Residential) - ($0.0171/dt); Rate Schedule 102 (Small General) - ($0.0167/dt); Rate Schedule 104 (Large General) - ($0.0093/dt); Rate Schedule 105 (Interruptible) - ($0.0049/dt).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

These findings of fact are jurisdictional and/or informational in nature and are not contested by any party. They are supported by the petition, the testimony and exhibits of the various witnesses, the records of the Commission in other proceedings and the Affidavits of Publication filed with the Commission in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The review period for this proceeding is established by Commission Rule R1-17. The review period designated for NUI North Carolina Gas under Rule R1-17(k)(6)(a) in this proceeding is the 12-month period ending April 30, 1999.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-7

The Company's fixed gas costs ($2,217,122), commodity costs ($3,980,712) and other gas costs ($1,560,311), as adjusted by the Public Staff, were presented in the prefiled testimony of Public Staff witness Kibler. Company witness DeMoine accepted the Public Staff's adjusted figures in his prefiled rebuttal testimony and indicated that the Company was making correcting book entries to incorporate the Public Staff's adjustments.

The Company's end of period deferred account balances (as adjusted by the Public Staff), consisting of a credit of $303,188 in the Sales Customers Only account and a credit of $108,094 in the All Customers account, were presented in the prefiled direct testimony of Public Staff witness Kibler. Company witness DeMoine agreed with these balances in his prefiled rebuttal testimony based on the Company's acceptance of the Public Staff's overall adjustments in the Company's filing.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-9

Company witness Gornick testified that NUI North Carolina Gas had properly accounted for its gas costs during the review period. Public Staff witness Kibler noted that several adjustments had been made by the Public Staff to the Company's deferred account reports but agreed that, as adjusted, the Company had properly accounted for its gas costs. In his prefiled rebuttal testimony, Company witness DeMoine confirmed the Company's acceptance of the Public Staff's adjustments.

Company witness DeMoine testified that NUI North Carolina Gas' gas purchasing policy was designed to meet four primary objectives: (1) maintain secure supplies for firm customers; (2) diversify supply sources to ensure reliability; (3) obtain lowest reasonable cost; and (4) enhance flexibility. Company witness DeMoine also testified that NUI North Carolina Gas' gas costs during the review period were consistent with this policy and were prudent. During the period of review, NUI North Carolina Gas' gas supplies were provided primarily through long-term firm supply contracts whose pricing was tied to a spot market index. Public Staff witness Larsen testified that he conducted a review of NUI North Carolina Gas' gas purchases during the period of review, including NUI North Carolina Gas' gas purchasing practices, design day estimates, forecasted load duration curves, historical and forecasted gas supply needs, and projected capacity additions and supply changes, and he had concluded that the Company's gas costs were prudently incurred.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Public Staff witness Larsen testified that several unusual circumstances warranted using May 31, 1999 balances in the Company's deferred accounts rather than the end of test period balances. These circumstances included a significant reduction in the Company's benchmark commodity cost of gas and an additional temporary decrement of ($0.50/dt) to sales customers both of which had gone into effect on February 1, 1999, and which had significantly reduced the end of review period credit balances in the Company's deferred accounts. Public Staff witness Kibler testified that as of May 31, 1999, the Sales Customer Only deferred account balance was a credit of $51,368 and the All Customers deferred account balance was a credit of $38,326. Company witness DeMoine also testified to these balances and indicated the Company's acceptance and approval of the use of May 31, 1999 deferred account balances for establishing new temporary decrements in the Company's rates.

The Commission concludes that new temporary decrements for NUI North Carolina Gas should be calculated on the basis of the Company's deferred account balances as of May 31, 1999, based upon (1) the significant differences in the Company's deferred account balances at April 30, 1999, and May 31, 1999, respectively, and the concurrent risk that new temporary decrements based on April 30, 1999 balances could result in a large under-recovery in the Company's gas costs in the future; (2) the agreement of the Company and the Public Staff that May 31, 1999 balances are appropriate for use to set new temporary decrements; and (3) the lack of any objections to the use of May 31, 1999 deferred account balances to set new temporary decrements in the Company's rates. In reaching this conclusion, the Commission notes, consistent with the stipulation of the parties, that post-review period costs will be subject to review and challenge in the Company's next annual prudence review and nothing in the Commission's conclusion herein regarding the appropriate date for setting temporary decrements alters that fact.

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

Company witness DeMoine testified that the existing deferred account temporary decrements established by the Commission in Docket No. G-3, Sub 211 were: (1) a decrement of ($0.1365/dt) relating to the Sales Customer Only deferred account and (2) decrements of: Rate Schedule 101 (Residential) - ($0.0841/dt); Rate Schedule 102 (Small General) - ($0.0822/dt); Rate Schedule 104 (Large General) - ($0.0457/dt); and Rate Schedule 105 (Interruptible) - ($0.0242/dt) relating to the

All Customers deferred account. This testimony is undisputed and is consistent with the Commission's September 29, 1998 Order on Annual Review of Gas Costs in Docket No. G-3, Sub 211.

Public Staff witness Larsen testified that based on the Company's deferred account balances at May 31, 1999, the existing temporary decrements should be discontinued and a temporary decrement of ($0.0138/dt) for sales only customers should be instituted and new temporary decrements for all customers should be implemented as follows: Rate Schedule 101 (Residential) - ($0.0171/dt); Rate Schedule 102 (Small General) - ($0.0167/dt); Rate Schedule 104 (Large General) - ($0.0093/dt); Rate Schedule 105 (Interruptible) - ($0.0049/dt). Company witness DeMoine agreed with these proposed decrements in NUI North Carolina Gas' rates.

IT IS, THEREFORE, ORDERED as follows:

1. That the $2,217,122 in fixed gas costs, $3,980,712 in commodity gas costs and $1,560,311 in other gas costs incurred by NUI North Carolina Gas during the period of review be, and they hereby are, determined to be prudently incurred.

2. That NUI North Carolina Gas' accounting for all such gas costs, as adjusted by the Public staff and reflected in this Order be, and the same hereby is approved.

3. That NUI North Carolina Gas be, and it hereby is, authorized to recover 100 percent of its prudently incurred gas costs during the period of review.

4. That NUI North Carolina Gas shall implement in its next billing cycle after the date of this Order a temporary decrement of ($0.0138/dt) relating to sales only customers and temporary decrements relating to all customers of ($0.0171/dt) for Rate Schedule 101 (Residential) customers; ($0.0167/dt) for Rate Schedule 102 (Small General) customers; ($0.0093/dt) for Rate Schedule 104 (Large General) customers; and ($0.0049/dt) for Rate Schedule 105 (Interruptible) customers simultaneously with the removal of the existing temporary decrements from its Docket No. G-3, Sub 211 filing.

5. That NUI North Carolina Gas give notice to all of its customers of the change in rates approved in this Order by appropriate bill messages in the first billing cycle following the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mb110599.01

DOCKET NO. G-5, SUB 402

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: Monday, August 10, 1999, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Judy Hunt, Presiding, and Commissioners Ralph A. Hunt and Robert V. Owens, Jr.

APPEARANCES:

FOR PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.:

J. Paul Douglas, Corporate Counsel, Public Service Company of North Carolina, Inc., P.O. Box 1398, Gastonia, North Carolina 28053

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

FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.:

James P. West, West Law Offices, P.C., P. O. Box 1568, Raleigh, North Carolina 27602

BY THE COMMISSION: On June 1, 1999, Public Service Company of North Carolina, Inc. (PSNC or Company) filed the direct testimony and exhibits of William C. Williams, Director – Industrial Marketing and Gas Supply, and Bruce P. Barkley, Director – Rates and Regulatory Administration, in connection with the annual review of PSNC's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On June 2, 1999, the Commission issued an Order Scheduling Hearing And Requiring Public Notice, ordering a public hearing to commence on August 10, 1999; establishing dates for the filing of petitions to intervene, testimony by the Public Staff and other intervenors; and any rebuttal testimony by PSNC; and ordering PSNC to give public notice of these matters by causing the form of notice attached thereto to be published in newspapers of general circulation.

On June 8, 1999, the Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene which the Commission allowed. No other notices of intervention or petitions to intervene have been filed in this proceeding.

On July 27, 1999, the Public Staff filed the direct testimony of Julie G. Perry, Staff Accountant in the Accounting Division of the Public Staff, and Jeffrey L. Davis, Utilities Engineer in the Natural Gas Division of the Public Staff. No other party filed any testimony.

PSNC witnesses Williams and Barkley and Public Staff witnesses Perry and Davis were the only witnesses to present expert testimony at the public hearing on August 10, 1999.

Based on the testimony, schedules and exhibits, the entire record in this proceeding, and matters which may be judicially noticed, the Commission makes the following:

FINDINGS OF FACT

1. PSNC is a corporation duly organized and validly existing 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 pipeline system for the transportation, distribution, and sale of natural gas to approximately 345,000 winter-peak customers within a certificated service area consisting of all or parts of thirty-one (31) counties in central and western North Carolina as designated in PSNC's certificates of public convenience and necessity issued by this Commission.

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 pursuant to G.S. 62-2.

3. PSNC 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 review period for this proceeding is the twelve months ending March 31, 1999.

5. As of March 31, 1999, PSNC had a balance of $1,862,331 owed to customers in its Sales-Only Deferred Account and a $4,667,209 balance recoverable from its customers in its All-Customers Deferred Account.

6. The Public Staff took no exceptions to PSNC's accounting for gas costs and recoveries during the review period.

7. PSNC has properly accounted for its gas costs and collections from customers during the period of review.

8. PSNC has adopted a gas supply policy which it refers to as a "best cost supply strategy." This gas supply policy is based upon three primary criteria: supply security, operational flexibility, and cost of gas.

9. PSNC has a portfolio of gas supply contracts which include long-term supply contracts with major producers, marketing companies, and interstate pipeline marketing affiliates. All of these contracts have provisions which ensure that the pricing remains market sensitive.

10. PSNC has made prudent gas purchasing decisions, and all of the gas costs incurred during this review period were prudently incurred.

11. PSNC should be permitted to recover 100 percent of its prudently incurred gas costs.

12. Pursuant to PSNC's request, a rate decrement of \$0.00520 per therm will be established to refund the March 31, 1999 balance in the Sales-Only Deferred Account to PSNC's customers taking service under Rate Schedules 105, 110, 125, and 126. The amount owed to PSNC in the All-Customers Deferred Account will remain in that deferred account and will be considered part of the activity for PSNC's next review period.

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

These findings are essentially informational, procedural, or jurisdictional in nature, and were not contested by any party. They are supported by information in the Commission's public files and records, the testimony, exhibits, and schedules filed by the witnesses for PSNC and the Public Staff, and matters which may be judicially noticed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 – 4

The evidence for these findings of fact is contained in the testimony of PSNC witnesses Williams and Barkley and Public Staff witnesses Perry and Davis, and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

The relevant statute, G.S. 62-133.4(c), requires PSNC to submit to the Commission specified information and data for a historical 12-month test period, including 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 weather-normalized sales volume data, work papers, and direct testimony and exhibits supporting the information filed.

Commission Rule R1-17(k)(6) requires PSNC to submit to the Commission the required information based on a 12-month test period ending March 31. An examination of Mr. Barkley's testimony confirms that PSNC has complied with the filing requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k)(6). Mr. Barkley further testified that (i) 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), and (ii) he was aware of no outstanding issues with respect to those filings. Public Staff witness Perry stated that PSNC has properly accounted for its gas costs during the review period. The Public Staff has not taken issue with any of these filings, and they are found to be in conformity with the rules.

The Commission concludes that PSNC has complied with all of the procedural requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k) for the 12-month review period ending March 31, 1999.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 – 7

The evidence supporting these findings of fact is found in the testimony of PSNC witness Barkley and Public Staff witness Perry.

PSNC witness Barkley testified that the balance in PSNC's Sales-Only Deferred Account as of March 31, 1999, was $1,862,331 owed to PSNC's customers taking service under Rate Schedules 105, 110, 125, and 126. He summarized the activity in the Sales-Only Deferred Account during the twelve months ending March 31, 1999, as follows:

Beginning balance, April 1, 1998	$1,677,763
Commodity cost overcollections	(3,360,471)
Negotiated margin losses	3,467,317
G-5, Sub 377 increment	(3,710,570)
Accrued interest	63,630
Ending balance, March 31, 1999	$(1,862,331)

The balance in the All-Customers Deferred Account as of March 31, 1999, was $4,667,209 recoverable from customers. Mr. Barkley summarized the activity in the All-Customers Deferred Account for the twelve months ending March 31, 1999, as follows:

Beginning balance, April 1, 1998	$ 2,583,086
Demand cost undercollections	5,036,550
True-up of unaccounted-for and company-use gas	(1,368,636)
Buy/sell credits	(841,393)
Capacity release credits	(1,264,636)
Other secondary market transaction credits	(1,377,769)
Rider F activity	23,256
Cardinal pipeline treatment per G-5, Sub 386	1,095,300
Accrued interest	781,451
Ending balance, March 31, 1999	$ 4,667,209

Witness Perry testified that the Public Staff had examined PSNC's accounting for gas costs during the review period ending March 31, 1999, and concluded that PSNC had properly accounted for its gas costs during this review period.

Witness Perry responded to questions from counsel for CUCA concerning the "Other" column in Schedule 9 of Mr. Barkley's exhibits, which relates to the All-Customers Deferred Account entries. Ms. Perry testified that these amounts were related to rate case adjustments. She stated that a $219,060 monthly entry was made beginning in November 1998 to treat costs associated with the Cardinal Pipeline as gas costs and allow PSNC to earn a return on its investment in that pipeline until it goes into service; this entry will terminate when the extended Cardinal Pipeline commences service in November 1999. Ms. Perry further testified that the other entries in that column relate to the Rider F margin, which accounts for customers switching from Rate Schedule 145 to Rate Schedule 150.

Based upon the testimony, exhibits, and schedules of the witnesses, the monthly filings by PSNC as required by Commission Rule R1-17(k)(5)(c), and the findings of fact set forth above, the Commission concludes that PSNC has properly accounted for its gas costs during the review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 – 11

The evidence supporting these findings of fact is found in the testimony of PSNC witnesses Williams and Barkley and Public Staff witness Davis.

Mr. Williams testified that approximately 51% of PSNC's market is comprised of deliveries to industrial or large commercial customers which either purchase gas from PSNC or transport gas on PSNC's system. The majority of these customers have the capability to use fuels other than natural gas (*e.g.*, distillate fuel oil, residual fuel oil, or propane) and will use their respective alternate fuels when they are priced below natural gas. The remainder of PSNC's sales are primarily to residential and small commercial customers, and electricity represents the primary competition for this market segment.

Mr. Williams testified that the most appropriate description of PSNC's gas supply policy would be a "best cost supply strategy," which is based on three primary criteria: supply security, operational flexibility, and the cost of gas. The first and foremost criterion is security of gas supply. To maintain the necessary supply security for PSNC's firm customers, all of its firm interstate pipeline transportation capacity is supported by either supply contracts providing delivery guarantees or storage. The rationale for this requirement is that during design peak day conditions, PSNC's interruptible markets would most likely be curtailed.

Mr. Williams testified that PSNC has executed long-term supply agreements and supplemental short-term supply agreements with a variety of suppliers including producers, interstate pipeline marketing affiliates, and independent marketers. By developing a diversified portfolio of capable long-term and short-term suppliers, PSNC believes it has increased the security of its gas supply. Potential suppliers are evaluated on a variety of factors including past performance and gas delivery capability.

The second primary criterion, Mr. Williams testified, is maintaining the necessary operational flexibility in PSNC's gas supply portfolio. Operational flexibility is required because of the daily changes in PSNC's market requirements related to the unpredictable nature of the weather, the operating schedules of its industrial customers, and their capacity to switch to an alternate fuel. While each of its gas supply agreements has different purchase commitments and swing capabilities, PSNC's gas supply portfolio as a whole must be capable of handling the monthly, daily, and hourly changes in the market requirements.

The third primary criterion is the cost of gas. Mr. Williams testified 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 their needs. Mr. Williams testified that this is done by using pricing provisions that reference market indices.

In response to questions from counsel for CUCA, Mr. Williams testified that PSNC's commodity cost of gas will vary with changes in market prices. PSNC's contracts do not contain "floors" or "ceilings" on the price that PSNC pays for gas. Mr. Williams also testified that PSNC does not use hedging to place a ceiling on the price of gas.

CUCA, in its post-hearing brief, states that PSNC's gas purchasing practices do not seem to be entirely prudent in that a gas purchase portfolio consisting entirely of market-indexed contracts without any price ceilings will offer ratepayers no protection against rapid and substantial gas price increases. Accordingly, CUCA suggests that the Commission should consider advising PSNC and the other LDCs to diversify their gas purchasing portfolios to include a reasonable number of contracts with price ceilings or future price hedges based upon reasonable cost structures.

The Commission will reject CUCA's suggestion. CUCA's assertion in its brief that simple common sense and history indicate that at some point in the future natural gas prices will rise significantly is not sufficient grounds to support a change in PSNC's purchasing practices. Further, no evidence has been presented in the proceeding to support the use of hedging to place a ceiling on the price of gas.

Mr. Williams further testified that the greatest challenge confronting PSNC involves making long-term decisions today which will affect PSNC and its customers for many years in light of future uncertainty with respect to critical planning factors such as market demand, supply availability, regulation, and legislation. These factors directly affect PSNC's business, and future changes are almost impossible to predict. To address these uncertainties, PSNC attempts to insert language in its supply and capacity contracts to allow PSNC to renegotiate the terms of the contract if PSNC's merchant function changes dramatically.

In response to questions from CUCA's counsel, Mr. Williams testified that PSNC has included provisions in its gas purchase contracts that enable it to renegotiate if the nature of PSNC's merchant function changes significantly. He explained that these provisions permit PSNC to renegotiate these contracts, but do not permit PSNC to terminate these contracts.

Although Transcontinental Gas Pipe Line Corporation (Transco) remains PSNC's primary interstate pipeline transporter, PSNC has a backhaul arrangement with Transco to redeliver gas from firm transportation and storage agreements with CNG Transmission Corporation (CNG) and Columbia Gas Transmission Corporation (Columbia Gas). PSNC also has upstream firm transportation agreements with Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, and Transco, which deliver gas into CNG for delivery to Transco for redelivery to PSNC via this backhaul transportation arrangement. In addition, PSNC has a transportation agreement with Washington Gas Light Company to move gas that PSNC will receive from the Cove Point LNG facility in Maryland.

With respect to the gas supplies used to support its firm transportation contracts, Mr. Williams testified that PSNC has developed a portfolio gas strategy which includes the execution of long-term supply contracts that conform to PSNC's best cost supply strategy. PSNC currently has approximately 250,000 dekatherms per day under long-term contracts with six major producers and three interstate pipeline marketing affiliates. He also testified that all of these contracts have provisions which ensure that the price stays market sensitive. Mr. Williams further stated that PSNC's gas supply and capacity portfolio has the flexibility necessary to meet its market requirements in a secure and cost-effective manner.

In addition, Mr. Williams testified that PSNC has undertaken the following activities to keep its gas costs as low as reasonably possible, while accomplishing its stated policies and maintaining security of supply and operational flexibility:

1. PSNC is actively participating in all matters before regulatory and governmental agencies whose actions could reasonably be expected to impact PSNC's rates and services to its customers.

2. PSNC has pursued opportunities for capacity release and other secondary market transactions.

3. PSNC continues to work with its industrial customers to transport customer-owned gas. These transportation services permit PSNC to compete with alternate fuels without having to negotiate the rates under its regular rate schedules.

4. PSNC has frequent communications directly with customers, numerous supply sources and other industry participants, and actively researches and monitors the industry using a variety of sources, including industry periodicals.

5. PSNC has frequent internal discussions among senior level officers regarding gas supply policies and major purchasing decisions.

6. PSNC renegotiated certain pricing terms in six of its long-term contracts to ensure that the prices accurately reflect market conditions.

7. Given the market requirements experienced during its most recent design day, PSNC is evaluating various capacity and supply options to ensure that future peak day requirements continue to be met. PSNC's FT capacity will increase by 100,000 Dt per day when Cardinal Extension Company, LLC (Cardinal Extension), begins operation on November 1, 1999; PSNC's agreement permits the transportation of up to 100,000 Dt from the terminus of the existing pipeline owned by Cardinal Pipeline Company LLC, near Haw River, North Carolina, to the terminus of Cardinal Extension southeast of Raleigh. PSNC's 90-day firm storage service agreement with Columbia Gas will increase to 35,335 Dt per day during the 1999-2000 heating season, and Pine Needle LNG, which will provide PSNC with a 10-day firm peaking service of approximately 100,000 Mcf per day, will begin service during the 1999-2000 heating season. At that time, PSNC will terminate its 10-day peaking service with North Carolina Natural Gas that provides 12,000 Dt per day, and reduce the 10-day peaking service provided by Cove Point LNG from 50,000 Dt per day to 25,000

Dt per day. PSNC has also executed a 60-day general storage service agreement with CNG, providing 23,000 Dt per day, to be in effect for the 1999-2000 heating season.

In response to questions from counsel for CUCA, Mr. Barkley explained that PSNC's customers purchasing gas under Rate Schedules 145 and 150 pay a commodity cost of gas based on current market prices. PSNC's sales customers taking service under its other sales rate schedules pay prices that are based on forecasts of market prices, and those prices are not market sensitive on a monthly basis but are market sensitive on a longer-term basis. He explained further that the purpose of this pricing mechanism is to create a more stable price of gas for sales customers other than those purchasing under Rate Schedules 145 and 150. Mr. Barkley also testified that the purpose of the pricing mechanism for Rate Schedules 145 and 150 was to make the commodity cost of gas approximate the market.

In its post-hearing brief, CUCA states that in order for competition to thrive in this State, industrial users must be able to purchase gas from entities such as marketers at a price less than the cost of gas that is available from LDCs such as PSNC. CUCA asserts that the Commission's continued use of full margin transportation rates hinders such goal. Further, CUCA states that PSNC's decision to adopt a monthly market-tracking commodity cost rate for industrial users eliminates the potential for industrial users to secure sufficient sales margins on the basis of monthly commodity gas price savings relative to forecasted PSNC commodity gas rates adopted by the Commission. Accordingly, CUCA requests that the Commission eliminate either full margin transportation rates or PSNC's market based commodity costs.

PSNC filed on September 21, 1999, a Motion to Strike portions of the CUCA brief dealing with the two issues noted above on grounds that neither issue is appropriately before this Commission in this proceeding.

The Commission notes that it has repeatedly adopted the use of full margin transportation rates; most recently in PSNC's last general rate case, Docket No. G-5, Sub 386, and the "transportation rate study" that was conducted in that proceeding. With respect to CUCA's suggestion to eliminate PSNC's market-based commodity costs for industrial users, PSNC points out in its Motion that this is a two-year program previously approved by the Commission which has not yet expired. While we will not grant PSNC's Motion to Strike, neither will the Commission disturb its prior decisions with respect to full margin transportation rates and market-based commodity costs for industrial users in the context of this proceeding.

Mr. Barkley also testified that PSNC obtains sufficient firm transportation capacity to meet its firm requirements during the winter heating season. Some of this capacity is not required to serve PSNC's firm customers during the summer months so PSNC releases that capacity and credits seventy-five percent of the net compensation to its customers and retains twenty-five percent pursuant to the Commission's orders.

Mr. Davis, testifying for the Public Staff, stated that he had reviewed PSNC's gas supply contracts to determine how the commodity or variable costs were determined and then reviewed any fixed gas cost fees that might apply. Mr. Davis also reviewed PSNC's responses to the Public Staff's data requests regarding PSNC's gas purchasing philosophies, customer requirements, and gas portfolio mixes. Mr. Davis further testified that he considered other information received in response to the Public Staff data requests concerning PSNC's future needs, including (i) design day estimates, (ii) historical and forecasted load duration curves, (iii) historical and forecasted gas supply needs, (iv) company purchasing practices, and (iv) projection of capacity additions and supply changes. Mr. Davis stated that, based upon his review of this information, PSNC's gas costs were prudently incurred during the review period.

Based upon the foregoing, the Commission concludes that the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1999, were reasonable and prudently incurred.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

PSNC's balance in the Sales-Only Deferred Account as of March 31, 1999, was $1,862,331 owed by PSNC, and the All-Customers Deferred Account balance was $4,667,209 owed to PSNC. Mr. Barkley requested that the March 31, 1999, balance owed by PSNC in the Sales-Only Deferred Account be refunded by a decrement of $0.00520 per therm for customers taking service under rate Schedules 105, 110, 125, and 126. He stated that the amount owed to PSNC in the All-Customers Deferred Account should remain in that deferred account and be treated as activity during the next review period.

IT IS, THEREFORE, ORDERED

1. That PSNC's accounting for gas costs and recoveries during the twelve-month review period ending March 31, 1999, be, and the same hereby is, approved; and

2. That the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1999, were reasonable and prudently incurred, and PSNC be, and hereby is, authorized to recover its gas costs as provided herein; and

3. That PSNC refund the $1,862,331 balance owed to customers in PSNC's Sales-Only Deferred Account through a decrement of $0.00520 per therm for customers taking service under rate Schedules 105, 110, 125, and 126, as set forth above; and

4. That PSNC give notice to all of its customers of the change in rates approved in this Order by appropriate bill messages in the first billing cycle following the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mh101999.02

DOCKET NO. G-9, SUB 409

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: November 17, 1998, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chair Jo Anne Sanford, Presiding; Commissioners Judy Hunt and J. Richard Conder

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Amos Jeffries & Robinson, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

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 Carolina Utility Customers Association, Inc.:

James P. West, West Law Office, P.C., Post Office Box 1568, Raleigh, North Carolina 27602

BY THE COMMISSION. On September 1, 1998, Piedmont Natural Gas Company, Inc. (Piedmont or the Company) filed (1) the direct testimony of Keith P. Maust, Director of Gas Supply and Market Sales and (2) the direct testimony and exhibits of Ann H. Boggs, Director of Gas Accounting, relating to the annual review of Piedmont's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On September 4, 1998, the Commission issued an Order scheduling a public hearing for November 17, 1998, setting dates for prefiled testimony and intervention, and requiring public notice.

On September 18, 1998, the North Carolina Attorney General filed notice of intervention.

On September 28, 1998, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene, and on October 6, 1998, the Commission issued an Order granting the petition.

On November 2, 1998, the Public Staff filed the testimony of Julie G. Perry, Staff Accountant, Natural Gas Section, Accounting Division and Jeffrey L. Davis, Utilities Engineer, Natural Gas Division.

On November 17, 1998, the matter came on for hearing as scheduled.

Based upon the evidence adduced at the hearing and the record as a whole, 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 business of transporting, distributing and selling natural gas to customers in North Carolina, South Carolina, and Tennessee.

3. Piedmont 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 review period in this proceeding is the twelve months ended May 31, 1998.

5. During the review period, Piedmont incurred gas costs of $271,072,146, received $273,569,641 of this amount through rates and the difference of $2,497,495 was credited to the appropriate deferred accounts.

6. At May 31, 1998, the Company had a net credit balance (payable to customers from Piedmont) of $9,335,534 in its deferred accounts consisting of a credit balance of $4,399,656 in the Sales Only Deferred Account and a credit balance of $4,935,878 in the All Customers Deferred Account.

7. During the review period, the Company realized net compensation of $7,675,601 from secondary market transactions. In accordance with the Commission's Orders in Docket Nos. G-100, Subs 63 and 67 and G-9, Sub 317, $5,756,701 of the net compensation was treated as a reduction in gas costs for the benefit of Piedmont's customers.

8. Piedmont properly accounted for its gas costs during the review period.

9. Piedmont has transportation and storage contracts with interstate pipelines which transport gas to Piedmont's system and long term supply contracts with producers, marketers and other suppliers.

10. Piedmont has adopted a "best cost" gas purchasing policy consisting of five main components - the price of gas, the security of the gas supply, the flexibility of the gas supply, gas deliverability, and supplier relations.

11. The Company's gas costs during the review period were prudently incurred.

12. The Company should be permitted to recover 100% of its prudently incurred gas costs.

13. Piedmont proposed to refund the net credit balance of $4,935,878 in the All Customers Deferred Account based on the fixed gas costs apportionment percentages for each rate schedule as set forth in the Commission's Order in the Company's last rate case, Docket No. G-9, Sub 382.

14. Piedmont proposed to refund the May 31, 1998 balance in its All Customers Deferred Account by implementing the decrements for each rate schedule as shown on Company witness Boggs Schedule 11 to Exhibit AHB-1 beginning with the first billing cycle of the month that follows the date of the Commission's Order in this docket.

15. Piedmont proposed to refund the May 31, 1998 balance of $4,399,656 in its Sales Only Deferred Account by implementing an across-the-board sales decrement of $.0812/dt effective with the first billing cycle of the month that immediately follows the date of this Order.

16. The total level of design day dekatherms utilized during this review period is reasonable.

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 Maust. 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 witness Boggs and Public Staff witness Perry.

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.

Ms. Boggs 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 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 Piedmont witnesses Maust and Boggs and Public Staff witnesses Perry and Davis.

In her prefiled testimony Ms. Boggs testified that, as of May 31, 1998, Piedmont had a net credit balance (payable from Piedmont to the customers) of $9,335,534 in its deferred accounts. The credit balance consisted of a credit balance of $4,399,656 in the Sales Only Deferred Account and a credit balance of $4,935,878 in the All Customers Deferred Account. Public Staff witness Perry testified that Piedmont had properly accounted for its gas costs during the review period.

Mr. Maust testified that Piedmont achieved net compensation of $7,675,601 from secondary market transactions; $5,756,701 of this net compensation was treated as a reduction in gas costs for the benefit of Piedmont's customers in accordance with procedures established in Docket No. G-100, Sub 63 and Docket No. G-100, Sub 67. No party offered any evidence to show that Piedmont did not record its gas costs in compliance with the previously approved procedures; therefore, the Commission finds and concludes that Piedmont has properly accounted for secondary market transactions.

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.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 - 11

The evidence supporting these findings is contained in the testimony of Piedmont witness Maust and Public Staff witness Davis.

Mr. Maust testified that Piedmont's gas purchasing policy is best described as a "best cost" policy. This policy consists of five main components: price of gas, security of gas supply, flexibility of gas supply, gas deliverability, and supplier relations. Mr. Maust stated that all of these components are interrelated and that Piedmont considers and weighs each of these five factors in establishing its entire supply portfolio.

Mr. Maust further testified that Piedmont purchases gas supplies under a diverse portfolio of contractual arrangements through the spot market and long-term contracts. Spot gas is purchased under a contract with a term of one month or less while long-term gas is purchased under a contract ranging in term from one year (or less) to terms extending through October, 2004. Spot gas contracts provide for little or no supply security because they are interruptible and short-term in nature. Long term firm supplies are usually more expensive because they generally require reservation fees; however, firm supplies are the most reliable and secure source of gas and are generally market priced. Some of these firm contracts are for winter service only and some provide for 365 day service.

Mr. Maust described how the interrelationship of the five factors affects Piedmont's construction of its gas 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. Maust stated that Piedmont's greatest obstacle in applying its "best cost" policy is in dealing with future uncertainties in a dynamic national and regional energy market. Future demand for gas is affected by economic conditions, weather patterns, regulatory policies and industry restructuring in the energy markets. Future availability and pricing of gas supplies is affected by overall demand, domestic oil and gas exploration and development, pipeline expansion projects, and regulatory policies and approvals. Mr. Maust further stated that Piedmont did not make any changes in its "best cost" gas purchasing policies or practices during the year; however, the Company did contract for additional firm transportation and storage expansion capacity to meet the needs of its rapidly growing market consistent with its "best cost" policy. This contractual commitment is in the form of a 13,000 Dt per day firm transportation service agreement with Columbia Gas Transmission Corporation for the months of December 1997 through March 1998 and December 1998 through March 1999. Piedmont also contracted for a peaking service to be provided by Cove Point LNG Limited Partnership, which provides for a maximum daily quantity of 24,000 Dts and maximum contract peaking quantity of 240,000 Dts for June 1, 1998 through February 28, 1999.

Mr. Maust testified that Piedmont secures incremental capacity and supply to meet the growth requirements of its firm customers consistent with its "best cost" policy. To implement this policy, Piedmont attempts to contract for timely and cost effective supply and capacity. Acquiring long-term expansion project capacity precisely in balance with Piedmont's market growth profile is impossible due to external factors beyond the Company's control. To fill the gap between the in service dates of new expansion projects and to meet the requirements of the Company's growing market demand, Piedmont contracts for temporary "bridge" services from various sources of supply and capacity. This process has been successfully employed in the past by the Company, and is expected to be used in the future to meet the growth demand requirements of the Company.

Finally, Mr. Maust testified that Piedmont had taken a number of steps to manage its gas costs, consistent with its "best cost" policy. The Company has participated in matters before the FERC and other regulatory agencies, actively renegotiated and restructured eligible supply and capacity contracts in order to take advantage of market opportunities, utilized the flexibility available within its supply and capacity contracts to purchase and dispatch gas and to release capacity in the most cost effective manner, "locked in" gas prices for periods of time to maintain its competitive position in specific markets and has provided transportation services to large volume customers in order to maintain system throughput and reduce average unit costs, actively promoted growth from "year around" markets in order to improve the Company's load factor and reduce average unit costs, and continued an internal review committee to receive input and direction on its gas supply performance and planning activities

Mr. Davis 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. Davis stated that he reviewed information related to (1) design day information, (2) forecasted load duration curves, (3) forecasted gas supply needs, (4) projections of capacity additions and supply changes, and (5) customer load profile changes. Mr. Davis stated that, in the Public Staff's opinion, Piedmont's purchasing practices were reasonable and prudent.

In its post-hearing brief, CUCA argues that Piedmont has failed to show that its gas costs were prudently incurred. Citing language from the Commission's 1988 Order dealing with the prudence audit of Carolina Power & Light Company's Shearon Harris nuclear plant, CUCA contends that an LDC must "identify the prudent alternatives available" in order to show prudence. More specifically, CUCA argues that an LDC must show that it has analyzed the performance of similarly situated LDCs and incorporated into its own procedures the methods by which other LDCs capture the greatest cost savings and supply security. CUCA argues that Piedmont's testimony does not do this.

In discussing the standard for the prudence audit of the Shearon Harris plant, the Commission's 1988 Order stated that if specific and discrete incidents of imprudence were identified, the auditor "would then demonstrate the existence of available prudent alternatives that the Company should have followed to avoid the imprudence.... Obviously, a decision cannot be imprudent if it represents the only feasible way to accomplish a necessary goal. Thus, identification of prudent available alternatives is necessary." 78th Report of Utilities Commission Orders and Decisions 252 (1988). CUCA is reading too much into this language. While it is certainly appropriate for an LDC to periodically review its procedures and to learn from the experience of other LDCs, neither G.S. 62-133.4(c), Commission Rule R1-17(k), nor any previous Commission order requires that an LDC's testimony in a gas cost review proceeding include a comparison with other LDCs' experience in order to pass muster. In this proceeding, Piedmont witness Maust presented other testimony tending to show prudence, and Public Staff witness Davis concluded that Piedmont's purchasing practices were reasonable and prudent.

Based on the foregoing and considering the testimony as a whole, 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. 12-15

The evidence supporting these findings is contained in the testimony of Piedmont witness Boggs and Public Staff witness Davis.

Ms. Boggs testified that Piedmont proposes to change its rates as shown on Schedule 11 to Exhibit AHB-1. Ms. Boggs computed rate decrements for all of its rate schedules to refund the \$4,935,878 credit balance in the All Customers Deferred Account, based on the fixed gas cost apportionment percentages for each rate schedule as set forth in the Commission's Order in the Company's last general rate case, Docket No. G-9, Sub 382. Ms. Boggs computed a rate decrement of \$.0812/dt for its sales rates to refund the \$4,399,656 credit balance in the Sales Only Deferred Account. Ms. Boggs proposes to replace the temporary increments and decrements determined in the Company's last Annual Review with the decrements determined in this proceeding. Public Staff witness Davis testified that he agreed with Piedmont's proposed rate changes.

The Commission finds that the rates proposed by Piedmont should be implemented by Order of the Commission in this docket for refund of the balances in the two deferred accounts.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding is contained in the testimony of Public Staff witness Davis.

Mr. Davis stated that in Piedmont's annual gas cost review in Docket No. G-9, Sub 384, Company witness Fleenor indicated that it was the Company's intention to implement a 5% reserve margin beyond its peak day demand calculations. This reserve margin would be phased in at 10,000 dekatherms per day (dt/day) per year for three years, beginning with the 1996-1997 winter season and ending with the 1998-1999 winter season, at which time a full 5% reserve margin would be in effect. Mr. Davis testified that the current review period for the twelve months ending May 31, 1998, included 20,000 dt/day of reserve margin.

Mr. Davis further testified that the purpose of this reserve margin was to supplement the design day criteria of 53 heating degree days (HDD), which represents 12° Fahrenheit in average temperature for the system. According to Mr. Davis, other gas utilities in the State use design criteria of 55 HDD for planning without a reserve margin. He stated that using a 20,000 dt/day reserve margin with a 53 HDD design day is approximately the same as using a 55 HDD design day, which is well within design tolerances and an acceptable approach. For this reason, he did not question the reasonableness of Piedmont's use of a 20,000 dt/day reserve margin for capacity and supply planning during the review period. He stated, however, that the Public Staff will continue to review the matter on a case-by-case basis in future proceedings.

The Commission agrees with Mr. Davis' analysis and finds that the total level of design day dekatherms utilized in this review period is reasonable. The Commission will address the appropriate level of design day requirements for future periods in subsequent annual reviews.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont's accounting for gas costs during the twelve months ended May 31, 1998, is approved;

2. That Piedmont is authorized to recover 100% of its gas costs incurred during the twelve months ended May 31, 1998;

3. That Piedmont shall implement the temporary decrements, as shown on Schedule 11 to Exhibit AHB-1, to refund the credit balance related to the All Customers Deferred Account beginning with the first billing cycle of the month immediately following the date of this Order;

4. That Piedmont shall implement a temporary decrement of $.0812/dt to refund the net credit balance related to the Sales Only Deferred Account beginning with the first billing cycle of the month immediately following the date of this Order;

5. That the existing increment to sales customers and the decrements to all customers approved in the last Annual Review, shall be discontinued;

6. That the Commission will address the appropriate level of design day requirements for future periods in subsequent annual review proceedings; and

7. That Piedmont shall give notice to all of its customers of the changes in rates approved in this Order by appropriate bill inserts beginning with the first billing cycle that includes the changes in rates approved herein.

ISSUED BY ORDER OF THE COMMISSION
This the 22nd day of January, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

rg012199.03

DOCKET NO. G-9, SUB 419

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the matter of		
Application of Piedmont Natural Gas	)	ORDER ON ANNUAL
Company, Inc., for Annual Review of Gas	)	REVIEW OF GAS
Costs Pursuant to G.S. 62-133.4(c) and	)	COSTS
Commission Rule R1-17(k)(6)	)	

HEARD: October 5, 1999, at 10:00 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner William R. Pittman, Presiding, Commissioner Ralph A. Hunt, and Commissioner Robert V. Owens, Jr.

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Amos, Jeffries & Robinson, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For Carolina Utility Customers Association, Inc.:

James P. West, West Law Offices, P.C., Suite 1735, 434 Fayetteville Street Mall, Raleigh, North Carolina 27601

BY THE COMMISSION: On August 2, 1999, Piedmont Natural Gas Company, Inc. (Piedmont or the Company) filed (1) the direct testimony of Keith P. Maust, Director of Gas Supply and Market Sales and (2) the direct testimony and exhibits of Ann H. Boggs, Director of Gas Accounting, relating to the annual review of Piedmont's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On August 5, 1999, the Commission issued an Order scheduling a public hearing for October 5, 1999, setting dates for pre-filed testimony and intervention, and requiring public notice.

On August 27, 1999, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene, and on September 1, 1999, the Commission issued an Order granting the petition.

On September 21, 1999, the Public Staff filed the testimony of Julie G. Perry, Staff Accountant, Accounting Division of the Public Staff and Eugene H. Curtis, Jr., Director, Natural Gas Division of the Public Staff.

On October 5, 1999, the matter came on for hearing as scheduled.

On October 14, 1999, Piedmont filed the non-confidential portion of its responses to the Public Staff's data requests to Piedmont to comply with a request made at the hearing.

On October 15, 1999, the Public Staff filed a Motion to admit a copy of Rate Schedule LNG-1 of the Pine Needle LNG Company FERC tariff as a late-filed exhibit. On November 8, 1999, CUCA filed its objection to the Motion. The Commission concludes that the proposed exhibit is not necessary for decision-making in this docket, and the Motion for a late-filed exhibit is denied.

Based upon the evidence adduced at the hearing and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. The Company is a public utility as defined in Chapter 62 of the North Carolina General Statutes.

2. The Company is engaged primarily in the business of transporting, distributing and selling natural gas to customers in North Carolina, South Carolina, and Tennessee.

3. Piedmont 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 review period in this proceeding is the twelve months ended May 31, 1999.

5. During the review period, Piedmont incurred gas costs of $170,100,581, received $158,413,064 of this amount through rates and debited the difference to the appropriate deferred accounts.

6. At May 31, 1999, the Company had a balance of $846,818 in its deferred accounts consisting of a credit balance of $5,925,601 in the commodity, or sales customers only, deferred account and a debit balance of $6,772,419 in the demand, or all customers, deferred account.

7. During the review period, the Company realized net compensation of $6,360,864 from secondary market transactions. In accordance with the Commission's Orders in Docket Nos. G-100, Subs 63 and 67 and G-9, Sub 317, $4,770,649 of the net compensation was treated as a reduction in gas costs for the benefit of Piedmont's customers.

8. Piedmont properly accounted for its gas costs during the review period.

9. Piedmont has transportation and storage contracts with interstate pipelines which transport gas to Piedmont's system and long term supply contracts with producers, marketers and other suppliers.

10. Piedmont has adopted a "best cost" gas purchasing policy consisting of five main components - the price of gas, the security of the gas supply, the flexibility of the gas supply, gas deliverability, and supplier relations.

11. The Company has made prudent gas purchasing decisions and all of the gas costs incurred during the review period in this proceeding were prudently incurred. However, the Commission's decision herein is without prejudice to further review of the Pine Needle affiliated contract in Piedmont's next annual prudence review proceeding.

12. The Company should be permitted to recover 100% of its prudently incurred gas costs.

13. Piedmont proposed to recover the balance in its All Customers Deferred Account based on the fixed gas costs apportionment percentages for each rate schedule as set forth in the Commission's Order in the Company's last rate case, Docket No. G-9, Sub 382.

14. Piedmont proposed to recover the May 31, 1999 balance in its All Customers Deferred Account by implementing the increments for each rate schedule as shown on Company witness Boggs

Schedule 11 to Exhibit AHB-1 beginning with the first billing cycle of the month that follows the date of this Order.

15. Piedmont proposed to refund the May 31, 1999 balance in its Sales Only Deferred Account by implementing an across-the-board decrement of $0.1058/dt to its sales rates effective with the first billing cycle of the month that immediately follows the date of this Order.

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 Maust. 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 witness Boggs and Public Staff witness Perry.

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.

Ms. Boggs 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 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 Piedmont witnesses Maust and Boggs and Public Staff witnesses Perry and Curtis.

In her prefiled testimony Ms. Boggs testified that, as of May 31, 1999, Piedmont had a net debit balance (Piedmont receivable from the customers) of $846,818 in its deferred account. The net debit balance consisted of a credit balance of $5,925,601 in the Sales Only Deferred Account and a debit balance of $6,772,419 in the All Customers Deferred Account. Public Staff witness Perry testified that Piedmont had properly accounted for its gas costs during the review period.

Both Ms. Boggs and Ms. Perry were cross-examined by CUCA about an $846,000 payment for demand charges incurred by Piedmont during the last month of the review period for the Pine

Needle LNG service. Specifically, CUCA questioned whether Piedmont currently has the right to withdraw gas from the Pine Needle facility or whether that right only arises on November 1, 1999. Ms. Boggs testified that the Pine Needle in-service date was May of 1999 and that gas is being delivered and injected into the facility. Ms. Perry testified that Pine Needle is a 10-day peaking service and that Piedmont would probably use Pine Needle in the winter and would use other contracts in the summer instead of paying the higher price for peaking service. The Commission concludes that the Pine Needle demand charges in question are gas costs that are recoverable from current customers under G.S. 62-133.4 and Rule R1-17(k). Even if Piedmont was not able to withdraw gas from Pine Needle until November of 1999, the fact remains that the facilitiy was operational during the last month of the review period in this proceeding and that Piedmont was charged for the service on a monthly basis consistent with contracts for other storage services and the FERC-approved interstate pipeline tariff. Further, Pine Needle service was being provided to Piedmont through storage injections which are necessary in order to withdraw LNG inventories later. Notwithstanding this decision made for purposes of this case, the Commission notes that an Order was issued today in Docket No. G-9, Sub 427 dealing with the Pine Needle affiliated contract. Our decision herein on the Pine Needle demand charges in this docket is without prejudice to our review of the Pine Needle contract in Piedmont's next prudence review.

Mr. Maust testified that Piedmont achieved net compensation of $6,360,864 from secondary market transactions; $4,770,649 of this net compensation was treated as a reduction in gas costs for the benefit of Piedmont's customers in accordance with procedures established in Docket No. G-100, Sub 63 and Docket No. G-100, Sub 67. No party offered any evidence to show that Piedmont did not record its gas costs in compliance with the previously approved procedures; therefore, the Commission finds and concludes that Piedmont has properly accounted for these transactions.

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.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 - 11

The evidence supporting these findings is contained in the testimony of Piedmont witness Maust and Public Staff witness Curtis.

Mr. Maust testified that Piedmont's gas purchasing policy is best described as a "best cost" policy. This policy consists of five main components: price of gas, security of gas supply, flexibility of gas supply, gas deliverability, and supplier relations. Mr. Maust stated that all of these components are interrelated and that Piedmont considers and weighs each of these five factors in establishing its entire supply portfolio.

Mr. Maust further testified that Piedmont purchases gas supplies under a diverse portfolio of contractual arrangements through the spot market and through long-term contracts. Spot gas is purchased under a contract with a term of one month or less while long-term gas is purchased under a contract ranging in term from one year (or less) to terms extending through October, 2004. Spot gas contracts provide for little or no supply security because they are interruptible and short-term in nature. Long term firm supplies are usually more expensive; however, firm supplies are the most reliable and secure source of gas. Some of these firm contracts are for winter service only and some provide for 365 day service.

Mr. Maust described how the interrelationship of the five factors affects Piedmont's construction of its gas 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. Maust stated that Piedmont's greatest obstacle in applying its "best cost" policy is in dealing with future uncertainties in a dynamic national and regional energy market. Future demand for gas is affected by economic conditions, weather patterns, regulatory policies and industry restructuring in the energy markets. Future availability and pricing of gas supplies is affected by overall demand, domestic oil and gas exploration and development, pipeline expansion projects, and regulatory policies and approvals. Mr. Maust further stated that Piedmont did not make any changes in its "best cost" gas purchasing policies or practices during the year.

Mr. Maust testified that Piedmont secures incremental capacity and supply to meet the growth requirements of its firm customers consistent with its "best cost" policy. To implement this policy, Piedmont attempts to contract for timely and cost effective supply and capacity. Acquiring long-term expansion project capacity precisely in balance with Piedmont's market growth profile is impossible due to external factors beyond the Company's control. To fill the gap between the in service dates of new expansion projects and to meet the requirements of the Company's growing market demand, Piedmont contracts for temporary "bridge" services from various sources of supply and capacity. This process has been successfully employed in the past by the Company, and is expected to be used in the future to meet the growth demand requirements of the Company.

Finally, Mr. Maust testified that Piedmont had taken a number of steps to manage its gas costs, consistent with is "best cost" policy. The Company has participated in matters before the FERC and other regulatory agencies, actively renegotiated and restructured eligible supply and capacity contracts in order to take advantage of market opportunities, utilized the flexibility available within its supply and capacity contracts to purchase and dispatch gas and to release capacity in the most cost effective manner, "locked in" gas prices for periods of time to maintain its competitive position in specific markets and has provided transportation services to large volume customers in order to maintain system throughput and reduce average unit costs, actively promoted growth from "year around" markets in order to improve the Company's load factor and reduce average unit costs, and continued an internal review committee to receive input and direction on its gas supply performance and planning activities

Mr. Maust was cross-examined about Piedmont's use of hedging transactions and fixed price contracts. He testified that the Company had not engaged in any financial hedges during the review period and that it has one fixed price contract which represents a "very small" percentage of its total gas purchases. He further testified that the Company does enter into fixed price contracts with suppliers on behalf of industrial customers in order to compete against alternate fuels.

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 fees that were charged during the review period. In addition, Mr. Curtis stated that he reviewed information related to (1) design day estimates, (2) forecasted load duration curves, (3) forecasted gas supply needs, (4) projections of capacity addition and supply changes, and (5) customer load profile changes. Mr. Curtis stated that, in the Public Staff's opinion, Piedmont's gas costs were prudently incurred.

Mr. Curtis was also cross-examined about Piedmont's use of market indexed versus fixed price contracts. He testified that he recalled one 5,000 dekatherm per day fixed price contract. He further testified that the Public Staff would review the prudence of the Company's gas purchasing practices at the time purchasing decisions were made with regard to all gas costs. Finally he testified that there is no appropriate level of fixed price or hedged contracts that the Public Staff believes an LDC should engage in to provide a ceiling on gas price increases.

The Commission notes that the issue of placing ceilings on gas costs through hedging and fixed price contracts was raised a recent gas cost review proceeding for Public Service Company of North Carolina, Inc. (PSNC), in Docket No. G-5, Sub 402. In that case, CUCA asserted that at some point in the future gas prices could rise significantly and suggested that the Commission consider advising PSNC and the other LDCs to diversify their purchasing portfolios to include a reasonable number of contracts with price ceilings or future price hedges. The Commission rejected that suggestion largely for lack of evidence to support it. *Order on Annual Review of Gas Costs* issued October 19, 1999. The record in this case is equally deficient. Furthermore, without a regulatory framework for addressing the risks and rewards of prudent hedging practices between stockholders and captive ratepayers, a hedging requirement would seem unreasonable. In the meantime, CUCA members can individually choose whether to pay market prices on a monthly basis or to lock-in rates for longer period under applicable sale and transportation rate schedules..

Based on the foregoing, the Commission concludes that Piedmont has made prudent gas purchasing decisions and all of the gas costs incurred during the review period were reasonable and prudent and should be recovered. However, the Commission's decision herein is without prejudice to further review of the Pine Needle affiliated contract in Piedmont's next annual prudence review proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-15

The evidence supporting these findings is contained in the testimony of Piedmont witness Boggs and Public Staff witness Curtis.

Ms. Boggs testified that Piedmont proposes to change its rates as shown on Schedule 11 to Exhibit AHB-1. Ms. Boggs computed rate increments for all of its rate schedules to recover the $6,772,419 debit balance in the All Customers Deferred Account. Ms. Boggs computed a rate decrement of $.1058/dt for its sales rates to refund the $5,925,601 credit balance in the Sales Only

Deferred Account. Public Staff witness Curtis testified that he agreed with Piedmont's proposed rate changes.

The Commission finds that the rates proposed by Piedmont are appropriate and should be implemented on the first billing cycle of the month following the date of this order.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont's accounting for gas costs during the twelve months ended May 31, 1999, is approved;

2. That Piedmont is authorized to recover 100% of its gas costs incurred during the twelve months ended May 31, 1999;

3. That Piedmont shall implement the temporary increments, as shown on Schedule 11 to Exhibit AHB-1, to recover the debit balance related to the All Customers Deferred Account beginning with the first billing cycle of the month immediately following the date of this order;

4. That Piedmont shall implement a temporary decrement of $.1058/dt to refund the credit balance related to the Sales Only Deferred Account beginning with the first billing cycle of the month immediately following the date of this order;

5. That the existing decrements approved in the last annual review, shall be discontinued;

6. That Piedmont shall give notice to all of its customers of the changes in rates approved in this Order by appropriate bill inserts beginning with the first billing cycle that includes the changes in rates approved herein; and

7. That the Commission's decision herein is without prejudice to further review of the Pine Needle affiliated contract in Piedmont's next annual prudence review, pursuant to the order issued today in Docket No. G-9, Sub 427.

ISSUED BY ORDER OF THE COMMISSION
This the 21st day of December, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mh122199.01

DOCKET NO. G-21, SUB 374

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Natural Gas Corporation 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: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 13, 1999, at 10:00 a.m.

BEFORE: Commissioner William R. Pittman, Presiding; and Commissioners Ralph A. Hunt and J. Richard Conder

APPEARANCES:

For North Carolina Natural Gas Corporation:

Edward S. Finley, Jr., P.O. Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Paul Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On February 1, 1999, 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 and Gerald A. Teele, Senior Vice President, Treasurer and Chief Financial Officer, 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 15, 1999, the Commission issued its Order scheduling a public hearing for April 13, 1999, 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 March 1, 1999, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene which was allowed by the Commission on March 16, 1997.

The Public Staff filed the direct testimony of Kirk Kibler, Staff Accountant with the Public Staff's Accounting Division, and Jeffrey L. Davis, Utilities Engineer of the Natural Gas Section, on March 29, 1997. CUCA filed no testimony in this proceeding.

The hearing was conducted as scheduled. The testimony of witnesses Monaghan and Teele for NCNG and witnesses Kibler and Davis for the Public Staff was copied into the record.

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 primarily in the purchase, distribution, and sale of natural gas (and in some instances, the transportation of customer-owned gas) to more than 163,000 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 twelve months ended October 31, 1998.

5. During the period of review, NCNG incurred gas costs of $88,771,558 and recovered $102,164,286 for gas costs through its rates. This resulted in an over-recovery of $13,392,728. Moreover, NCNG recovered an additional $3,181,156 through a rate increment during the review period. NCNG refunded $6,589,957 to customers in rate decrements during the test year. The net refund was $3,408,801.

6. During the period from November 1997 through October 1998, NCNG generated a net recoupment of fixed costs amounting to $2,608,244 as a result of capacity release, buy/sell agreements, "straddle options" and storage asset management transactions. The Company credited 75% of this amount to its Deferred Account - All Customers pursuant to the Commission's Order in Docket No. G-100, Sub 67.

7. At October 31, 1998, NCNG had a net credit balance of $1,879,431 in its deferred gas cost accounts, consisting of a credit balance of $5,841,149 in the commodity deferred account (sales customers only) and a debit balance of $3,961,718 in the demand deferred account (all customers).

8. The Public Staff took no exceptions to NCNG's accounting for gas costs and recoveries during the period of review.

9. NCNG has transportation and supply contracts with the interstate pipelines that transport gas directly to NCNG's system and long-term supply contracts with twelve other suppliers.

10. Based on NCNG's contracts with gas suppliers, the gas costs incurred by NCNG during the period of review were prudently incurred.

11. NCNG should be permitted to recover 100% of its prudently incurred gas costs.

12. At the time of the hearing, NCNG did not propose to change its rates.

13. As of the date of the hearing, NCNG has a temporary rate decrement of $(0.1705) per dekatherm (dt) for the deferred gas costs - sales customers only account, effective November 1, 1998, and rate decrements ranging from $(.0142)/dt for industrial boiler fuel customers to $(0.0635)/dt for residential-heating only customers, also effective November 1, 1998. These rate decrements were proposed to be in the Company's rates for twelve months ending October 31, 1999.

14. 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 review 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, 1999, the required information based on a twelve-month review period ended October 31, 1998. 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 Mr. Monaghan's testimony. Mr. Teele also testified that NCNG 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). Public Staff witness Kibler 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 twelve month review period ended October 31, 1998.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 THROUGH 7

The evidence supporting these findings of fact is found in the testimony of NCNG witness Teele and Public Staff witnesses Kibler and Davis.

NCNG witness Teele testified that as of October 31, 1998, NCNG had a credit balance of $1,879,431 in its deferred accounts. This credit balance consists of a credit balance of $5,841,149 in the commodity deferred account (sales customers only) and a debit balance of $3,961,718 in the demand deferred account (all customers).

According to Mr. Monaghan, during the period from November, 1997 through October 1998, NCNG received net recoupment of fixed costs amounting to $2,608,244 as a result of capacity release, buy/sell agreements, "straddle options" and storage asset management transactions. The Company credited 75% 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 67.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the testimony of Public Staff witnesses Davis and Kibler and Company witness Teele and is uncontroverted.

Witness Kibler 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.

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 finding of fact set forth above, the Commission concludes that NCNG has properly accounted for gas costs during the period of review.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 THROUGH 11

The evidence supporting these findings of fact is found in the testimony of NCNG witnesses Monaghan, Teele and Public Staff witness Davis.

Witness Monaghan testified that the primary objective of NCNG's Board of Directors' gas supply acquisition policy is to ensure 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 the other times throughout the year. A key feature of the policy is the requirement of a "portfolio mix" of long-term supply contracts. Other key features are that the backup of peak gas supplies be maintained (mainly in the form of gas in storage), that long-term contracts provide for periodic renegotiation to keep them market-responsive, and that firm gas supplies be acquired primarily to meet peak-season firm requirements.

NCNG sells or transports gas to two groups, which are its firm and interruptible markets. Its firm market is principally residential, commercial and small industrial. 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 has twelve long-term supply contracts, including the Transco FS sales service contract, representing a total firm supply of 182,607 dts per day for winter delivery and lesser amounts in the remainder of the year. Mr. Monaghan also testified that of these twelve contracts, four are multi-year, winter only contracts which are utilized only during the five winter months. Mr. Monaghan further stated that four of the remaining contracts provide higher quantities in the winter months than the summer months, and the remaining four contracts have a level contract quantity year-round.

Mr. Monaghan testified that NCNG continued to have 5,199 dekatherms per day of Rate Schedule FSS (firm storage service) and related transportation from Columbia Gas Transmission, 2,070 dekatherms per day of GSS storage service from Transco, and 5,320 dekatherms per day of Transco's five-day LG-A peaking service, as well as NCNG's on-system Barragan LNG peaking facility which can provide in excess of 100,000 dekatherms on a peak day.

Public Staff witness Davis 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. Davis 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, 1998, were reasonable and prudently incurred, and that NCNG should be permitted to recover 100 percent of its prudently incurred gas costs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 THROUGH 14

Witness Teele testified that as of the date of the hearing NCNG had in rates a temporary rate decrement of $(0.1705)/dt for the deferred gas costs - sales customers only account effective November 1, 1998, and rate decrements ranging from $(.0142)/dt for industrial customers to $(0.0635)/dt for residential - heating only customers also effective November 1, 1998. These rate decrements were proposed to be in the Company's rates for the twelve months ending October 31, 1999.

Public Staff witness Davis testified that he agreed with the Company's proposal not to change its rates at this time.

The Commission believes that it is just and reasonable to continue the decrements in NCNG's rates until further Order by the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's accounting for gas costs and recoveries during the twelve-month period of review ended October 31, 1998, is approved;

2. That NCNG is authorized to recover 100 percent of its gas costs incurred during the twelve-month period of review ended October 31, 1998; and

3. That the present decrements in NCNG's rates remain unchanged until further Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of May, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mh052199.01

DOCKET NO. P-55, SUB 1117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of BellSouth Telecommunications, Inc.,	)	FINAL ORDER
for a Certificate of Public Convenience and	)	GRANTING
Necessity to Provide Local Exchange and	)	CERTIFICATE OF
Exchange Access Service as a Competing Local	)	PUBLIC CONVENIENCE
Provider in the State of North Carolina	)	AND NECESSITY

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Wednesday, April 14, 1999, at 9:30 a.m.

BEFORE: Jo Anne Sanford, Chair, Presiding; and Commissioners Robert V. Owens, Jr. and Robert K. Koger

APPEARANCES:

For BellSouth Telecommunications, Inc.

Edward L. Rankin, III, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28230

For the Using and Consuming Public

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

BY THE COMMISSION: This proceeding was initiated by the filing of an application on November 17, 1998, by BellSouth Telecommunications, Inc. (BellSouth or the Applicant). The application seeks authority for BellSouth to offer local exchange and exchange access services as a competing local provider (CLP) in North Carolina in all geographic areas outside its current service territory. The application was assigned Docket No. P-55, Sub 1117 and was supplemented on March 8, 1999.

On December 7, 1998, BellSouth filed a Motion for Interim Construction Authority. On December 22, 1998, the Commission issued an Order Granting Interim Construction Authority.

An Order was issued on February 18, 1999, which originally scheduled the hearing for April 6, 1999. On March 3, 1999, the Commission issued an Order Rescheduling the Hearing for April 14, 1999, and requiring the prefiling of testimony by BellSouth, the Public Staff, or any other intervener.

This matter was heard on April 14, 1999. BellSouth presented the testimony of Julie K. Earnhart, Business Development Manager of BellSouth Business Systems, Inc., an affiliate of BellSouth Telecommunications, Inc. No other party offered testimony.

The Public Staff pointed out through questions at the hearing that BellSouth has the obligation under the Telecommunications Act of 1996 (the Act) to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with BellSouth's network which is at least equal in quality to that provided by BellSouth to itself or to any subsidiary, affiliate or any other party to which the carrier provides interconnection. (251(c)(2)(C). The next provision of the Act requires that the interconnection offered to any requesting telecommunications carrier be provided on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of its agreement with the carrier and the requirements of Section 251 and 252 of the Act. (251(c)(2)(D).

Ms. Earnhart stated during cross-examination that although BellSouth would treat existing facilities which it uses within BellSouth's incumbent local exchange company (ILEC) serving area to serve CLP customers outside of its ILEC serving area as UNEs for accounting purposes, BellSouth would not actually order those existing facilities as UNEs, and would use its existing ILEC ordering facilities, rather than OSS services, to order and provision the facilities.

Subsequent to enactment by the North Carolina General Assembly of H.B. 161, which authorizes the Commission to allow competition in the provision of local exchange and exchange access services, the U.S. Congress enacted S. 652, the Telecommunications Act of 1996 (the Act). The Commission takes judicial notice of the Act and that subsequent rules to be adopted by the Federal Communications Commission to implement the Act may be preemptive of certain State laws and decisions of this Commission.

After careful consideration and review of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. BellSouth Telecommunications, Inc. is a Georgia corporation and a wholly-owned subsidiary of BellSouth Corporation. BellSouth is authorized to do business in North Carolina with its principal place of business in North Carolina at 300 S. Brevard Street, Charlotte, North Carolina.

2. BellSouth operates as an incumbent local exchange carrier in the following states: North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi and Louisiana. An affiliate, BellSouth BSE, Inc., is currently authorized to provide local exchange and exchange access service in North Carolina, South Carolina, Georgia, Florida, Kentucky, Mississippi, Tennessee and Alabama. Neither BellSouth nor any of its affiliates have been denied authority to operate as a competing local provider in any state.

3. BellSouth seeks a certificate of public convenience and necessity to provide local exchange and exchange access telecommunications services as a CLP in all geographic areas outside its current service territory that are subject to competition under state and federal rules. While the

Commission is authorized by State law to issue such a certificate for service areas within the State of local exchange companies with more than 200,000 access lines, it is not authorized to issue such a certificate for service areas having 200,000 or fewer access lines unless the local exchange company serving such an area is regulated by a price plan pursuant to G. S. 62-133.5 (a) [See G. S. § 62-110(f1) and (f2)] or to issue a certificate for service in areas served by telephone membership corporations. Therefore, it is appropriate at this time to limit the certificate as required by G.S. 62-110(f2) and (f3).

4. BellSouth is fit, capable, and financially able to render local exchange telecommunications services as a CLP in the State of North Carolina.

5. BellSouth has stated that the services to be provided will meet the service standards set out in Rule R9-8 and the billing requirements of Rule R12.

6. BellSouth has stated that it will abide by all applicable statutes, orders, rules and regulations entered and adopted by the Commission including the Commission's Order dated February 23, 1996, which promulgated rules governing local exchange providers.

7. BellSouth proposes to account for the interconnection to its own network and the means of ordering and provisioning those facilities which it intends to utilize for its CLP through the use of approved UNE and tariff rates. Investment deployed by the Company outside of its current ILEC service territory will be directly assigned to the CLP activity.

8. There has been no showing that the provision of the proposed service will adversely impact the availability of reasonably affordable local exchange service.

9. BellSouth has stated that it will, to the extent it may be required to do so by the Commission, participate in the support of universally available telephone service at affordable rates.

10. There has been no showing that the provision of the proposed service will adversely impact the public interest.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based on the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that BellSouth should be granted a certificate of public convenience and necessity pursuant to G. S. 62-110 (f1) to provide local exchange and exchange access telecommunications services as a CLP in the State of North Carolina in all geographic areas outside its current service territory, subject to the following terms and conditions:

A. BellSouth shall abide by all applicable rules and regulations of the North Carolina Utilities Commission.

B. BellSouth shall not hereafter abandon or discontinue service under its certificate in North Carolina unless BellSouth has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C., BellSouth shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. At this time, the portion of the State in which BellSouth may be authorized to provide local exchange service is limited to: (1) service areas within the State of local exchange companies with more than 200,000 access lines located within the State, and (2) the service area of Concord Telephone Company.

E. BellSouth shall comply with the price list filing requirements of Rule R17-2(h) or petition the Commission for a waiver of the price list filing requirement.

F. Given BellSouth's plan to utilize facilities other than UNEs, and ordering and provisioning arrangements other than OSS services offered to other CLPs within its own ILEC service area to offer service to its CLP customers outside of its ILEC service area, the Commission concludes that a dependable and verifiable means must be established to assure that the requirements of the Act and the general statutes are met. BellSouth's plan requires the establishment and use of a verifiable set of performance measurements which will enable the comparison of the quality of ordering and provisioning of services which it utilizes to provide service outside of its ILEC service area to those services offered to other CLPs.

G. In ordering and provisioning facilities within its ILEC service area to provide local exchange and exchange access service outside of its current ILEC service territory, BellSouth should account for the costs incurred in the ordering and provisioning of these services at the approved tariff, UNE, and OSS rates and charges which are available to all other CLPs.

H. BellSouth should establish and maintain performance measurements, which will be used to evaluate the ordering and provisioning of services it provides to retail customers outside its current service territory relative to the ordering and provisioning of services it provides to other CLPs and to its retail LEC customers, and should ensure that the access it provides to CLPs within its current service territory is at least at parity with the access BellSouth provides to itself. The performance measurements which will be used for this purpose should be filed with the Commission within 60 days for approval.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth is granted a certificate of public convenience and necessity pursuant to G.S. 62-110(f1) to provide local exchange and exchange access telecommunications services as a CLP in the State of North Carolina in all geographic areas outside its current service territory, subject to the following terms and conditions:

A. BellSouth shall abide by all applicable rules and regulations of the North Carolina Utilities Commission.

B. BellSouth shall not hereafter abandon or discontinue service under its certificate in North Carolina unless BellSouth has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C. BellSouth shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. BellSouth is authorized to provide local exchange and exchange access telecommunications service within the North Carolina service areas of (1) any local exchange company with more than 200,000 lines located within the State and (2) Concord Telephone Company.

E. Prior to offering and while offering any intrastate service in North Carolina, BellSouth shall comply with any applicable price list filing requirement then in effect.

F. In ordering and provisioning facilities within its ILEC service area to provide local exchange and exchange access service outside of its current ILEC service territory, BellSouth shall account for the costs incurred in the ordering and provisioning of these services at the approved tariff, UNE, and OSS rates and charges which are available to all other CLPs.

G. BellSouth shall establish and maintain performance measurements, which will be used to evaluate the ordering and provisioning of services it provides to retail customers outside its current service territory relative to the ordering and provisioning of services it provides to other CLPs and to its retail LEC customers, and shall ensure that the access it provides to CLPs within its current service territory is at least at parity with the access BellSouth provides to itself. The performance measurements which will be used for this purpose must be filed with the Commission within 60 days for approval.

2. That this Order shall constitute the certificate of public convenience and necessity granted to BellSouth by the North Carolina Utilities Commission to provide local exchange and exchange access telecommunications services as a CLP in North Carolina in all geographic areas outside its current service territory.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of June, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

mz061499.02

DOCKET NO. P-55, SUB 1094

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
MCImetro Access Transmission Services, Inc.,	)	
Complainant	)	ORDER RULING ON
	)	COMPLAINT
v.	)	PROCEEDING
	)	INVOLVING
	)	INTERCONNECTION
BellSouth Telecommunications, Inc.,	)	AGREEMENT
Respondent	)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, August 18, 1998

BEFORE: Commissioner William R. Pittman, Presiding; and Commissioners Ralph A. Hunt and J. Richard Conder

APPEARANCES:

FOR MCImetro ACCESS TRANSMISSION SERVICES, INC.:

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

Dulaney O'Roark, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342

FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

Edward L. Rankin, III and J. Phillip Carver, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28230

FOR THE USING AND CONSUMING PUBLIC:

Antoinette R. Wike, Chief Counsel, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On April 23, 1998, MCImetro Access Transmission Services, Inc. (MCIm or MCImetro) filed a complaint proceeding against BellSouth Telecommunications, Inc. (BellSouth) alleging that BellSouth had violated The Telecommunications Act of 1996 (the Act or TA96) and had failed to meet the terms of the Companies' Interconnection Agreement on 12 specific counts. The Interconnection Agreement entered into between the parties was approved by the Commission on May 12, 1997.

On May 13, 1998, BellSouth filed its Answer and Response to the Complaint requesting that the complaint of MCIm be dismissed. On May 28, 1998, MCIm filed its Response to BellSouth's Answer stating that the Answer was unacceptable and requesting an expedited hearing.

On June 3, 1998, an Order was issued scheduling the docket for hearing. An evidentiary hearing was held on August 18, 1998. Proposed Orders were filed by the parties on October 1, 1998.

WHEREUPON, the Commission now makes the following

FINDINGS OF FACT

1. BellSouth and MCIm are required to negotiate the initial subset of the Regional Street Address Guide (RSAG) database that will be assembled and provided and the price to be paid by MCIm for this one-time service. The cost of extracting data which BellSouth believes should not be provided with the RSAG database is a cost that should be borne by BellSouth. BellSouth should be required to provide real-time access to updates to the database at no charge.

2. BellSouth is required to provide MCIm with the ability to calculate due dates in the inquiry mode of the Local Exchange Navigation System (LENS) which BellSouth was planning to complete by November, 1998, as well as in the interfaces that are being developed for the future. Additionally, BellSouth is required to integrate the due date intervals and scheduling data to provide MCIm with the ability to display available due dates comparable to that available to BellSouth through the Regional Navigation System (RNS).

3. BellSouth is required to provide a means for MCIm to reserve telephone numbers which MCIm can integrate into its ordering system and reserve the same number of telephone numbers per order as BellSouth. Further, BellSouth is not required to integrate the NXX information which is available in the Local Exchange Routing Guide (LERG) into the ordering system which it provides to MCIm.

4. BellSouth is required to provide MCIm with access to Universal Service Order Code (USOC) information including field identifiers (FIDs) and state validity information on a real-time electronic basis within 45 days. Additionally, BellSouth should provide updates to the USOC information on a real-time basis.

5. BellSouth is required to provide all customer service record (CSR) data specifically outlined in the Interconnection Agreement which does not include pricing data. Additionally, BellSouth may maintain its current freeze procedures for CSRs.

6. BellSouth is not required to provide service jeopardy notification via Electronic Data Interchange (EDI) under the Interconnection Agreement.

7. BellSouth is not required to systematically disclose the details of its internal Operations Support Systems (OSS) to MCIm under the Interconnection Agreement or the Act. To the extent that the information provided in Docket No. P-55, Sub 1022 is lacking or indicates the

need for further investigation of BellSouth's OSS, the Commission will conduct its own inquiries with appropriate safeguards.

8. BellSouth is required to make available to MCIm the same network blocking data that BellSouth produces for its own use.

9. BellSouth has provided the information requested since the complaint was filed that may enable MCIm to interconnect at BellSouth's local tandems. Accordingly, no further action by the Commission is necessary at this time.

10. BellSouth has fulfilled its obligations under the Interconnection Agreement and the Act concerning access to directory listing information.

11. BellSouth is required to pay MCIm reciprocal compensation on traffic terminated to Internet Service Providers (ISPs), going forward and all amounts past due, plus interest under the Interconnection Agreement.

12. BellSouth should alter its soft dial tone message within 30 days of the issuance of the Commission Order to read as follows:

> "You may only dial 911 from this line. To establish telephone service, you must call from another location."

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Issue: Has BellSouth provided MCImetro with the RSAG in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has refused to provide a download of the RSAG database. The provision of limited access to this database through LENS does not comply with BellSouth's contractual obligations. BellSouth should be ordered to provide a database download within 10 days after the Commission Order with daily updates thereafter.

BELLSOUTH: Yes. The Interconnection Agreement does not require BellSouth to provide a download of RSAG. The Interconnection Agreement is silent on who pays for such a download, even if it were required. BellSouth has recently been ordered by the Georgia Public Service Commission to provide a download for the RSAG data, and BellSouth will be providing the download in the near future. However, MCImetro should be required to reimburse BellSouth for the cost of the project.

PUBLIC STAFF: No. BellSouth should provide a one-time download of the RSAG to MCImetro at a price to be negotiated. BellSouth should also provide updates of the RSAG to MCImetro on a real-time basis at no charge.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment VIII, Subsection 2.1.3.1, of the Interconnection Agreement which reads as follows:

> "Within thirty (30) days after the Effective Date of this Agreement, BellSouth shall provide to MCIm the Street Address Guide (SAG) data, or its equivalent, in electronic form. All changes to the SAG shall be made available to MCIm on the same day as the change to the data is made."

BellSouth witness Hendrix referenced Attachment VIII, Subsection 2.3.2.5 of the Interconnection Agreement which reads as follows:

> "At MCIm's option, BellSouth will provide MCIm the capability to validate addresses by access to BellSouth's Regional Street Address Guide (RSAG) via dial-up or LAN [local area network] to WAN [wide area network] access. Implementation time frames will be negotiated between the parties."

According to the direct testimony of MCIm witness Turner, by letter dated December 2, 1997, BellSouth proposed to provide an extract of the RSAG database based on the following cost structure: $30,000 for a project plan, a time line, and a final proposal; $538,030 for total start-up costs for the new connections; and $8,650 per month on an ongoing basis. By letter dated December 16, 1997, MCIm rejected BellSouth's proposal since it is MCIm's position that the Interconnection Agreement requires BellSouth to provide the RSAG download free of charge.

MCIm witness Turner further stated in direct testimony that currently BellSouth requires Competing Local Providers (CLPs) to access the RSAG through LENS or Interexchange Carrier Reference Validation (ICREF). Witness Turner stated that he believes that the most important pre-order function is address validation and that recently, BellSouth has acknowledged that an invalid address constitutes the second most common reason for order rejection. Witness Turner argued that MCIm needs the download of RSAG in order for MCIm to be able to electronically enter the information into its own system so that MCIm's customer service representatives would not have to use the BellSouth system and then re-enter the data manually into the MCIm system.

In rebuttal testimony, witness Turner stated that it has always been MCIm's position that under the Interconnection Agreement, BellSouth is required to provide MCIm a download of the RSAG at no additional cost. Concerning BellSouth witness Stacy's testimony that, "based on the volume of data involved, it is inconceivable that BellSouth would ever have agreed to provide MCImetro or any other CLP a download of RSAG data", MCIm witness Turner stated that the language in the contract is clear. BellSouth witness Stacy stated that two extracts from the total RSAG database comprise nearly 400 million bytes (characters) of data and that the nightly download of data would fill in excess of 125,000 printed pages. MCIm witness Turner further stated that the AT&T and BellSouth Interconnection Agreement states that BellSouth is required to provide a "download" of the RSAG, so it is witness Turner's position that BellSouth's volume argument fails to hold water.

During cross-examination, witness Turner agreed that the Georgia Commission required BellSouth to provide CLPs with a download of the RSAG data in the context of an OSS workshop, and not a complaint proceeding involving an interconnection agreement. Witness Turner also testified that the Georgia Commission's Order speaks to the download itself and does not resolve the issue of cost. BellSouth attorney Mr. Carver stated that it is BellSouth's position that the RSAG data is maintained in such a way that if it is downloaded, BellSouth would have to download it for all nine states, not just for Georgia, which was a fact that witness Turner was not aware of. However, witness Turner maintained that it is MCIm's position that the Interconnection Agreement requires BellSouth to provide the download at no cost to MCIm. Mr. Carver postured that MCIm is asking the North Carolina Utilities Commission to come up with a different answer to the same question that is before the Georgia Commission and "sort of preempt Georgia as to the North Carolina data".

BellSouth witness Stacy stated in his prefiled testimony that he believes that BellSouth is not required to provide a download of the RSAG database under the Interconnection Agreement. Witness Stacy argued that MCIm witness Martinez failed to reference another subsection of the Interconnection Agreement which provides convincing evidence that BellSouth intended to provide MCIm access to the RSAG electronically and not through a download of the RSAG database. Witness Stacy pointed out that Subsection 2.1.1.2 states:

> "For resale purposes, BellSouth shall provide real time electronic interfaces ("EI") for transferring and receiving Service Orders and Provisioning data and materials (e.g., access to Street Address Guide ("SAG") and Telephone Number Assignment database). These interfaces shall be administered through a gateway that will serve as a point of contact for the transmission of such data from MCIm to BellSouth, and from BellSouth to MCIm."

Witness Stacy concluded that based on Subsection 2.1.1.2, it is clear that access to RSAG was intended to be provided via electronic interface such as through LENS and was never contemplated to be provided as a "download" of the entire database.

However, witness Stacy also noted in his testimony that BellSouth has been ordered by the Georgia Public Service Commission to provide a download of the RSAG in the context of its OSS dockets. Witness Stacy further stated that BellSouth will provide a download of the RSAG data for Georgia and for every other state in BellSouth's region, which includes North Carolina. According to BellSouth, the only question that appears to remain in dispute is if MCIm should pay for the cost of BellSouth downloading the RSAG to MCIm. Witness Stacy stated that the Georgia Commission created a mechanism for BellSouth to recover the cost of implementing the requirements of the OSS Order. However, MCIm witness Turner stated in direct testimony that MCIm is pursing this issue in North Carolina because according to the Interconnection Agreement, MCIm is entitled to the download at no cost. Witness Stacy confirmed in his summary at the hearing that this issue is moot as far as BellSouth is concerned since BellSouth has agreed to furnish the RSAG database to MCIm reserving the right to negotiate the price for that service.

Witness Stacy confirmed on cross-examination that the Georgia Commission's Order does not state that it was necessarily going to give BellSouth any cost relief for the download of the RSAG.

The Public Staff, in its Proposed Order, stated that it recognizes the critical nature of the address validation function and sympathizes with MCIm's desire to perform the function in house. The Public Staff also stated that it agrees with MCIm that Attachment VIII, Subsection 2.1.3.1 of the Interconnection Agreement does require BellSouth to provide the SAG data itself in electronic form, which the Public Staff believes would appear to include a download of the database. The Public Staff expressed sympathy with BellSouth that the download would involve a tremendous volume of data and would be costly to assemble for download to MCIm. However, the Public Staff concluded that it is consistent with the Interconnection Agreement to require the parties to negotiate the initial subset of the RSAG database that will be assembled and provided under the Interconnection Agreement and the price to be paid by MCIm for this one-time service. The Public Staff also recommended that the cost of extracting data which BellSouth believes should not be provided with the RSAG database is a cost which should be borne by BellSouth. Finally, the Public Staff recommended that the Commission require BellSouth to provide updates to the initial downloaded database on a real-time basis pursuant to Subsection 2.3.2.5 of Attachment VIII of the Interconnection Agreement at no charge.

The Commission also acknowledges the importance of the RSAG database to MCIm in its provision of service to its customers. The Commission agrees with the Public Staff that the Interconnection Agreement, Attachment VIII, Subsection 2.1.3.1 specifically and clearly states that BellSouth will provide the SAG data to MCIm in electronic form; however, the Commission does not necessarily agree with the Public Staff that electronic form would include a download of the database. Nevertheless, BellSouth has stated in the record that it will provide a download of the RSAG to all nine BellSouth states based on the decision from the Georgia Commission and that the only issue that remains in dispute is the cost of the download. The Commission notes that the Interconnection Agreement is silent on the issue of cost to download the RSAG. Therefore, the Commission believes that the Public Staff's recommendation in this regard (i.e. that the parties negotiate the initial subset of the RSAG database that will be assembled and provided and the price to be paid by MCIm for this one-time service) is reasonable. The Commission also believes that the Public Staff's recommendation that the Commission require BellSouth to provide updates on a real-time basis at no charge is appropriate.

CONCLUSIONS

The Commission concludes that BellSouth and MCIm should negotiate the initial subset of the RSAG database that will be assembled and provided and the price to be paid by MCIm for this one-time service. The Commission also concludes that the cost of extracting data which BellSouth believes should not be provided with the RSAG database is a cost which should be borne by BellSouth. Finally, the Commission concludes that BellSouth should be required to provide MCIm with real-time access to updates in the database at no charge.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: Has BellSouth provided MCImetro with the due date calculation for a service order request from a customer in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has not provided MCImetro with parity in the calculation of due dates. BellSouth should be ordered to provide MCImetro with the same capability to calculate due dates that BellSouth has for itself, through a system that can be integrated with MCImetro's ordering system, within 30 days of the issuance of the Commission Order.

BELLSOUTH: Yes. MCImetro can use the firm order mode of LENS or Common Gateway Interface (CGI) to receive a calculated due date. A BellSouth service representative using RNS or Direct Order Entry (DOE) inquiring about the available due dates without "building" a complete service order views the same installation calendar that is provided to CLPs via LENS, CGI, (sometimes referred to as LENS CGI), and EC-Lite (The "EC" in EC-Lite stands for electronic communications). BellSouth provided the LENS CGI specifications to MCImetro two months prior to this complaint being filed and updated specifications in April, 1998. BellSouth is planning to add due date calculations to the LENS inquiry mode in November, 1998.

PUBLIC STAFF: No. BellSouth should provide to MCImetro the same capability to calculate due dates that BellSouth has with RNS through a system that can be integrated with MCImetro's ordering system.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment VIII, Subsections 2.1.1.2 and 2.3.1.3 of the Interconnection Agreement which read as follows:

> **Subsection 2.1.1.2:** "During the term of this Agreement, BellSouth shall provide necessary ordering and provisioning business process support as well as those technical and systems interfaces as may be required to enable MCIm to provide at least the same level and quality of service for all resale services, functions, features, capabilities, and Unbundled Network Elements as BellSouth provides itself, its Affiliates or its own subscribers. BellSouth shall provide MCIm with the same level of ordering and provisioning support as BellSouth provides itself in accordance with standards and performance measurements that are at least equal to the highest level of standards and/or performance measures that BellSouth uses and/or which are required by law, regulatory agency, or by BellSouth's own internal procedures, whichever are the most rigorous. These standards shall apply to the quality of the technology, equipment, facilities, processes,

and techniques (including, but not limited to, such new architecture, equipment, facilities, and interfaces as BellSouth may deploy) that BellSouth provides to MCIm under this Agreement.

For resale purposes, BellSouth shall provide real time electronic interfaces ("EI") for transferring and receiving Service Orders and Provisioning data and materials (e.g., access to Street Address Guide ("SAG") and Telephone Number Assignment database). These interfaces shall be administered through a gateway that will serve as a point of contact for the transmission of such data from MCIm to BellSouth, and from BellSouth to MCIm. The implementation of such data transfer system shall be negotiated in good faith by the parties and be specified in a written agreement between MCIm and BellSouth that will be completed expeditiously after the Effective Date of this Agreement. MCIm and BellSouth agree to use best efforts to provide the Electronic Communications Gateway described above as soon as practicable, but in no event later than April 1, 1997. In addition, (I) [sic] BellSouth agrees to use its best efforts to carry outs [sic] its responsibilities under this Section, and (ii) MCIm agrees to use its best efforts to carry out its responsibilities under this Section. BellSouth warrants that interim solutions shall provide MCIm Customers with the same level of service available to BellSouth customers."

Subsection 2.3.1.3: "BellSouth and MCIm shall agree on and implement interim solutions for each interface within thirty (30) days after the Effective Date of this Agreement, unless otherwise specified in Exhibit A of this Attachment. The interim interfaces(s) shall, at a minimum, provide MCIm the same functionality and level of service as is currently provided by the electronic interfaces used by BellSouth for its own systems, users, or subscribers."

BellSouth witness Hendrix referenced Attachment VIII, Subsection 2.2.4.3 of the Interconnection Agreement which reads as follows:

"BellSouth shall supply MCIm with due date intervals to be used by MCIm personnel to determine service installation dates."

According to MCIm witness Turner, the due date function enables a customer service representative to inform a customer when his or her service will be turned up. Additionally, according to witness Turner, RNS automatically shows the first available due date on the screen and because a BellSouth order flows immediately from pre-ordering to ordering, the due date calculation will not have changed by the time the order is submitted; therefore, the due date can be quoted much more confidently to the customer. Witness Turner argued that BellSouth does not provide the same due date functionality to MCIm. Witness Turner stated that LENS has no method of calculating due dates for unbundled network element (UNE) orders.

In rebuttal testimony, witness Turner argued that BellSouth witness Stacy's position that BellSouth provides installation intervals for UNEs is true, but that such intervals by themselves do not give MCIm anything like the automated due date calculation function that BellSouth has. Witness Turner argued that for CLPs that do not intend to use LENS for ordering, such as MCIm, calculating due dates in the firm order mode of LENS is not a viable option, as offered by BellSouth witness Stacy. Witness Turner also pointed out that BellSouth witness Stacy acknowledged that BellSouth still has not developed a due date calculation function in the inquiry mode of LENS which means that a CLP customer service representative still must perform a manual due date calculation. Witness Turner concluded that this requirement is discriminatory. Finally, witness Turner stated that BellSouth witness Stacy's recommendation that CLPs do their own programming to calculate due dates based on information provided in the inquiry mode of LENS is unacceptable because it is unreasonable to expect CLPs to make such an investment in a proprietary and inadequate pre-ordering system.

BellSouth witness Stacy stated in prefiled testimony that BellSouth has provided MCIm with the due date calculation for a service order request from a customer in compliance with the Interconnection Agreement. Witness Stacy further stated that due dates are not needed for the majority of orders, only for orders requiring a premises visit. Witness Stacy maintained that if MCIm used the firm order mode of LENS or CGI to order resale services or UNEs, it will receive a calculated due date, just as RNS provides to BellSouth. Further, witness Stacy maintained, a CLP can obtain due date information on services requiring a premises visit from Direct Order Entry Support Applications Program (DSAP) through the inquiry mode of LENS. MCIm may, according to witness Stacy, integrate pre-ordering functionality with EDI and its own internal OSS by using the LENS CGI specification, which allows CLPs to build a machine-to-machine interface to LENS, or by using EC-Lite, another machine-to-machine pre-ordering interface provided by BellSouth. Witness Stacy stated that it is his understanding that MCIm is using LENS CGI to obtain CSRs, but is not using it to perform any other pre-ordering or ordering functions. Witness Stacy stated that the characterizations of the due date capabilities provided to MCIm through LENS as stated by MCIm witness Turner in prefiled testimony are inaccurate or misleading. Witness Stacy concluded that BellSouth is providing CLPs access to due dates in substantially the same time and manner as BellSouth provides to itself and that CLPs are free to build any system they choose to support their unique vision of customer service and to incorporate the pre-ordering and ordering functions in that OSS. Witness Stacy also noted that since the Georgia Public Service Commission has ordered BellSouth to add due date calculation to the LENS inquiry mode, BellSouth plans to complete this by November, 1998.

During cross-examination, witness Stacy maintained that due date calculations are available through LENS (both in the browser mode and the CGI mode) and EC-Lite. Witness Stacy further agreed that EC-Lite was specifically developed for AT&T and that EC-Lite is available to all other carriers, however, no other carriers have developed it. Witness Stacy also acknowledged that MCIm intends to use EDI for ordering and that the EDI ordering interface does not provide a due date calculation function. However, witness Stacy stated that EDI has been a national standard interface for about twelve more months and that a CLP could use EC-Lite to get the due date calculation. He further agreed that MCIm would have to use LENS in a browser mode or CGI mode to get due date calculations. Witness Stacy also acknowledged that using the inquiry mode of LENS, a CLP representative has to perform the due date calculation itself for a new installation and that a BellSouth representative using RNS has the next available due date highlighted on the screen.

The Public Staff, in its Proposed Order, stated that it is mindful of the need to strike a balance between BellSouth's duty to provide capabilities to MCIm through electronic interfaces and MCIm's responsibility to develop its own capabilities in its internal systems. The Public Staff concluded that the capabilities currently provided by BellSouth in the case of due date calculations for service order requests are inadequate for the reasons expressed by MCIm and fail to satisfy the parity requirements of the Interconnection Agreement. The Public Staff recommended that the Commission find that BellSouth should be required to provide MCIm with the ability to calculate due dates in the inquiry mode of LENS, as it is already planning to do, as well as in the interfaces that are being developed. The Public Staff also maintained that the function should include UNEs. Finally, the Public Staff recommended that BellSouth should be required to integrate the due date intervals and scheduling data to provide MCIm with the ability to display available due dates comparable to that provided in RNS.

The Commission agrees with the position taken by the Public Staff that the current capabilities for due date calculations are inadequate and fail to provide parity as required under the Interconnection Agreement. The Commission believes that it is appropriate to require BellSouth to provide MCIm with the ability to calculate due dates in the inquiry mode of LENS which BellSouth was planning to complete by November, 1998, as well as in the interfaces that are being developed for the future. Additionally, the Commission believes that it is reasonable to require BellSouth to integrate the due date intervals and scheduling data to provide MCIm with the ability to display available due dates comparable to that available to BellSouth through RNS.

CONCLUSIONS

The Commission concludes that it is appropriate to require BellSouth to provide MCIm with the ability to calculate due dates in the inquiry mode of LENS which BellSouth was planning to complete by November, 1998, as well as in the interfaces that are being developed for the future. Additionally, the Commission concludes that it is appropriate to require BellSouth to integrate the due date intervals and scheduling data to provide MCIm with the ability to display available due dates comparable to that available to BellSouth through RNS.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: Has BellSouth provided MCImetro with access to telephone numbers and telephone number information in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has not provided MCImetro with parity in the reservation of telephone numbers or in access to NXX information. BellSouth should be ordered to provide MCImetro with parity for these functions within 30 days of the date of the Commission Order.

BELLSOUTH: Yes. CLPs may reserve up to six numbers at a time in LENS or CGI for an unlimited number of times per session, which yields an unlimited number of reservations. Using EC-Lite, a CLP may reserve up to 25 numbers per session, the same as RNS and DOE allow. BellSouth plans to enhance LENS and CGI in November, 1998 to allow the selection of a maximum of 25 numbers at a time.

PUBLIC STAFF: No. BellSouth should provide MCImetro with the same access to telephone numbers that BellSouth has with its own ordering system, through a system that can be electronically integrated with MCImetro's ordering system. BellSouth should not be obligated to provide to MCImetro the NXX information that can be found in the LERG.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment VIII, Subsection 2.1.8.1 of the Interconnection Agreement which reads as follows:

> **Subsection 2.1.8.1:** "Until Number Administration functions are assumed by a neutral third party in accordance with Federal Communications Commission (FCC) Rules and Regulations, Incumbent Local Exchange Carrier (ILEC) shall assign NXXs to MCIm on a non-discriminatory basis in accordance with national guidelines. BellSouth shall provide the same range of number choices allowing the assignment of numbers while the subscriber is on the phone to MCIm, including choice of exchange number, as BellSouth provides its own subscribers. Reservation and aging of numbers shall remain BellSouth's responsibility."

BellSouth witness Hendrix referenced Part A, Section 13.5 of the Interconnection Agreement wherein BellSouth agrees to, "provide nondiscriminatory access to telephone numbers for as long as BellSouth remains the code administrator for the North American Numbering Plan." Witness Hendrix also referenced Subsection 2.1.8 of the Interconnection Agreement.

MCIm witness Turner stated in direct testimony that BellSouth does not provide nondiscriminatory access to the telephone number reservation function. Witness Turner argued that LENS does not permit MCIm to integrate the telephone number reservation function with its ordering system. According to witness Turner, for BellSouth's RNS and DOE systems, the telephone number reservation function is integrated with the ordering function which is not the case for MCIm using LENS. Additionally, witness Turner stated that with LENS, the customer service representative can only reserve a maximum of six telephone numbers at a time for a customer, compared to 25 telephone numbers that can be reserved by BellSouth for its customers. Finally, according to witness Turner, a CLP has no way of viewing the NXX codes in offering customers a choice of numbers while BellSouth representatives using RNS can easily view such codes. Witness Turner maintained that this is also true in BellSouth's business system, DOE, with the comparable screen in LENS. Witness Turner concluded that MCIm is seeking to have the Commission: (1) require BellSouth to permit MCIm to reserve telephone numbers through a system that can be integrated with MCIm's ordering system; (2) require BellSouth to permit MCIm to reserve the same number of telephone numbers per order as BellSouth; and (3) to require BellSouth to provide the same NXX information to MCIm that is provided to BellSouth representatives.

In rebuttal testimony, witness Turner argued that BellSouth witness Stacy himself acknowledged that BellSouth's customer service representatives using RNS or DOE may reserve up to 25 telephone numbers while CLP customer service representatives using LENS may only reserve six at a time in LENS. Witness Turner also maintained that this same limitation also exists in LENS when enhanced by CGI. Witness Turner also stated that it appears that BellSouth witness Stacy has acknowledged that BellSouth customer service representatives have access to available NXX codes through OSS, while CLPs do not have such access through LENS, however, that witness Stacy did not provide justification for the disparity. Witness Turner stated that BellSouth witness Stacy's recommendation that CLPs incorporate the LERG into their own systems ignores the fact that the LERG is massive and incorporating the LERG into CLPs' OSS systems for on-line access would not be a practical undertaking. Finally, witness Turner pointed out that BellSouth witness Stacy does not dispute that its customer service representatives using RNS have access to pre-selected telephone numbers, whereas CLP customer service representatives using LENS do not. Witness Turner maintained that this disparity is unacceptable.

During cross-examination, witness Turner affirmed that during a LENS session, a customer service representative can go into the screen multiple times and get six numbers each time, clarifying that a customer service representative must go back out and back in to request another six numbers. Also during cross-examination, witness Turner agreed that the number selection issue will only come into play with a customer that doesn't have a telephone number already, and witness Turner agreed that would only be in the minority of situations.

BellSouth witness Stacy stated in prefiled testimony that BellSouth uses RNS for residence customers and DOE for business customers to select telephone numbers for retail customers and that by using RNS or DOE, the BellSouth service representative sends inquires to and receives responses from the BellSouth database (Application for Telephone Number Load Administration and Selection - ATLAS) containing telephone numbers. Witness Stacy maintained that CLPs perform telephone selection in a way similar to BellSouth by using LENS, CGI, or EC-Lite, and in several respects, the special number capabilities of LENS, CGI, and EC-Lite provide advantages over those available to BellSouth's retail service representatives. Concerning reservation of telephone numbers, witness Stacy maintained that CLPs may reserve up to six numbers at a time using LENS or CGI for an unlimited number of times per session and using EC-Lite may reserve up to 25 numbers per session, the same as RNS and DOE allow. However, witness Stacy stated that BellSouth plans to enhance LENS and CGI in November, 1998 to allow the selection of a maximum of 25 numbers at a time. Witness Stacy also refuted MCIm witness Turner's assertion that CLPs have no way of viewing the NXX codes available to the customers by stating that the LERG contains that information. Witness Stacy further stated that MCIm may take the information found in the LERG and incorporate it into its front end sales negotiation system and that building such capability is one of the advantages and responsibilities that a CLP has when it makes the business decision to do machine-to-machine interface. Finally, concerning MCIm witness Turner's assertion that BellSouth, using RNS, can view a pre-selected telephone number that may be accepted if approved by a customer while LENS does not, witness Stacy argued that MCIm could develop a similar presentation system for its own internal sales negotiation OSS.

Witness Stacy, during cross-examination, stated that a BellSouth representative using RNS and DOE can reserve 25 telephone numbers on a screen for an unlimited number in the session. Witness Stacy further agreed that a MCIm representative using LENS can reserve up to six telephone numbers at a time for an unlimited number in each session while EC-Lite allows a reservation of 25 at a time up to an unlimited number. Witness Stacy stated that well over 95% of the orders require five numbers or less. Witness Stacy further agreed that a BellSouth representative using RNS or DOE can see a list of all NXXs that serve a customer's address while a MCIm representative using LENS does not see a similar list.

The Public Staff, in its Proposed Order, stated that it believes that MCIm's assertions have considerable merit. The Public Staff recommended that the Commission conclude that BellSouth should provide a means for MCIm to reserve telephone numbers that can be integrated with MCIm's ordering system and to reserve the same number of telephone numbers per order as BellSouth. Finally, the Public Staff stated that since NXXs are available to MCIm through the LERG, the Public Staff recommended that the Commission find that BellSouth is not obligated to integrate this information into the ordering system which it provides to MCIm.

The Commission agrees with the Public Staff that MCIm's arguments in this regard have merit. The Commission believes that it is important for MCIm to be able to integrate into its ordering system a means to reserve telephone numbers and also to reserve the same number of telephone numbers per order at parity with BellSouth. However, the Commission does not believe that it is BellSouth's responsibility to integrate the information with MCIm's ordering system. Therefore, the Commission concludes that BellSouth should be required to provide a means for MCIm to reserve telephone numbers which MCIm can than integrate with its ordering system and reserve the same number of telephone numbers per order as BellSouth. The Commission further believes that BellSouth is not required to integrate the NXX information which is available in the LERG into the ordering system which it provides to MCIm under the Interconnection Agreement.

CONCLUSIONS

The Commission concludes that BellSouth should be required to provide a means for MCIm to reserve telephone numbers which MCIm can integrate with its ordering system and reserve the same number of telephone numbers per order as BellSouth. The Commission further concludes that BellSouth is not required to integrate the NXX information which is available in the LERG into the ordering system which it provides to MCIm under the Interconnection Agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Has BellSouth provided MCImetro with access to USOCs in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. While BellSouth has provided MCImetro with USOC information in a usable electronic format, BellSouth has not provided such access to FID information. BellSouth should be ordered to provide MCImetro a FID file with descriptions, together with information on the states in which USOCs are valid, all within 30 days of the issuance of the Commission Order.

BELLSOUTH: Yes. BellSouth uses RNS and DOE, and CLPs use LENS or EC-Lite to obtain USOCs from the same Product/Services Inventory Management System (P/SIMS) and Central Office Features File Interface (COFFI) databases. USOCs are also made available on BellSouth's Interconnection Web Site. The Interconnection Agreement does not require BellSouth to provide the requested USOC information.

PUBLIC STAFF: No. BellSouth should provide MCImetro with USOC information, including FIDs and state validity, in a format that can be downloaded into an MCImetro database.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment VIII, Subsections 2.1.1.2 and 2.3.1.3 of the Interconnection Agreement (see Pages 8-9 of this Order for the text of the Subsections).

BellSouth witness Hendrix stated in prefiled testimony that access to USOCs is not addressed in the Interconnection Agreement.

According to MCIm witness Turner in his direct testimony, USOCs are codes that correspond to BellSouth service features. Witness Turner maintained that BellSouth has acknowledged that it is essential for CLPs to have accurate information on USOCs and FIDs so CLPs can place valid orders and that USOC and FID errors are the most common cause of rejected orders. Witness Turner stated that there are thousands of USOCs and that in order to have accurate information on USOCs and FIDs, a CLP must know the states in which a specific USOC is valid and which FIDs are associated with each USOC. BellSouth provides USOCs and FIDs in the Local Ordering Guide (LEO) and the USOCs on their web site. However, according to witness Turner, the web site does not indicate the states in which the USOCs are valid or FID information. Therefore, to get complete information, the LEO also must be used. Witness Turner maintained that the process of referencing two different sources is cumbersome and inefficient. Witness Turner recommended that the Commission: (1) order BellSouth to provide MCIm via fixed format Network Data Mover (NDM) a description or definition of each of its USOCs, including the FIDs and their descriptions and the states in which the USOCs are valid; (2) order BellSouth to update this information on a biweekly basis; and (3) order BellSouth to give notice of the implementation or deactivation of a USOC 45 days in advance.

In rebuttal testimony, witness Turner stated that BellSouth's suggestion, that MCIm can integrate FIDs and state validity data with the downloadable USOC information BellSouth provides, was unsupported by BellSouth.

In his summary at the hearing, witness Turner stated that BellSouth has recently provided USOC information to MCIm in a usable format, however, BellSouth still has not provided information on the FIDs or on the particular states in which a particular USOC is valid.

BellSouth witness Stacy stated in prefiled testimony that BellSouth obtains USOC information through RNS and DOE which retrieves USOC information from the P/SIMS and COFFI databases. Witness Stacy asserted that CLPs may use LENS or EC-Lite to obtain USOCs from the P/SIMS and COFFI databases. However, using EC-Lite or LENS CGI, CLPs can integrate this information with the EDI ordering interface. Witness Stacy also stated that BellSouth has made USOC data along with the associated FIDs available to CLPs in three forms: (1) through the LEO Guide which is also available on BellSouth's web site; (2) a list which has been provided to the CLPs including MCIm; and (3) in the Service Order Error Routine (SOER) edits which are also available on BellSouth's web site. Finally, witness Stacy maintained that BellSouth has made two work aids available to CLPs: the BellSouth Work Aid for Ordering Simple Services and the BellSouth Work Aid for Ordering Complex Services which are also available through the BellSouth web site. Witness Stacy maintained that for several months, CLPs have been able to download the USOCs on a machine-to-machine basis from the BellSouth web site which CLPs could use to integrate and correlate this information, along with the information provided by the LEO Guide or the SOER edits, into their front-end, pre-ordering systems. Concerning USOC errors, witness Stacy stated that "some CLPs have demonstrated the ability to achieve more than 90% flow-through on their electronic orders submitted to BellSouth, which is comparable to BellSouth's rate".

Witness Stacy stated during cross-examination that BellSouth has provided the FID and state validity information to MCIm on paper and in an electronic format, but not in the format requested by MCIm. Witness Stacy also testified that BellSouth intends to provide the information in the future, however, BellSouth does not believe that it is a requirement of the Interconnection Agreement. Witness Stacy stated that the information may be provided late in the first quarter of 1999, but that he did not have an exact date. Witness Stacy also agreed that BellSouth representatives do not have to look up the information as CLP representatives do because the information is put together by BellSouth's retail unit and it is built into BellSouth's ordering process. Witness Stacy did agree that USOC errors are still the single biggest source of rejects.

The Public Staff, in its Proposed Order, stated that it believes that BellSouth's provision of USOC information to MCIm continues to fall short of parity of access. The Public Staff maintained that FIDs and state validity information are essential to the processing of correct orders. The Public Staff maintained that until the information is provided in a format that can be integrated into MCIm's ordering systems, BellSouth's customer service representatives will enjoy an advantage over MCIm's representatives insofar as the ordering process is concerned. The Public Staff also asserted that while automation may not be required for accuracy, it clearly minimizes the potential for human error. The Public Staff recommended that the Commission conclude that BellSouth should be required to provide MCIm with USOC information, including FIDs and state validity information, in a format that can be downloaded into a MCIm database no later than December 31, 1998, and thereafter to update this information on a biweekly basis and give 45 days notice of the implementation or deactivation of a USOC.

The Commission believes that the record of evidence indicates that access to complete and accurate USOC information with FIDs and state validity information is critical for MCIm to be able to construct accurate orders. However, the Commission does not believe that the Interconnection Agreement requires BellSouth to provide such data in a format that can be downloaded into a MCIm database. The Commission believes that BellSouth should provide the USOC information with FIDs and state validity information on a real-time electronic basis to MCIm. Updates should also be provided on a real-time basis.

CONCLUSIONS

The Commission concludes that BellSouth should provide USOC information including FIDs and state validity information on a real-time electronic basis to MCIm as soon as practicable. The Commission further finds that 45 days is more than an adequate amount of time for BellSouth to provide this information. Additionally, the Commission concludes that BellSouth should provide real-time updates to the USOC information.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Has BellSouth provided MCImetro with CSR information in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has failed to provide MCImetro with access to all CSR data, including, for example, price information associated with a customer's services. BellSouth should be ordered to provide MCImetro with access to complete CSR data within 30 days of the issuance of the Commission Order.

BELLSOUTH: Yes. MCImetro has electronic access to CSR information via the LENS, CGI, and EC-Lite pre-ordering interfaces, consistent with the Interconnection Agreement. CLPs have machine-to-machine access to CSRs using CGI or EC-Lite, allowing CLPs to electronically transfer CSR information into EDI and/or their own OSS. BellSouth is providing the CSR information required by the Interconnection Agreement unless it is not authorized by the customer to release it.

PUBLIC STAFF: No. BellSouth should provide MCImetro with CSR data for all customers, including pricing information, unless prohibited by the customer, such that MCImetro can populate an order form using EDI.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment VIII, Subsection 2.3.2.3 of the Interconnection Agreement which reads as follows:

> **Subsection 2.3.2.3:** "BellSouth shall provide MCIm with Customer Service Records, including without limitation, Customer Proprietary Network Information (CPNI), except such information as BellSouth is not authorized to release either by the customers or pursuant to applicable law, rule or regulation, as follows:...."

According to MCIm witness Turner, BellSouth has made a decision not to include all of the information in its CSRs in LENS. Witness Turner argued that LENS does not provide access to

CSRs at parity. Witness Turner concluded that it is not for BellSouth to decide that CLPs do not need information to which BellSouth itself has access. Witness Turner also maintained that BellSouth's prohibition of CLPs from access to "restricted" CSRs, even after MCIm has obtained the customer's express permission to obtain access, is improper and discriminatory. Witness Turner stated that BellSouth will not release restricted CSRs until it has directly spoken to the customer. Witness Turner requested that the Commission require BellSouth to provide MCIm with access to all CSR data, except such data as BellSouth can prove it is not authorized to release by its customers or under applicable law, rule, or regulation.

In rebuttal testimony, witness Turner maintained that BellSouth witness Stacy acknowledged that BellSouth provides CSR databases on its determination of what CLPs need to provision telephone service and limits the number of pages that CLPs may obtain electronically through LENS and that BellSouth does not currently provide pricing information. Witness Turner further stated that BellSouth's procedure of prohibiting CLPs from access to "restricted" CSRs until after BellSouth has actually spoken to the customer is improper and discriminatory. Witness Turner stated that it has taken BellSouth seven to 30 days to lift the restriction on requested CSR data.

Witness Turner also rebutted BellSouth witness Stacy's testimony that BellSouth should be able to strip off pricing information from the CSRs it provides to CLPs. Witness Turner maintained that BellSouth witness Stacy stated that the pricing information is not proprietary and witness Turner concluded that the only reason for excluding this information is to have CLPs derive the same information from other sources. Witness Turner stated that this process makes the CLPs' pre-ordering process more expensive and time-consuming. Witness Turner also stated that the Georgia Public Service Commission rejected similar arguments by BellSouth and required BellSouth to include pricing information in the CSRs provided to CLPs.

During cross-examination, witness Turner agreed that BellSouth does provide some CSR information to MCIm. Witness Turner also testified that MCIm only identified price as an item which MCIm was not receiving from BellSouth. Witness Turner also testified that the marketing and sales people are the ones that have specifically requested the information.

Witness Turner also clarified during cross-examination that it is MCIm's position that if MCIm, through a letter of authorization (LOA), states that a customer wants their CPNI released, BellSouth should release the information without having to talk directly to the customer before releasing their CPNI. When asked whether the issue of CSRs was decided by this Commission in the Section 271 Docket, witness Turner testified that he really did not know. However, he further testified that he would ask the Commission to consider this request based on this filing.

BellSouth witness Stacy maintained in prefiled testimony that BellSouth provides all data elements, via LENS, CGI, or EC-Lite, necessary for a CLP to provision telephone service. Witness Stacy presented a list of 10 elements that are provided to CLPs. Witness Stacy stated that CLPs are restricted from certain customer accounts, specifically accounts in which the BellSouth retail customer notifies BellSouth to restrict access to their account information. Additionally, witness Stacy stated that BellSouth's pricing information does not appear on the CSRs obtained by CLPs since this information is not necessary for CLPs to order, provision, maintain, or bill for resold services or UNEs provided to them by BellSouth. Witness Stacy concluded that this information is not needed for provisioning purposes, but that CLPs apparently want the information for marketing purposes, and that CLPs should not be given BellSouth's marketing information inherent in pricing data at the customer level. Concerning MCIm witness Turner's assertion that BellSouth takes seven to 30 days to provide MCIm with CSRs for which MCIm has submitted a LOA, witness Stacy stated that since no specific information was provided by witness Turner, BellSouth was unable to respond to the specific complaint. However, witness Stacy maintained that BellSouth's turnaround time for providing a CSR once a CLP has submitted a LOA is one day.

Witness Stacy conceded during cross-examination that MCIm has access to only a subset of the CSR information through LENS. The subset is not a complete CSR and excludes such things as a customer's credit history or pricing for the various services that the customer uses, except in Georgia. Witness Stacy also agreed that the pricing information was originally included, however, about a year ago, BellSouth removed that information because BellSouth believes that the information has value only as a marketing tool. Witness Stacy did concede, however, that the prices are tariffed rates. Witness Stacy also agreed that the Georgia Commission has ordered BellSouth to provide the pricing information and stated that BellSouth will comply with the Order but will only provide the information in Georgia. Witness Stacy read into the record a portion of the Georgia Order which reads, "BellSouth's testimony claiming marketing reasons for removing the rate information before passing it through to the CSRs was not credible". Concerning freezing CSRs, witness Stacy stated that BellSouth goes over a form with business customers which makes the customer aware of his option to freeze his CSR information if the customer wishes pursuant to a FCC Order (Docket 96-115 and 96-149). Witness Stacy also expressed that BellSouth believes that direct contact with the customer is required before a freeze can be lifted.

Witness Stacy agreed through cross-examination by the Public Staff that BellSouth does not provide CSR in electronic form to MCIm if the CSR exceeds the page limits discussed. However, witness Stacy acknowledged that BellSouth does have the CSR available in electronic form for BellSouth's own internal purposes.

On re-direct, witness Stacy stated that the Interconnection Agreement has a specific list of information to be included on a CSR and that BellSouth is providing every item on the list. He also stated that the list does not contain pricing information.

The Public Staff, in its Proposed Order, stated that it agrees with the Georgia Commission that, "BellSouth's claim that the rate information becomes proprietary when included in the CSR was not adequately supported, and was undermined by the facts that BellSouth had previously provided such information in fax format and that the basic rate information is not proprietary, and was generally not credible. In addition, Competitive Local Exchange Carriers (CLECs) cannot randomly browse through the CSRs to locate potential customers because they must obtain explicit customer approval before viewing the CSR." Although the Public Staff recognized that the Georgia Commission's Order dealt with OSS generally rather than under the terms of an interconnection agreement and that the Interconnection Agreement negotiated and arbitrated in North Carolina lists the information that is to be provided in the CSRs, the Public Staff believes that as a matter of parity MCIm should have access to all of the information on the CSR that is available to BellSouth, including pricing information, unless disclosure is prohibited by the customer. The Public Staff stated that it does not find anything in the Interconnection Agreement which would authorize BellSouth to redact CSRs before providing them to MCIm. The Public Staff also recommended that the Commission find that it is not appropriate to interfere with BellSouth's practice of requiring direct customer contact before releasing CSRs that have been frozen by a customer, as the Public Staff believes that this practice is consistent with FCC regulations and with BellSouth's other practices regarding CPNI. Finally, the Public Staff believes that once a CSR is released, it should be provided to MCIm in substantially the same time and manner as it is to BellSouth's retail operations which would mean electronically, regardless of length and without redaction. The Public Staff also believes that parity requires that MCIm should be able to parse the data and populate an order from it using EDI and that to the extent that BellSouth has not made this ability available to MCIm, it should be required to do so.

The Commission notes that BellSouth is providing every item identified in the Interconnection Agreement that BellSouth is obligated to include in a CSR. Additionally, the Commission believes that due to the current vulnerability of telephone customers to things such as slamming, it is appropriate to allow BellSouth to maintain its current freeze procedures for CSRs. MCIm will be provided access to CSRs after the appropriate actions are taken by MCIm to remove the freeze placed on the CSR at the request of the customer. Finally, the Commission also believes that it is appropriate to require BellSouth, to the extent that it has not done so already, to make the CSR data available to MCIm so that MCIm can populate an order from the data using EDI.

CONCLUSIONS

The Commission concludes that it is appropriate to require BellSouth to provide only the specific items identified in the Interconnection Agreement on a CSR. Additionally, the Commission concludes that it is appropriate to allow BellSouth to maintain its current freeze procedures for CSRs. Finally, the Commission concludes that it is appropriate for BellSouth, to the extent that it has not done so already, to make the CSR data available to MCIm so that MCIm can populate an order from the data using EDI.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: Has BellSouth provided MCImetro with service jeopardy notification in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has failed to provide MCImetro with electronic notification for all service jeopardies. BellSouth should be ordered to provide MCImetro with commercially functional EDI support for service jeopardy notification within 30 days of the issuance of the Commission Order.

BELLSOUTH: Yes. BellSouth provides CLPs with service jeopardy notification in substantially the same time and manner as itself. BellSouth is willing to implement electronic notification of service jeopardies via EDI; however, such notification should be implemented through the Electronic Interface Change Control (EICC) process.

PUBLIC STAFF: No. BellSouth should provide MCImetro with electronic notification of service jeopardies via EDI.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment VIII, Subsection 2.2.9.1 of the Interconnection Agreement which reads as follows:

> **Subsection 2.2.9.1:** "BellSouth shall provide to MCIm notification of any jeopardy situations prior to the Committed Due Date, missed appointments and any other delay or problem in completing work specified on MCIm's service order as detailed on the Firm Order Confirmation (FOC)."

There are two specific types of jeopardies:

(1) Missed appointment (or customer-caused or end-user caused) jeopardies which are situations where service is not installed because the customer is unavailable at the scheduled time; and

(2) Service (or company-caused or facilities) jeopardies are situations in which BellSouth is unable to complete the installation on time due to such factors as workload or unavailability of facilities.

MCIm witness Turner stated that BellSouth has agreed to provide missed appointment jeopardies via EDI, although MCIm has not tested that notification process. However, for service jeopardies, witness Turner stated that BellSouth calls MCIm, which in turn has to call its customers. Witness Turner maintained that it is critical for MCIm to receive notice of service jeopardies so it can notify its customers immediately and track the status of its orders accurately. Witness Turner stated that the notification process faced by MCIm contains an extra manual step that BellSouth does not incur, and, therefore, MCIm cannot relay jeopardy notifications to its customers as rapidly and efficiently as BellSouth. MCIm has requested electronic notification of service jeopardies via EDI, but to date, BellSouth has not been willing to grant MCIm's request. MCIm is asking for the Commission to require BellSouth to provide commercially functional EDI support for its service jeopardy notifications.

Witness Turner stated in rebuttal testimony that MCIm faces an additional manual step in its service jeopardy notification process. Witness Turner argued that BellSouth should be required to provide service jeopardies via EDI as requested by MCIm without submitting a Bona Fide Request (BFR). Further, witness Turner argued that MCIm should not be required to use the EICC process to obtain service jeopardy notifications via EDI because nothing in the EICC process permits BellSouth to avoid its preexisting contractual obligations. Witness Turner concluded that since BellSouth did not submit a change request for jeopardies for the July 13, 1998 change management sessions, BellSouth must agree with MCIm.

BellSouth witness Stacy stated in prefiled testimony that CLPs are notified by the Local Carrier Services Center (LCSC) by facsimile or via the LENS interfaces; however, MCIm currently does not use either electronic interface for ordering. Therefore, witness Stacy maintained, in this situation, the BellSouth work management center will call the CLP. However, witness Stacy stated that BellSouth is willing to implement electronic notification of service jeopardies via EDI before industry standards are established, but that it would not be a unilateral effort by BellSouth. A CLP would have to submit a BFR as defined in its interconnection agreement with BellSouth to pursue this type of enhancement. Witness Stacy also offered that the EICC process went into effect on May 15, 1998 and defines how BellSouth and CLPs will manage requested changes and enhancements to the CLP electronic interfaces. Witness Stacy stated that the Committee has proposed adding electronic notification of service jeopardies to EDI which is currently dependent on the EICC process.

Witness Stacy agreed during cross-examination that for missed appointment jeopardies, MCIm will receive electronic notification via EDI, however, for other service jeopardies, MCIm will receive notification by telephone or by fax. Witness Stacy also agreed that there is an additional step for a CLP to learn of a jeopardy.

The Public Staff, in its Proposed Order, maintained that the Interconnection Agreement does require BellSouth to give electronic notification of service jeopardies just as it does missed appointment jeopardies. The Public Staff stated that there is no distinction in either Attachment VIII, Subsection 2.2.9.1, or in the chart following that attachment between service jeopardies and missed appointment jeopardies. The Public Staff also stated that it does not believe that the fact that the matter has been referred to the EICC Committee relieves BellSouth of its obligations under the Interconnection Agreement. The Public Staff recommended that the Commission find that BellSouth should provide MCIm with service jeopardy notification via EDI no later than December 31, 1998.

The Commission notes that the language in the Interconnection Agreement does not distinguish between service jeopardies and missed appointment jeopardies, and only references "any jeopardy situation". Additionally, the Commission notes that the Interconnection Agreement requires BellSouth to provide notification to MCIm of any jeopardy situation, however, it does not specify *electronic* notification. Therefore, the Commission does not believe that BellSouth is obligated under the Interconnection Agreement to provide electronic notification of service jeopardies as requested by MCIm.

CONCLUSIONS

The Commission concludes that BellSouth is not required under the terms of the Interconnection Agreement to provide MCIm service jeopardy notification via EDI.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Issue: Has BellSouth provided MCImetro with information about BellSouth's OSS and related databases in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has failed to provide MCImetro with the information about BellSouth's internal OSS and related databases that is needed to judge whether the OSS provided to MCImetro is at parity with that used by BellSouth. BellSouth should be required to provide the requested information within 10 days from the date of the Commission's final Order.

BELLSOUTH: Yes. BellSouth has supplied the necessary information relevant to its OSS to all CLPs, including MCImetro, via their account teams, at CLP conferences, during training classes, OSS meetings, and workshops. Access to most of this information is also available at BellSouth's Interconnection Web Site. MCImetro is not entitled to proprietary information contained in BellSouth's OSS. MCImetro can be assured of nondiscriminatory access to BellSouth's OSS through performance measures found acceptable by the North Carolina Utilities Commission.

PUBLIC STAFF: Yes. BellSouth should not be required to systematically disclose details of its internal OSS to MCImetro.

DISCUSSION

BellSouth witness Hendrix referenced Part A, Sections 13.3 and 13.8 of the Interconnection Agreement which state:

> **Section 13.3:** "BellSouth agrees that it will provide to MCIm on a nondiscriminatory basis...the operations support systems as set forth in this Agreement. BellSouth further agrees that these services, or their functional components, will contain all the same features, functions and capabilities and be provided at a level of quality at least equal to the level which it provides to itself or its Affiliates."
>
> **Section 13.8:** "BellSouth agrees that order entry, provisioning, installation, trouble resolution, maintenance, billing, and service quality with respect to Local Resale will be provided at least as expeditiously as BellSouth provides for itself or for its own retail local service or to others, or to its Affiliates, and that it will provide such services to MCIm in a competitively neutral fashion."

Witness Hendrix also referenced Attachment VIII, Section 2.3.1.3 and Section 5.1.1.1 which state:

> **Section 2.3.1.3:** "BellSouth and MCIm shall agree on and implement interim solutions for each interface within thirty (30) days after the Effective Date of this Agreement, unless otherwise specified in Exhibit A of this Attachment. The interim interface(s) shall, at a minimum, provide MCIm the same functionality and level of service as is currently provided by the electronic interfaces used by BellSouth for its own systems, users, or subscribers."
>
> **Section 5.1.1.1:** "...BellSouth shall provide necessary maintenance business process support as well as those technical and systems interfaces required to enable MCIm to provide at least the same level and quality of service."

The direct and rebuttal testimony of MCIm witness Martinez and the cross-examination and deposition of witness Martinez from the Florida MCIm/BellSouth complaint proceeding were stipulated into the record in this proceeding. Witness Martinez testified that MCIm is entitled to receive OSS at parity and further stated that MCIm is entitled to know what BellSouth's capabilities are so that it may obtain these capabilities for itself.

In rebuttal testimony, witness Martinez stated that the Act and the Interconnection Agreement require that BellSouth provide parity in the OSS offered to MCIm, but that they do not specify how it is to be achieved. Witness Martinez also asserted that parity cannot be achieved unless BellSouth is required to disclose its systems and databases so that MCIm can determine the OSS to which it is entitled. However, witness Martinez further testified that MCIm does not seek to acquire BellSouth's intellectual property and would agree to appropriate restrictions on MCIm's use of the information provided.

During cross-examination before the Florida Commission, which was stipulated into the record in this instant proceeding as if given orally from the witness stand in North Carolina, witness Martinez conceded that, at the time the Florida agreement was negotiated, MCIm did not envision receiving information about all of BellSouth's OSS. However, witness Martinez stated that MCIm's position that it needed access to BellSouth's OSS developed only after the contract was executed. Witness Martinez argued that the contract foresaw accessing BellSouth's OSS because so much time was spent talking about electronic interfaces, and that MCIm must have access to the information in order to understand if it is receiving the parity that is so pervasive throughout the contract.

According to MCIm witness Turner, since BellSouth has refused to provide MCIm information concerning BellSouth's systems and databases, it is preventing MCIm from learning all of the capabilities MCIm should expect BellSouth to afford it. Witness Turner testified in direct testimony that MCIm requested the information from BellSouth in its December 24, 1997 letter to BellSouth to which BellSouth responded by letter dated February 11, 1998, refusing to provide the requested information. According to witness Turner, MCIm is requesting that the Commission require BellSouth to permit MCIm to review (i) a detailed listing of all OSS systems that BellSouth uses; (ii) all technical specifications for each of the listed systems, including but not limited to information explaining what functions the system performs, how the system performs those functions, what databases and other systems it interacts with and whether an interface can be built into the system; (iii) a detailed listing of each of the databases that are used by BellSouth's OSS systems; and (iv) a description of each of the listed databases, including but not limited to a database layout specifically identifying the characteristics of all database fields.

In his rebuttal testimony, witness Turner stated that the materials and training that BellSouth witness Stacy testified had been provided to CLPs does not address MCIm's concerns on OSS since the information relates to the OSS BellSouth provides to MCIm, and not BellSouth's own internal OSS. Witness Turner further stated that BellSouth witness Stacy's contention that MCIm has been given opportunities to learn about BellSouth's OSS has only been in the context of Section 271 hearings and related workshops, but such examination as a practical matter has been limited. Witness Turner concluded that it is suspicious that BellSouth is willing to produce certain information about its OSS, but is not willing to produce even a simple list of the OSS systems and databases that it uses.

Witness Turner testified during cross-examination that it is MCIm's position that it must be able to view all of BellSouth's OSS in order to determine if MCIm is actually being provided OSS at parity with the OSS BellSouth provides to itself. Witness Turner further stated that if BellSouth could show that a system had nothing to do with either pre-ordering, ordering, provisioning, maintenance and repair, or billing, then MCIm would not want to see those OSS systems. Witness Turner also testified that he did not believe that any Commission anywhere, any state, or the FCC has ordered the type and scope of access to any Local Exchange Carrier's (LEC's) OSS systems as MCIm is requesting in this proceeding.

BellSouth witness Stacy maintained in prefiled testimony that MCIm has been provided the "necessary information" relevant to BellSouth's OSS through account teams, CLP conferences, and during training classes, OSS meetings and workshops. Further, CLPs have access to this information via BellSouth's web site. Witness Stacy argued that MCIm's request to review BellSouth's internal or back-office OSS systems is unreasonable since back office OSS are proprietary intellectual property because they contain software which is trade secret information. Witness Stacy maintained that there are no provisions in TA96, the Interconnection Agreement, or any Statute which requires BellSouth to comply with MCIm's request in this regard. Witness Stacy offered that instead of examining BellSouth's internal OSS systems, MCIm may receive a yearly audit of BellSouth's performance measurements by an independent, third party auditor, which BellSouth will pay for. Concerning witness Turner's complaint that LENS is deficient because it is not a machine-to-machine interface and that BellSouth has no machine-to-machine, pre-ordering interface, witness Stacy maintained that LENS has a machine-to-machine version called CGI and BellSouth offers another machine-to-machine, pre-ordering interface called EC-Lite. Witness Stacy also maintained that CGI is a true machine-to-machine, pre-ordering interface, and BellSouth has proven that with a third-party software vendor, Albion International, Inc.

BellSouth witness Stacy testified on cross-examination that BellSouth's position is that the various state commissions have the right and authority to understand any of the OSS they choose to investigate; however, MCIm does not have the right to information on BellSouth's internal OSS. Finally, witness Stacy agreed that CLPs have not learned everything there is to know about the capabilities of BellSouth's OSS.

The Public Staff, in its Proposed Order, stated that it appreciates the difficulty faced by MCIm and the other CLPs in assuring themselves that they are being provided OSS at parity with BellSouth. The Public Staff maintained that evidence presented in this and other recent proceedings indicates that more remains to be done by BellSouth, the CLPs, and the industry as a whole to achieve this level of confidence and even then the CLPs are not likely to be fully satisfied. The Public Staff stated that it does not believe that the systematic disclosure of BellSouth's systems and databases requested by MCIm is required by the Interconnection Agreement or the Act. The Public Staff also stated that it expects the enhanced performance measurements, which BellSouth has recently developed and submitted in Docket No. P-55, Sub 1022, will provide valuable information on OSS. The Public Staff concluded that it would recommend that to the extent that the information provided in Docket No. P-55, Sub 1022 is lacking or indicates the need for further investigation, the Commission should conduct its own inquiries with appropriate safeguards.

MCIm is arguing that without knowing the internal OSS that BellSouth has available to itself, MCIm has no way of knowing if the OSS BellSouth provides to MCIm is at parity with the OSS BellSouth uses. However, the Commission agrees with the Public Staff in this regard that there are alternative ways to determine OSS parity other than to allow MCIm access and information on all of BellSouth's internal OSS. The Commission recognizes that performance measurements have been filed in Docket No. P-55, Sub 1022 which will be analyzed by the Commission. The Commission believes that it is appropriate in this regard for the Commission to further investigate any concerns over OSS parity after the performance measurements have been reviewed and analyzed, if such concern exists. Therefore, the Commission finds that allowing MCIm access to all of BellSouth's internal OSS is not required under the Interconnection Agreement or the Act.

CONCLUSIONS

The Commission concludes that under the Interconnection Agreement or the Act, BellSouth is not required to systematically disclose information of its internal OSS to MCIm. The Commission further concludes that to the extent that the information provided in Docket No. P-55, Sub 1022 is lacking or indicates the need for further investigation of BellSouth's OSS, the Commission will conduct its own inquiries with appropriate safeguards.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: Has BellSouth provided MCImetro with network blockage measurements in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has provided MCImetro with only limited network blockage information. BellSouth should be ordered to provide the detailed network blockage information requested by MCImetro in its December 24, 1997 letter to BellSouth within 30 days of the issuance of the Commission Order.

BELLSOUTH: Yes. The Interconnection Agreement does not require BellSouth to produce the blocking measurements requested by MCImetro. BellSouth measures MCImetro trunk blockage in the same manner as it measures BellSouth's trunk blockage.

PUBLIC STAFF: No. BellSouth should provide MCImetro with all blockage data that is available to BellSouth on trunks that serve MCImetro.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Part A, Subsection 13.2 of the Interconnection Agreement which reads as follows:

> "BellSouth agrees that Interconnection will be provided in a competitively neutral fashion, at any technically feasible point within its network as stated in this Agreement and that such interconnection will contain all the same features, functions and capabilities, and be at least equal in quality to the level produced by BellSouth to itself or its Affiliates."

BellSouth witness Hendrix referenced Attachment IV, Sections 4.2.1 and 4.2.2 of the Interconnection Agreement which state:

> **Section 4.2.1:** "A blocking standard of one percent (.01) during the average busy hour, as defined by each party's standards, for final trunk groups between a MCIm end office and a BellSouth access tandem carrying meet point traffic shall be maintained. All other final trunk groups are to be engineered with a blocking standard of one percent (.01). Direct end office trunk groups are to be engineered with a blocking standard of one percent (.01). The blocking standard of one half of one percent (.005) will be used on trunk groups carrying interLATA traffic."
>
> **Section 4.2.2:** "For trunks carrying MCIm interLATA traffic, MCIm may request BellSouth to report trunk group service performance and blocking standards to the industry."

MCIm witness Martinez argued that to comply with the provisions of the Interconnection Agreement, BellSouth must provide adequate network blockage data to allow MCIm to determine whether parity is being provided and to allow MCIm to properly engineer its network. Witness Martinez testified that in a letter dated December 24, 1997, MCIm requested BellSouth to provide the following information for the most recent three-month period: (i) blockage data on all common trunk groups utilized for CLP traffic that experienced blockage; (ii) blockage data on all of MCIm's interconnection trunk groups from BellSouth's end offices and tandems to MCIm's points of termination that experienced blockage; (iii) blockage data on all CLP interconnection trunk groups from BellSouth's end offices and tandems to CLP points of termination that experienced blockage; and (iv) similar blockage data on all trunks carrying BellSouth local traffic. Further, MCIm requested that BellSouth provide the same information on a month-to-month basis going forward. According to witness Martinez, the only reports provided on blockage data, which include the CLEC Trunk Group Service Report, the BellSouth Common Transport Trunk Groups (CTTG) Blocking Report, the Local Network Trunk Group Service Report, and the BellSouth Local Network Blocking Report, fall far short of providing the information that was requested by MCIm and that is needed to gauge trunk group blockage.

In his rebuttal testimony, witness Martinez stated that BellSouth provides CLPs with blockage information for trunk groups that experience certain levels of blockage (2% or 3% blockage during the "time consistent busy hour"), whereas BellSouth has information showing blockage below these maximum levels. Thus, witness Martinez argued that while CLPs are only given information showing where emergencies already exist, BellSouth has information that enables it to prevent the emergencies from occurring in the first place. CLPs must rely on this information from BellSouth because CLPs' switches do not indicate that traffic from BellSouth's network in not getting through. MCIm believes that BellSouth's practice of refusing to provide critical blockage information in its possession constitutes the failure to provide parity under the Act and the Interconnection Agreement. MCIm is requesting that BellSouth be required to provide the information that was requested in its December 24, 1997 letter within 30 days of the issuance of the Commission Order.

BellSouth witness Stacy maintained in prefiled testimony that BellSouth produces three reports: Comparative Trunk Group Service Summary, Trunk Group Service Report, and Trunk Group Service Detail. Blocking thresholds for all trunk groups are 3%, except BellSouth Telecommunications Corporation (BST) CTTG, which is 2%, according to witness Stacy. Witness Stacy also maintained that the reports have been produced for CLPs in the aggregate by BellSouth since January 1998 and have been posted on the BellSouth web site since February 1998 (CLP specific blocking reports have been posted since July 1998) . Further, witness Stacy stated MCIm specific trunk blocking reports were produced for March and will be produced on a monthly basis in the future. Witness Stacy believes that the reports produced by BellSouth should satisfy all of MCIm's trunk blocking requests.

BellSouth witness Stacy testified on cross-examination that BellSouth is providing exception reports which are exactly the same reports that BellSouth uses for itself. Witness Stacy further agreed that BellSouth has access to all of the blockage data it chooses to see, but as "a matter of fact, BellSouth doesn't use the data". Witness Stacy also stated that the threshold determined by the industry over a long period of time is 3%. Therefore, witness Stacy argued, it is appropriate to ignore the blockage every month unless it is over 3% since the network was designed to experience 3% or less blockage in any given month. Witness Stacy clarified that there are two groups: one you design for 1% blockage, and your exception report starts at 3% and one you design for 1/2% blockage, and your exception report starts at 2%. Witness Stacy acknowledged that the Interconnection Agreement references a design standard for blocking of 1% for some circuits and 1/2% for other circuits, however, he stated that the Interconnection Agreement is silent on how the traffic data is to be exchanged between the two parties.

The Public Staff, in its Proposed Order, stated that it can think of no legitimate reason for BellSouth to withhold from MCIm blockage data, which it admittedly has, on trunks that serve MCIm. The Public Staff recommended that the Commission find that BellSouth should be required to provide MCIm with monthly reports which identify blocking percentages on all local trunk groups between MCIm and BellSouth that experience blockage. The Public Staff also recommended that the Commission require that the initial report include detail for the three preceding months and should be provided within 30 days from the date of the Commission Order in this docket.

The Commission believes that BellSouth should make available to MCIm the same blockage data that BellSouth uses for itself. The Commission also believes that it is appropriate to require BellSouth to make the initial information available within 30 days of the issuance of this Order.

CONCLUSIONS

The Commission concludes that BellSouth should make available to MCIm the same blockage data that BellSouth uses for itself. The Commission also believes that it is appropriate to require BellSouth to make the initial information available within 30 days of the issuance of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: Has BellSouth provided MCImetro with local tandem interconnection information in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: Yes. Initially, BellSouth did not. BellSouth has provided information since the complaint was filed that may enable it to interconnect at BellSouth's local tandems. Accordingly, no further action by the Commission is requested at this time.

BELLSOUTH: Yes. This issue as been resolved and no longer needs further action by the Commission. BellSouth has provided MCImetro with the requested information on local tandem interconnection.

PUBLIC STAFF: Yes. BellSouth is providing MCImetro with the information necessary for local tandem interconnection.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Part A, Subsection 13.2 of the Interconnection Agreement which reads as follows:

> "BellSouth agrees that Interconnection will be provided in a competitively neutral fashion, at any technically feasible point within its network as stated in this Agreement and that such interconnection will contain all the same features, functions and capabilities, and be at least equal in quality to the level produced by BellSouth to itself or its Affiliates."

TELECOMMUNICATIONS - COMPLAINT

BellSouth witness Hendrix stated in prefiled testimony that the Interconnection Agreement does not specifically address local tandem interconnection information. However, witness Hendrix stated that the Interconnection Agreement states:

> "MCIm shall designate at least one IP (Interconnection Point) in the LATA in which MCIm originates local traffic and interconnects with BellSouth. Upon MCIm's request for additional points of interconnection, BellSouth will interconnect with MCIm at any Technically Feasible point on BellSouth's network of MCIm's choosing using the same technical configuration or using other arrangements, including but not limited to mutually agreed upon mid-span fiber meets, entrance facilities, telco closets, and physical or virtual collocation."

According to MCIm witness Martinez in his direct testimony, local tandems are tandems in BellSouth's network that interconnect end offices but do not provide access for long-distance traffic.

In his rebuttal testimony, witness Martinez confirmed that MCIm now is attempting to interconnect at BellSouth's local tandems based on the information BellSouth has provided. Witness Martinez stated that no further Commission action is requested at this time.

BellSouth witness Milner stated in prefiled testimony that BellSouth has informed MCIm of the availability of local tandem interconnection and has provided information regarding how such interconnection can be ordered.

During his summary at the hearing, witness Milner confirmed that based on his understanding of MCIm witness Martinez's rebuttal testimony, witness Milner believes that the issue has been resolved and no further action is required on the part of the Commission.

The Public Staff, in its Proposed Order, recommended that the Commission find that this count of the complaint has been satisfied. However, the Public Staff also recommended that the Commission monitor the situation by requiring BellSouth and MCIm to submit quarterly reports on the status of MCIm's interconnection at BellSouth's local tandems for the next year.

The Commission believes based on the record of evidence that this issue has been resolved and no further action is required on the part of the Commission.

CONCLUSIONS

The Commission concludes that BellSouth has provided the information requested since the complaint was filed that may enable MCIm to interconnect at BellSouth's local tandems. Accordingly, no further action by the Commission is necessary at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Issue: Has BellSouth provided MCImetro with access to directory listing information in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth has failed to provide MCImetro with directory listing information for certain customers of other local telephone companies. BellSouth should be ordered to provide MCImetro with such information within 10 days from the issuance of the Commission Order.

BELLSOUTH: Yes. BellSouth believes it would be most appropriate to make all directory listings available, but its contractual commitments preclude it from doing so. Decisions by third party companies with regard to the use of their listing information should not be construed as a breach by BellSouth of its Interconnection Agreement with MCImetro. MCImetro should be ordered to negotiate with companies over the release of their listings.

PUBLIC STAFF: Yes. BellSouth is not required to provide MCImetro with directory listing information for customers of ILECS and CLPs who have contracts with BellSouth prohibiting disclosure of such information.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment VIII, Subsection 6.1.6.1 of the Interconnection Agreement which reads as follows:

> "BellSouth shall provide to MCIm, to the extent authorized, the residential, business, and government subscriber records used by BellSouth to create and maintain its Directory Assistance Database, in a non-discriminatory manner. MCIm may combine the Directory Assistance Database with any other Network Element for the provision of any Telecommunications Service."

BellSouth witness Hendrix also referenced Attachment VIII, Subsection 6.1.6.1.

MCIm witness Martinez argued in his rebuttal testimony that the Act requires all ILECS to provide nondiscriminatory access to directory listings and that this duty supersedes any contractual restriction in BellSouth's agreements with other telephone companies.

BellSouth witness Milner stated in prefiled testimony that the issue relates to two services offered by BellSouth: (1) Directory Assistance Database Services (DADS) and; (2) Direct Access to Directory Assistance Services (DADAS). Witness Milner stated that DADS can be thought of as a "snapshot" of the database at any given point in time while DADAS is a data link to BellSouth's on-line directory assistance database containing customer directory assistance listings. Witness Milner further clarified that BellSouth does not provide CLPs' listings of some local service providers through DADS or DADAS with which BellSouth has a contract precluding BellSouth from providing the listings. Witness Milner stated that BellSouth must honor its contractual obligations which preclude the Company from offering all listings to CLPs. Witness Milner also stated that BellSouth has gone to considerable efforts to seek permission from the local service providers to amend its interconnection agreements with those local service providers which prohibits release of their listing information to third parties. Witness Milner stated that in May 1998, BellSouth wrote to or specifically contacted the independent telephone companies in North Carolina for which BellSouth provides directory assistance services in their interconnection agreements which prevent BellSouth from including their listings in the DADS or DADAS databases. The following companies have not agreed to alter the contracts: (1) Atlantic TMC; (2) GTE South; (3) Randolph Telephone Cooperative; and (4) ALLTEL of North Carolina. According to witness Milner, BellSouth also contacted the CLPs in North Carolina which had similar language in their interconnection agreements and at the time of witness Milner filing his testimony, the following CLPs have interconnection agreements with BellSouth which prevent the inclusion of their listings in BellSouth's DADS and DADAS services: (1) ALLTEL of North Carolina; (2) AT&T; and (3) Sprint. Therefore, according to witness Milner, under contractual obligations, BellSouth cannot provide all directory assistance listings to MCIm and BellSouth has fulfilled its contractual commitments to MCIm under the Interconnection Agreement.

Witness Milner stated in his summary at the hearing that it is important to note that MCIm is free to negotiate directly with the four independent companies and three CLPs for their listings.

During the hearing, witness Milner was referenced to sections of the AT&T and BellSouth Interconnection Agreement. Witness Milner read part of the agreement which states, "BellSouth shall refer any requests from third parties for AT&T's subscriber list information to AT&T". Witness Milner stated that BellSouth interpreted that to mean that BellSouth should not act on a request, but simply refer the request to AT&T. Witness Milner also expressed that it is his understanding that the agreement references third parties to mean companies and not customers; however, he did acknowledge that the agreement does not expressly state that. Witness Milner also agreed that it is BellSouth's preference to provide the complete database to CLPs such as MCIm. Finally, witness Milner stated that if the Commission ordered BellSouth to provide the complete database, BellSouth would comply with the Commission Order.

Witness Milner testified that he did not know for sure whether MCIm has contacted AT&T and asked for the directory listings.

The Public Staff, in its Proposed Order, stated that it is of the opinion that BellSouth has done all that it is required to do, if not more, to comply with the requirements of TA96 and the Interconnection Agreement with regard to its directory assistance database. The Public Staff stated that it believes that the matter is between MCIm and the other ILECS and CLPs rather than between MCIm and BellSouth. The Public Staff maintained that the resulting impact on local competition of some CLPs and ILECS still refusing to provide their listings despite attempts by BellSouth and MCIm to persuade them to do so is unacceptable. The Public Staff recommended that the Commission find that it is appropriate for the Commission to express that it is prepared to take appropriate action, if necessary, to ensure the availability of complete directory assistance databases to all local providers.

The Commission believes that it is important in a competitive local service environment for all carriers to have access to complete directory assistance databases. However, based on the record of evidence presented in this docket, the Commission believes that BellSouth has fulfilled its obligation under the Interconnection Agreement and the Act concerning access to complete directory assistance databases. The Commission is not inclined to interfere in the interconnection agreements between BellSouth and the CLPs and other ILECS that refuse to provide their listings for inclusion in BellSouth's databases.

CONCLUSIONS

The Commission concludes that BellSouth has provided MCImetro with access to directory listing information in compliance with the Act and the Interconnection Agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Issue: Under the Interconnection Agreement, are MCImetro and BellSouth required to compensate each other for transport and termination of traffic to ISPs? If so, what action should be taken?

POSITIONS OF PARTIES

MCIMETRO: Yes. BellSouth and MCImetro must pay each other reciprocal compensation for the termination of telephone calls to ISPs. The definition of Local Traffic makes no exception for such calls. Had such an exception been intended, it would have been expressly included by the parties. BellSouth should be ordered to pay reciprocal compensation for such traffic.

BELLSOUTH: No. BellSouth has remitted payment for local traffic as defined in the Interconnection Agreement. BellSouth disagrees that ISP traffic is local traffic which by definition in the agreement would originate and terminate within the same exchange or an extended area service (EAS) exchange. A ruling on this count should be withheld until the FCC resolves the jurisdictional and compensation issues regarding ISP traffic currently pending before the FCC.

PUBLIC STAFF: Yes. BellSouth should pay MCImetro reciprocal compensation on traffic terminated to ISPs, going forward and all amounts past due, plus interest.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment IV, Subsection 2.2.1 of the Interconnection Agreement which reads as follows:

> "The Parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the North Carolina Utilities Commission. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service (EAS) exchange. The terms Exchange and EAS exchanges

are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff."

BellSouth witness Hendrix also referenced Attachment IV, Subsection 2.2.1. Witness Hendrix stated that BellSouth "totally disagrees" that ISP traffic is local. He argued that calls made to the Internet through ISPs that originate on one CLP or ILEC's network do not "terminate" on the other CLP or ILEC's network since a single Internet call can communicate with international, interstate, and local destinations simultaneously. Therefore, witness Hendrix concluded the ISP traffic cannot be considered "local" and, hence, is not subject to reciprocal compensation. Witness Hendrix recommended that the Commission withhold ruling on this issue until the FCC resolves the jurisdictional and compensation issues regarding ISP traffic currently pending before it.

The Public Staff, in its Proposed Order, stated that the Commission's ruling in Docket No. P-55, Sub 1027 supports MCIm's claim that it is entitled under the Interconnection Agreement to reciprocal compensation on traffic terminated to ISPs. The Public Staff noted that in that case, the Commission rejected BellSouth's position that such traffic is not local traffic as defined in its Interconnection Agreement with US LEC. The Public Staff further stated that no new facts or arguments were presented in this case which should cause the Commission to change its previous decision on this issue. Therefore, the Public Staff recommended that the Commission find that BellSouth should be required to pay MCIm reciprocal compensation on traffic terminated to ISPs, going forward and all amounts past due, plus interest.

The Commission also notes that it has previously ruled on this issue in Docket No. P-55, Sub 1027 (Interconnection Agreement of BellSouth and US LEC). By Order dated February 26, 1998, the Commission found that ISP traffic is local and subject to reciprocal compensation. BellSouth appealed the Order in District Court and asked the District Court to refer the issue to the Federal level since in BellSouth's opinion it is interstate traffic. Additionally, by Order dated November 4, 1998 issued in Docket No. P-55, Sub 1096 (Interconnection Agreement between BellSouth and Intermedia Communications, Inc.) the Commission affirmed its previous decision on this issue (i.e., finding the traffic local and applicable to reciprocal compensation). The Commission agrees with the Public Staff that no new evidence was presented in this case. Therefore, the Commission finds that BellSouth is required to pay MCIm reciprocal compensation on traffic terminated to ISPs, going forward and all amounts past due, plus interest.

CONCLUSIONS

The Commission concludes that BellSouth should pay MCIm reciprocal compensation on traffic terminated to ISPs, going forward and all amounts past due, plus interest under the Interconnection Agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: Has BellSouth provided MCImetro with soft dial tone service in compliance with the Act and the Interconnection Agreement? If no, what action, if any, should the Commission take?

POSITIONS OF PARTIES

MCIMETRO: No. BellSouth provides soft dial tone in a discriminatory fashion that identifies only BellSouth as the carrier to be contacted for installation of local service. BellSouth should be required to change this to an unbranded notification message within 30 days from the issuance of the Commission Order.

BELLSOUTH: Yes. BellSouth's QuickService announcement advises customers to use another line to reach BellSouth or any other provider and it is competitively neutral. BellSouth should be allowed an opportunity to market its services provided via its own facilities. Once the CLP disconnects its subscriber from the line, the cost of maintaining the line becomes completely the responsibility of BellSouth and, therefore, it is only reasonable that BellSouth retain the opportunity to mention the availability of its service.

PUBLIC STAFF: No. BellSouth should change its soft dial tone message to make it competitively neutral.

DISCUSSION

MCImetro is claiming that BellSouth has breached its contractual obligations under Attachment III, Subsection 7.2.1.11.4 of the Interconnection Agreement which reads as follows:

> "Soft dial tone where required by law. Where BellSouth provides soft dial tone, it shall do so on a competitively neutral basis."

BellSouth witness Hendrix also referenced Attachment III, Subsection 7.2.1.11.

Soft dial tone refers to a situation where a telephone line has been disconnected for any reason; however, a "soft" dial tone will still be available from the line to enable someone to only dial 911 emergency services.

BellSouth provides soft dial tone, as referenced in Attachment III, Subsection 7.2.1.11.4 of the Agreement and has the following message on the line:

> "You can only dial '911' from this line. To reach BellSouth or another Local Service Provider, you must call from another location."

MCIm believes that the soft dial tone message is not competitively neutral as required in the Interconnection Agreement. MCIm recommended that the Commission require BellSouth to provide a soft dial tone message as follows:

> "This telephone only may be used for emergency access to 911. To order service for this line, please call one of the local service providers in your area."

BellSouth argued that it incurs the cost of maintaining the telephone line after service has been discontinued, therefore, it is not unreasonable for BellSouth to mention its name in the soft dial tone message. According to BellSouth witness Milner, soft dial tone, or what BellSouth calls "QuickService" capability, is available to all CLPs who resell BellSouth's services. Witness Milner expressed that the nature of the dispute is that BellSouth references itself by name in the soft dial tone message, which MCIm claims is not "competitively neutral". Witness Milner argued that BellSouth's message is competitively neutral for three reasons. First, witness Milner argued that recently, the FCC noted that on inbound telemarketing calls, a Bell Operating Company (BOC) could recommend its own long distance affiliate so long as it also states that other carriers also provide long distance services. Witness Miler implied that this situation is similar and in this case, BellSouth also mentions that other service providers are available. Second, witness Milner stated that after a CLP disconnects its subscriber from a line, the CLP no longer bears any of the cost for maintaining the line, BellSouth does. Therefore, witness Milner argued, it is only reasonable that BellSouth retain the opportunity to mention the availability of its service. Finally, witness Milner stated that the Commission has designated BellSouth as the carrier of last resort in its franchised area. The designation obligates BellSouth to serve any requesting end user customer. Witness Milner stated that by not mentioning BellSouth in the soft dial tone message, customers would be confused. He maintained that the language referencing BellSouth is consistent with BellSouth's designation as carrier of last resort.

During cross-examination, witness Milner agreed that the Interconnection Agreement does not state that if a carrier is the carrier of last resort, then the competitively neutral standard is waived. Witness Milner also denied that the message is an advertisement or that it is used by BellSouth to gain a competitive advantage. Finally, witness Milner also testified that in North Carolina, soft dial tone is required by Commission Rule and that any benefit (i.e. cost savings) to BellSouth in providing soft dial tone would be of an operational nature.

The Public Staff, in its Proposed Order, stated that it agrees with MCIm that BellSouth's soft dial tone message is not competitively neutral as required under the Interconnection Agreement. The Public Staff stated that it understands BellSouth's desire to identify itself on a line it maintains; however, the Public Staff believes that the fact remains that BellSouth agreed to a contractual provision which cannot be construed to permit such branding of facilities or services. The Public Staff recommended that the Commission require BellSouth to revise its soft dial tone message to reflect the following statement:

> "You may only dial 911 from this line. To establish telephone service, you must call from another location."

The Public Staff further recommended that the above message be put on all lines equipped with soft dial tone within 30 days of the date of the Commission Order in this docket.

The Commission believes that the term "competitively neutral" precludes BellSouth from specifically identifying itself on the soft dial tone message without referencing other local service providers by name. The Commission further agrees that the soft dial tone message recommended by the Public Staff fulfills the requirements of the Interconnection Agreement for competitive neutrality. Further, the Commission finds that BellSouth should change its soft dial tone message within 30 days from the date of the Commission Order.

CONCLUSIONS

The Commission concludes that BellSouth should be required to alter its soft dial tone message within 30 days of the issuance of this Order to read as follows:

> "You may only dial 911 from this line. To establish telephone service, you must call from another location."

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth and MCIm should negotiate the initial subset of the RSAG database that will be assembled and provided and the price to be paid by MCIm for this one-time service. The cost of extracting data which BellSouth believes should not be provided with the RSAG database is a cost that should be borne by BellSouth. BellSouth should be required to provide real-time access to updates to the database at no charge.

2. That BellSouth should provide MCIm with the ability to calculate due dates in the inquiry mode of LENS which BellSouth was planning to complete by November, 1998, as well as in the interfaces that are being developed for the future. Additionally, BellSouth should integrate the due date intervals and scheduling data to provide MCIm with the ability to display available due dates comparable to that available to BellSouth through RNS.

3. That BellSouth should provide a means for MCIm to reserve telephone numbers which MCIm can integrate into its ordering system and reserve the same number of telephone numbers per order as BellSouth. Further, BellSouth should not be required to integrate the NXX information which is available in the LERG into the ordering system which it provides to MCIm.

4. That BellSouth should provide USOC information including FIDs and state validity information on a real-time electronic basis within 45 days. Additionally, BellSouth should provide updates to the USOC information on a real-time basis.

5. That BellSouth should provide all CSR data specifically outlined in the Interconnection Agreement which does not include pricing data. Additionally, BellSouth may maintain its current freeze procedures for CSRs.

6. That BellSouth should not be required to provide service jeopardy notification via EDI under the Interconnection Agreement.

7. That BellSouth should not be required to systematically disclose the details of its internal OSS to MCIm under the Interconnection Agreement or the Act. To the extent that the information provided in Docket No. P-55, Sub 1022 is lacking or indicates the need for further

investigation of BellSouth's OSS, the Commission will conduct its own inquiries with appropriate safeguards.

8. That BellSouth should make available to MCIm the same network blocking data that BellSouth produces for its own use.

9. That BellSouth has provided the information requested since the complaint was filed that may enable MCIm to interconnect at BellSouth's local tandems. Accordingly, no further action by the Commission is necessary at this time.

10. That BellSouth has fulfilled its obligations under the Interconnection Agreement and the Act concerning access to directory listing information.

11. That BellSouth is required to pay MCIm reciprocal compensation on traffic terminated to ISPs, going forward and all amounts past due, plus interest under the Interconnection Agreement.

12. That BellSouth should alter its soft dial tone message within 30 days of the issuance of this Order to read as follows:

> "You may only dial 911 from this line. To establish telephone service,
> you must call from another location."

13. That, except as provided in this Order, MCIm's complaint is otherwise denied.

ISSUED BY ORDER OF THE COMMISSION.

This the __10th__ day of February, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

bc020999.01

Glossary of Acronyms Docket No. P-55, Sub 1094	
ATLAS	Application for Telephone Number Load Administration and Selection
BellSouth	BellSouth Telecommunications, Inc.
BFR	Bona Fide Request
BOC	Bell Operating Company
BST	BellSouth Telecommunications Corporation
CGI	Common Gateway Interface
CLEC	Competitive Local Exchange Carrier
CLP	Competing Local Provider
COFFI	Central Office Features File Interface
CPNI	Customer Proprietary Network Information
CSR	Customer Service Record
CTTG	Common Transport Trunk Groups
DADAS	Direct Access to Directory Assistance Services
DADS	Directory Assistance Database Services
DOE	Direct Order Entry
DSAP	Direct Order Entry Support Applications Program
EAS	Extended Area Service
EC	Electronic Communications
EDI	Electronic Data Interchange
EI	Electronic Interfaces
EICC	Electronic Interface Change Control
FCC	Federal Communications Commission
FID	Field Identifier
FOC	Firm Order Confirmation
ICREF	Interexchange Carrier Reference Validation
ILEC	Incumbent Local Exchange Carrier

Glossary of Acronyms Docket No. P-55, Sub 1094	
IP	Interconnection Point
ISP	Internet Service Provider
LAN	Local Area Network
LCSC	Local Carrier Services Center
LEC	Local Exchange Carrier
LENS	Local Exchange Navigation System
LEO	Local Ordering Guide
LERG	Local Exchange Routing Guide
LOA	Letter of Authorization
MCIm or MCImetro	MCImetro Access Transmission Services, Inc.
NDM	Network Data Mover
OSS	Operations Support Systems
P/SIMS	Product/Services Inventory Management System
RNS	Regional Navigation System
RSAG	Regional Street Address Guide
SAG	Street Address Guide
SOER	Service Order Error Routine
TA96 or the Act	The Telecommunications Act of 1996
UNE	Unbundled Network Element
USOC	Universal Service Order Code
WAN	Wide Area Network

DOCKET NO. P-7, SUB 877

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Carolina Telephone and Telegraph Company -	)	ORDER APPROVING
Snow Hill Extended Area Service	)	EXTENDED AREA
	)	SERVICE

BY THE COMMISSION: This matter was most recently considered by the Commission during the Regular Commission Conference held on Monday, September 27, 1999. The Public Staff presented the matter, including its recommendations, as an agenda item.

By Commission Order entered in this docket on June 3, 1999, Carolina Telephone and Telegraph Company (Carolina) was authorized to send no-protest notices to the subscribers in its Greenville, Kinston, La Grange, and Stantonsburg exchanges regarding proposed extended area service (EAS) to its Snow Hill exchange. Subsequently, Carolina filed tariffs effective July 1, 1999, regrouping exchanges which had exceeded the local calling scope limits (including EAS routes) of their rate group classifications. The Stantonsburg exchange was among the exchanges regrouped. Since the regrouping increases in the basic local rates were the basis for determining the EAS rate increases under Carolina's EAS matrix tariff, application of the tariff after the July 1, 1999, effective regrouping date produced no increase in the Stantonsburg basic local rates for establishing the proposed EAS, making it unnecessary to send no-protest notices to the Stantonsburg subscribers.

The notice sent to the subscribers in the other three exchanges stated that unless substantial protests and requests for hearing were received by September 3, 1999, the Commission would approve the proposed EAS. By that date, only four protests were received, two from the Greenville exchange, two from the Kinston exchange and none from the La Grange exchange.

At the Regular Commission Conference on September 27, 1999, the Public Staff asserted that an insignificant level of protests had been received from the Greenville, Kinston and La Grange exchanges. The Public Staff also reported that the poll results at the Farmville and Snow Hill exchanges were favorable and that no increases in basic monthly local rates would apply at the Goldsboro and Stantonsburg exchanges. According to the Public Staff, the Ayden exchange is the only one out of the eight affected exchanges in this EAS proposal to express any opposition to being included in the proposal. The earlier poll results at Ayden were unfavorable, but when combined with the results of the polls of the Snow Hill, or Snow Hill and Farmville subscribers, the results were positive. The specific poll results were presented in the Public Staff's Agenda Item P17 for the Regular Commission Conference of June 1, 1999.[1]

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[1]At the Regular Commission Conference on June 1, 1999, the Public Staff noted that the Ayden exchange was the only exchange which voted against the EAS proposal, but recommended that the Commission should, based on the "overall favorable poll results," issue an Order authorizing Carolina to send no-protest notices to four exchanges. Carolina could have raised the issue of excluding the Ayden exchange from the EAS proposal at that earlier point in time, but did not. The Commission approved the Public Staff's recommendation, with no opposition thereto having been expressed by Carolina.

Because of the overall positive poll results and other cited factors, the Public Staff maintained there is sufficient justification for the Commission to include the Ayden exchange in approving the total proposed EAS in accordance with the Commission's EAS Rule R9-7(i). The pertinent part of that Rule reads as follows:

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

Accordingly, the Public Staff offered the following factors in support of its recommendation to include Ayden in the proposal:

1. One of the primary objectives of this EAS proposal has been to establish county-seat EAS calling throughout Greene County where none currently exists. In fact, the Snow Hill county-seat exchange is one of only two exchanges in North Carolina that has no EAS. Establishing full county-seat EAS would aid economic development within the county and would eliminate measured calling within the county school system since all of the county's schools are located in the Snow Hill exchange. Leaving the Ayden exchange, which is partly in Greene County, out of the proposal will not completely fulfill this primary objective.

2. Approximately 500 of the Ayden subscribers, nearly ten percent of the total in the Ayden exchange, reside in Greene County and do not have EAS to their county seat or schools, while the balance of the Ayden subscribers, who reside in Pitt County, have EAS to their county seat at Greenville. The same local rates apply to both sets of Ayden subscribers. Leaving the Ayden exchange in this proposal will rectify this inequity.

3. Ayden was also subject to Carolina's regrouping tariff effective July 1, 1999. Consequently, the basic monthly local rate increases for establishing the proposed EAS would be lower than the increases used in polling the Ayden subscribers. For example, the increase in the residential monthly Community Caller rate, which applies to approximately 75% of the Ayden subscribers, used for polling was $0.94. After regrouping, that increase would now be $0.67. This means that those Ayden subscribers are now paying $0.27 of the originally computed cost for the EAS without having the EAS. For an additional monthly increase of $0.67 for those subscribers on Community Caller service as well as reduced increases for the rest of the Ayden subscribers, all the Ayden subscribers in Greene County will have EAS to their county seat and schools. The Public Staff took the position that the rate increases to provide these benefits are not unreasonable.

4. Recently, the Public Staff received letters of support for including Ayden in the proposal from the Greene County Board of Commissioners, Greene County Public Schools and Greene County Economic Development.

5. When the results of the Ayden, Farmville and the Snow Hill polls are combined, 68.6% of the subscribers who voted, voted in favor of the proposal.

Based on these considerations, the Public Staff recommended that Ayden should be included in the proposal.

Governmental Action

On September 20, 1999, Carolina filed a notice of its intent to file a petition, under the governmental action provision of its Price Regulation Plan, seeking rate adjustments to offset the financial impact of the Snow Hill EAS proposal and a motion to delay action on the Public Staff's recommendation on the proposal until the Commission had given full consideration to Carolina's governmental action filing. Carolina stated that it anticipated filing the petition on or before October 1, 1999.

At the Regular Commission Conference, the Public Staff took the position that the Commission should summarily reject Carolina's attempt to open a major new aspect of this case at this stage of the proceeding. The Public Staff noted that it had initially presented this matter to the Commission at the Regular Commission Conference of February 8, 1999. Prior to that, the Public Staff had numerous discussions with Carolina's representatives on how best to meet the needs of the Snow Hill subscribers. Based on the Public Staff's recommendation at the February 8, 1999 Regular Commission Conference, the Commission issued an Order on February 10, 1999, authorizing Carolina to conduct a poll of the affected subscribers in the Ayden, Farmville and Snow Hill exchanges, and subsequently authorized no-protest notices to be sent to the Greenville, Kinston and La Grange subscribers. The polls and the no-protest notices which the Commission authorized were based upon the application of Carolina's tariff and the Commission's rules on EAS. The Public Staff further noted that at no point in this proceeding prior to September 20, 1999, had Carolina raised the specter of a governmental action pleading in connection with this EAS proposal. Only then did Carolina indicate that it would seek to recover costs and revenue losses associated with the proposed EAS.

According to the Public Staff, the very fact that Carolina seeks a delay at this point in the proceeding demonstrates the untimeliness of any governmental action request in the matter. The proper time for such a pleading was prior to the Commission's decision on whether to proceed with the poll and no-protest notices, since governmental action recovery from those who will benefit from the EAS arrangement could well have affected the rates at which the subscribers, such as those in Ayden, Farmville and Snow Hill, were polled and whether or not no-protest notices or a poll was appropriate for other exchanges, such as Greenville, Kinston and La Grange. The Public Staff further stated that even if Carolina proposes a means of recovery of costs and lost revenues from other subscribers, the Commission's decision to move forward with this EAS proposal will have been made without knowing the full costs to Carolina's ratepayers, and its decision on recovery of any additional costs will have been partially preempted by Carolina's failure to request such recovery in a timely pleading.

For these reasons, the Public Staff recommended that the Commission deny Carolina's request for a delay of the decision in this case and reject any governmental action request in this case because of Carolina's failure to make the request at the appropriate time. Accordingly, the Public Staff recommended that the Commission issue an Order: (1) approving EAS between the Snow Hill exchange and each of the exchanges of Ayden, Farmville, Goldsboro, Greenville, Kinston, La Grange and Stantonsburg; (2) requiring BellSouth to immediately begin the process of obtaining a waiver from the Federal Communications Commission (FCC) to provide the approved interLATA EAS between the Goldsboro and Snow Hill exchanges; and (3) denying Carolina's attempt to delay a decision in this case and to recover additional cost and/or lost revenues as a result of this implementation.

The following persons appeared at the Regular Commission Conference on September 27, 1999, and spoke in support of the Public Staff's EAS recommendations: Mr. Paul Miller, Chairman of the Greene County Board of Commissioners, and Ms. Martha Carraway, a member of the Greene County Board of Education.

Mr. Marcus Potter of Carolina also appeared before the Commission. He argued that the Public Staff's recommendation regarding Ayden is at variance with Commission Rule R9-7(i). He suggested that it would be more economically efficient for government offices in Snow Hill to obtain an FX line for calling by Ayden customers. He said that Carolina supported a second poll in Ayden. With respect to Carolina's governmental action argument, Mr. Potter objected to its being summarily dismissed on a timeliness basis. Carolina's Price Regulation Plan does not itself set out a fixed schedule and indeed authorizes a filing at any time. Carolina was not aware until recently of the full impact of this proposal, as switching equipment in the Snow Hill exchange may need replacement.

Mr. Hugh Gerringer of the Public Staff Communications Division responded to Mr. Potter's arguments.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should adopt the Public Staff's recommendations in this docket.

With respect to the inclusion of the Ayden exchange in the EAS proposal, despite its negative vote, the Commission believes that ample authority exists to do this in the text of Rule R9-7(i). Although the rules does say that "approval or disapproval of the request will be based on individual poll results" where mixed results involving two or more exchanges occur, the rule goes on to state that the Commission will consider "other factors that may be reflective of any unique circumstances affecting the request, including valid public policy considerations such as economic development and county seat calling." The concluding sentence states: "In making a final decision, the Commission will exercise its discretion in considering all relevant factors." The Public Staff has presented several cogent and convincing "unique considerations" and "public policy considerations" as to why Ayden should be included in spite of Ayden's negative vote.

With respect to Carolina's assertion of governmental action to justify recovery under Section 7 of its Price Regulation Plan, the Commission agrees with the Public Staff that Carolina's notice and motion are untimely. Although the Price Regulation Plan sets out no fixed schedule under which such assertions are to be made, the Commission believes it is unreasonable to assert the governmental action provision at this late date.[1] This matter was originally presented at the Regular Commission Conference on February 8, 1999, and the Public Staff had extensive discussions with Carolina regarding this mater in the months prior to the date. The first time the governmental action provision was raised was September 20, 1999. Since the allowance of a governmental action claim could affect how much the EAS additive rate would be, the proper time for such a claim is prior to the Commission's decision on whether to proceed with the poll and no-protest notices. In any event, the Commission, the Public Staff, and the public should know what the full costs are before the matter moves forward.

IT IS, THEREFORE, ORDERED as follows:

1. That EAS between the Snow Hill exchange and each of the exchanges of Ayden, Farmville, Goldsboro, Greenville, Kinston, La Grange and Stantonsburg is approved.

2. That BellSouth shall immediately begin the process of obtaining a waiver from the FCC to prove the approved interLATA EAS between the Goldsboro and Snow Hill exchanges.

3. That Carolina's notice of intent to petition for price adjustments under the governmental action provision of its Price Regulation Plan and its motion to delay action on the Public Staff recommendation are denied.

4. That once the waiver has been received, Carolina and BellSouth shall take the necessary actions to implement two-way, non-optional EAS as approved in this docket and that a time schedule for establishing the service shall be submitted to the Commission no later than 30 days from the date the waiver is obtained.

5. That Carolina and BellSouth shall file the necessary tariffs with the Commission to be effective upon the in-service date of the EAS reflecting the EAS rates in effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

Chairman Jo Anne Sanford did not participate.

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[1]Section 7.A of Carolina's Price Regulation Plan reads that "[t]he Companies may request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment at any time during each Plan year to reflect the financial impact of governmental actions." It is the Commission's view that this provision simply authorizes Carolina to make up to two filings--in other words, Carolina is not restricted to the annual filing it is required to make but may make an additional filing as well. The phrase "at any time" is not, however, a license to make a filing at the eleventh or even the twelfth hour. It does not authorize Carolina to make such a filing in any given instance which, as here, is not timely.

DOCKET NO. P-7, SUB 877
DOCKET NO. P-7, SUB 825
DOCKET NO. P-10, SUB 479

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-7, SUB 877 In the Matter of Carolina Telephone and Telegraph Company - Snow Hill Extended Area Service DOCKET NO. P-7, SUB 825 DOCKET NO. P-10, SUB 479 In the Matter of Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of a Price Regulation Plan Pursuant to G.S. 62-133.5	)	ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION: On September 28, 1999, the Commission entered an Order in Docket No. P-7, Sub 877 approving extended area service (EAS) between the Snow Hill telephone exchange and each of the exchanges of Ayden, Farmville, Goldsboro, Kinston, La Grange and Stantonsburg.

On October 18, 1999, Carolina Telephone and Telegraph Company (Carolina) filed a Petition and Motion for Reconsideration with respect to those portions of the Commission's September 28, 1999 EAS Order in Docket No. P-7, Sub 877 that relate to and purport to deny Carolina the right to seek governmental action treatment as to EAS expenses. Carolina specifically referred to the third paragraph under the CONCLUSIONS section of the Order and the accompanying Footnote 2 and Ordering Paragraph No. 3 of the September 28, 1999 Order.

The third paragraph under the CONCLUSIONS section of the September 28, 1999, Order reads as follows:

> With respect to Carolina's assertion of governmental action to justify recovery under Section 7 of the its Price Regulation Plan, the Commission agrees with the Public Staff that Carolina's notice and motion are untimely. Although the Price Regulation Plan sets out no fixed schedule under which such assertions are to be made, the Commission believes it is unreasonable to assert the governmental action provision at this late date. This matter was originally presented at the Regular Commission Conference on February 8, 1999, and the Public Staff had extensive discussions with Carolina regarding this matter in the months prior to the date. The first time the governmental action provision was raised was September 20, 1999. Since the allowance of a governmental action claim could affect how much the EAS additive rate would be, the proper time for such a claim is <u>prior</u> to the Commission's decision on whether to proceed with the poll

and no-protest notices. In any event, the Commission, the Public Staff, and the public should know what the full costs are before the matter moves forward.

Footnote 2 of the September 28, 1999 Order reads as follows:

> Section 7.A of Carolina's Price Regulation Plan reads that "[t]he Companies may request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment at any time during each Plan year to reflect the financial impact of governmental actions." It is the Commission's view that this provision simply authorizes Carolina to make up to two filings--in other words, Carolina is not restricted to the annual filing it is required to make but may make an additional filing as well. The phrase "at any time" is not, however, a license to make a filing at the eleventh or even the twelfth hour. It does not authorized Carolina to make such a filing in any given instance which, as here, is not timely.

Carolina set forth three major arguments in support of its Petition and Motion for Reconsideration:

1. <u>The Commission's conclusion that Carolina did not give timely notice is wrong</u>. Carolina argued that the attached affidavit of Steve Parrott showed that the expenses that Carolina will incur in implementing this EAS plan are highly unusual in EAS situations; that Carolina first became aware of the nature of these expenses after the EAS polling and no protest notices had been completed; that Carolina filed its notice of intent to seek governmental action treatment within 20 days after the preliminary estimates of the financial impact of this EAS plan had first become available; that Carolina's governmental action proposal would not affect the EAS rates paid by the participants to this EAS plan (in fact, they would be exactly the same); and that Carolina's governmental action proposal would properly allocate the costs of this EAS plan to the appropriate class or classes of customers in accordance with Section 7 of the Price Regulation Plan.[1] Carolina intended to present these facts in its governmental action petition but was preempted by the Commission's Order from doing so.

2. <u>The Commission's Order is preemptive in nature and results in the denial of procedural due process</u>. Carolina cited to <u>Utilities Commission</u> v. <u>Western Carolina Telephone Company</u>, 260 N.C. 369 (1963) (<u>Western Carolina Telephone Company</u>), where the North Carolina Supreme Court held that the Commission erred in refusing the Petitioner in that case the opportunity to be heard as to the alleged defects in its Petition. The Supreme Court characterized this refusal as a "denial of the constitutional guarantee of due process." Carolina noted that it had raised the due process issue at the Regular Commission Conference on September 27, 1999.

[1] Among other points, Mr. Parrott stated in his affidavit that this docket will require Carolina to upgrade the Snow Hill Central Office to accommodate a substantial increase in traffic. He represented that Carolina engineers first reported that such an upgrade might be necessary on or about August 17, 1999, but an announcement of such prior to polling would have been speculative and possibly misleading. Carolina did not have complete information on the upgrade on September 20, 1999, when it filed its Notice of Intent.

3. The Commission's Order imposes a "time of filing" requirement that is not present in the Price Regulation Plan and which is in fact contrary to the language and intent of the Plan. Carolina cited to Section 7 of the Plan which states:

> Such governmental actions would include, by way of illustration and not limitation, general changes such as "separations" matters (involving the separation of investment, expenses, and revenues, between the intrastate and interstate jurisdictions) as well as extended area services or Commission-required technological innovations.

Section 7 further sets out:

> The Companies may request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment at any time during each Plan year to reflect the financial impact of governmental actions.

Carolina pointed out that, in neither of these provisions, is there a specific time of filing requirement or even any suggestions for a time of filing. The Commission's citation to the possibility that the EAS additive might be affected by a governmental action filing is inapposite, since Carolina's governmental action petition wold clearly and unequivocally state that the EAS rates that appeared on the ballots and no protest notices would not be changed or modified in any way. In other words, the EAS rates for the relevant customers would remain the same.

For relief, Carolina requested that the Commission issue an Order vacating those portions of the September 28, 1999 Order denying Carolina the opportunity to file its petition seeking governmental action treatment for the financial impact of this EAS plan and specifically affirming Carolina's right to file such a petition under the Price Regulation Plan. Carolina represented that its petition would include, but not be limited to, the following:

1. A cost study which accurately quantifies the financial impact of the EAS plan; and

2. A plan to properly allocate the financial impact of the EAS plan "to the appropriate class or classes of customers" in accordance with Section 7 of the Price Regulation Plan but in a manner which would not impact the completed polling/no protest process or otherwise raise rates for the Snow Hill EAS proposal.

Public Staff Response

On November 8, 1999, the Public Staff filed its Response to Carolina's Petition and Motion for Reconsideration, asking that they be denied.

The Public Staff briefly noted that history of the docket. The Snow Hill proposal was first brought before the Commission on February 8, 1999, with a recommendation for polling. By that time, Carolina was already well aware of the local interest in an EAS plan, had had numerous discussions with the Public Staff, and had conducted calling studies pursuant to Commission Rule R9-7(d). Carolina was silent at the February 8, 1999 Commission Conference, but did speak at the September 27, 1999 Commission Conference when the polling results were presented and the

Public Staff recommended approval of the EAS plan, at which time Carolina recommended a second poll of the Ayden subscribers and spoke of the need to replace the Snow Hill central office switching system.

After noting that Carolina's reliance on Western Carolina Telephone Company was inapposite both as to facts and law, the Public Staff set out its view of the governmental action provision of the Price Plan and how it interacts with the EAS rules. The Public Staff identified as a fundamental principle underlying the EAS rules that the cost of providing EAS should be borne by those who benefit from the service; but whether the EAS rates should be affected is a decision to be made by the Commission, not by Carolina. The Commission was well within its authority to rule that the time for requesting governmental action treatment of EAS costs was prior to proceeding with a poll and no-protest notices. Otherwise, a decision to place the cost on the EAS subscribers would have been effectively preempted by Carolina.

The EAS rules predate price regulation by several years. With a few changes, the EAS rules merely codify prior Commission policy and practice in dealing with EAS requests. When the Commission approved Carolina's Price Plan on May 2, 1996, there was no indication that the Commission intended to modify or rescind the EAS rules. Like other EAS cases, the Snow Hill proposal began with a demonstration of broad-based support under Rule R9-7(c)(1). Because Carolina utilizes an EAS matrix, the applicable rate increases were already known.[1] Thus, the critical point for Carolina to bring forth any arguments concerning the rate increases was when the Public Staff brought the matter forth for the authorization of polling and no-protest notices. The governmental action provision in the Price Plan in no way alters the fact that the time to raise the issue of "unusual or extenuating circumstances" warranting a cost study under Rule R9-7(e) was at that stage of the proceeding. Had Carolina conducted and presented its cost study at the appropriate time, the Commission's decision to allow polling might have been different. Carolina's failure to provide this information is contrary to Rule R9-7.

The Public Staff further maintained that Carolina's argument that it was authorized under the Price Regulation Plan to make filings "at any time" was faulty, because Section 7 of the Price Plan and Rule R9-7 must be construed together in a manner that preserves the integrity of each provision. Any tension between the use of the governmental action provision by a matrix company like Carolina and the EAS rules must be resolved by requiring that the governmental action request be submitted before the critical polling decision is made.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that Carolina's Petition and Motion for Reconsideration with respect to those portions of the Commission's September 28, 1999, Order

[1] Carolina's matrix tariff was first approved in a 1975 general rate case and was modified in another general rate case in 1981. It is designed to recover EAS costs on an average basis. The Public Staff argues that, by seeking to invoke the governmental action provision of its Price Plan in this case, Carolina implies that its matrix tariff may be applied selectively at its discretion.

Approving Extended Area Service that relate to Carolina's right to seek governmental action treatment as to EAS expenses should be denied for the reasons generally set forth by the Public Staff in its Response and by the Commission in the original Order.

It is the Commission's opinion that Carolina is putting too much weight on the provision of its Price Plan which allows it to request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment "at any time" during each Plan year. By the same token, Carolina also makes much of the absence of a specific "time of filing" requirement in the Price Plan for the "other" filing. However, as was correctly explained by the Commission in the original Order:

> It is the Commission's view that this provision simply authorizes Carolina to make up to two filings–in other words, Carolina is not restricted to the annual filing that it is required to make but may make an additional filing as well. The phrase "at any time" is not, however, a license to make a filing at the eleventh or even the twelfth hour. It does not authorize Carolina to make such a filing in any given instance which, as here, is not timely.

The Commission further agrees with the Public Staff that the Price Plan provisions cannot be examined in a vacuum but must be construed together with other relevant provisions, such as the EAS rules. The EAS rules predate the Price Plan by a considerable amount of time and provide for an orderly process by which EAS requests may be considered and ultimately paid for. As the Public Staff pointed out, the appropriate time for Carolina, a matrix company[1], to present fiscal arguments regarding the impact of an EAS is when the Public Staff brings the matter forward for the authorization of polling and no-protest notices. Instead, in this case, there was silence from Carolina until it filed its notice of intent regarding governmental action treatment on September 20, 1999. Carolina now suggests that its request for governmental action treatment was not intended to put any further direct burden on the affected subscribers; but this decision is one for the Commission, not the Company, and, in any event, this recommendation was scarcely self-evident at the time Carolina raised the issue of governmental action treatment.

Finally, Carolina has argued that it has been denied procedural due process because the Commission refused to hear its governmental action claim. It cites to Western Carolina Telephone Company in support of this proposition. As noted by the Public Staff, this case is hardly on "all fours" either as to facts or law. Unlike in that case, Carolina has had opportunity to be heard on this issue, notably at the Regular Commission Conference on September 27, 1999. In any event, Carolina does not have an absolute right to be heard further on a matter which was not presented in a timely

[1] Rule R9-7(f) regarding Matrix Rating Plans provides that "For telephone companies [such as Carolina] which have an approved EAS matrix plan in effect, the applicable customer charge(s), which shall be used for polling purposes, will be determined by application of said matrix plan." That being the case, the Commission agrees with the Public Staff that the governmental action provision in Carolina's Price Plan in no way alters the fact that the time to raise the issue of "unusual or extenuating circumstances" warranting a cost study under Rule R9-7(e) was prior to the Commission's decision on whether to proceed with the poll and no-protest notices and that Carolina's failure to provide this information is contrary to the requirements of Rule R9-7.

manner. Carolina's right to invoke Section 7 of its Price Plan is not unbounded. In effect, Carolina waived whatever right it may have had to be heard further on a governmental action request in this matter by waiting until after the EAS rates had been determined and polling had been completed to invoke Section 7 of its Price Plan. Since the allowance of a governmental action claim could affect how much the EAS rate additives would be, the Commission, the Public Staff, and affected customers should know what the full costs of an EAS arrangement are before the matter moves forward to the polling/no-protest notice stage.

IT IS, THEREFORE, ORDERED that Carolina's October 18, 1999, Petition and Motion for Reconsideration be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the _17th_ day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz111599.19

DOCKET NO. P-19, SUB 309

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of GTE South Incorporated - Knotts Island to Coinjock, Mamie, and Moyock InterLATA Extended Area Service	)))	ORDER APPROVING EXTENDED AREA SERVICE

BY THE COMMISSION: Pursuant to Commission Orders issued June 29, 1999, and July 12, 1999, in this docket, Carolina Telephone and Telegraph Company (Carolina) sent no protest notices to the subscribers in its Mamie exchange regarding proposed interLATA extended area service (EAS) to GTE South Incorporated's (GTE's) Knotts Island exchange as a last step in completing county-wide EAS in Currituck County among the Knotts Island, Coinjock, Mamie and Moyock exchanges.

The notice stated that unless substantial protests and requests for hearing were received by August 30, 1999, the Commission would approve the proposed EAS. By that date, no protests were received from the Mamie subscribers.

This matter came before the Regular Commission Conference on September 20, 1999. The Public Staff recommended that based on no protests having been received from the Mamie subscribers and on the earlier favorable results of the poll of the Knotts Island subscribers, the Commission should issue an Order approving the proposed EAS, thereby completing county-wide EAS in Currituck County.

After careful consideration, the Commission concludes that good cause exists to issue an Order approving the proposed EAS in this docket.

IT IS, THEREFORE ORDERED as follows:

1. That Carolina and GTE take the necessary steps to provide and implement two-way, non-optional EAS as proposed in this docket and that a time schedule for establishing the service be submitted to the Commission not later than 30 days within the date of this Order.

2. That Carolina and GTE file the necessary tariffs with the Commission to be effective on the in service date of the EAS reflecting the EAS rates then in effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz092099.02

DOCKET NO. P-55, SUB 1144

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Interconnection Agreement Between BellSouth Telecommunications, Inc., and The Other Phone Company, Inc., d/b/a Access One	)))	ORDER REJECTING AGREEMENT IN PART

BY THE COMMISSION: On October 19, 1999, AT&T Communications of the Southern States, Inc. (AT&T) filed its objections to the Interconnection Agreement (Agreement) between BellSouth Telecommunications, Inc. (BellSouth) and The Other Phone Company, Inc., d/b/a Access One Communications, Inc. (Access One) filed with the Commission on July 29, 1999. AT&T asked that the Commission disapprove the Agreement pursuant to Section 252(e) of the Telecommunications Act of 1996 (TA96 or Act) because the Agreement discriminates against telecommunications carriers not a party to the Agreement and it is not consistent with the public interest, convenience, and necessity.

First, AT&T argued that certain of the terms, rates and conditions are discriminatory. AT&T noted that the Agreement states that the rates, terms and conditions of the "Professional Services and Combinations" Attachment (Attachment 13) are "interdependent upon and related to one another" and that other carriers can only obtain the "totality of the identical rates, terms and conditions." This paragraph unnecessarily limits other carriers' ability to exercise their rights under the Federal Communications Commission's (FCC's) "pick and choose" rule. Second, key terms are anticompetitive in that there are (1) unacceptable volume commitments that preclude facilities-based carriers from obtaining unbundled network element (UNE) combinations and (2) higher charges in rural areas than urban areas. AT&T also took particular exception to the provisions of Attachment 13 dealing with UNE combinations. In that Attachment, it is recited that:

> The parties further acknowledge and agree that BellSouth's duties and obligations as set out in this Attachment 13 require BellSouth to combine network elements that, but for the Parties' agreement, BellSouth would not be required to provide or combine for any telecommunications carrier. Accordingly, the Parties agree that, to the extent this Attachment 13 requires BellSouth to undertake duties and obligations that it is not otherwise required to perform pursuant to any section of the Act nor pursuant to any current or future order of the Federal Communications Commission or of any state public service commission, such duties and obligations are not subject to the jurisdiction of the FCC or any of the state public utility commissions, including but not limited to any authority to arbitrate the rates, terms and conditions for the offering of such combinations of network elements. . . .

With respect to "pick and choose," AT&T pointed out that this is allowed under Section 252(i) of TA96 and FCC Rule 809. Contrary to these provisions, BellSouth and Access One have included a provision that "all of the rates terms and conditions contained in this Attachment 13 are interdependent upon and related to one another. . . ." By refusing to make available certain terms, BellSouth discriminates against facilities-based carriers because a carrier that has its own switches cannot obtain the same rates as Access One since BellSouth requires 90% of Access One's traffic to be carried over BellSouth's network. While the FCC rules allow a local exchange carrier to require that another carrier accept "legitimately related " terms, the burden is on the local exchange company to prove that the terms are indeed related to each other. A conclusory statement does not suffice, and even a cursory review of the terms reveals that there is no relation at all among many of the terms.

AT&T also scored the Agreement as anticompetitive because it obligates Access One to carry 90% of its traffic over BellSouth's network for seven years and charges significantly increased prices for combinations of UNEs in rural areas.

Public Staff Petition to Reject Agreement
In Whole or In Part

On October 29, 1999, the Public Staff filed a Petition to Reject Agreement in Whole or In Part. After reviewing the history of the docket, the Public Staff set out the major reasons for its position.

First, the Public Staff was concerned about language in Attachment 13 which appears to deny Commission jurisdiction. In essence, the relevant provision (Paragraph 2 of Attachment 13) purports to say that, if the FCC or a public service commission exercises jurisdiction "for the purpose of changing the rates, terms and conditions of this Attachment 13, or are subject to arbitration, then, the rates, terms and conditions of this Attachment 13. . .shall immediately become null and void and of no effect whatsoever." The Commission has already ruled in its June 23, 1999 Order in this docket that the provisions now included in Attachment 13 are properly part of the Interconnection Agreement that BellSouth and Access One were required to file with the Commission for approval. The above language flies in the face of that decision and is itself sufficient reason to reject Paragraph 2 of Attachment 13. This "poison pill" provision is another attempt by the parties to circumvent or elude the rightful jurisdiction of the Commission.

Second, the Public Staff argued that two portions of the proposed Agreement conflict with the "pick and choose" provisions of FCC Rule 809. Attachment 4, page 2 has an opening proviso in the nature of an integration clause--all rates, terms and conditions of the Attachment were said to be negotiated as a whole and are interdependent.[1] This language is identical to language (also pertaining to a Physical Collocation Attachment) included in an agreement between BellSouth and Frontier Local Services, Inc. (Frontier) which was previously ruled upon--and rejected--by the Commission. See August 2, 1999, and September 15, 1999 Orders in Docket No. P-55, Sub 1150. BellSouth has also removed the offending language from other agreements after the Commission's Orders in the Frontier matter were issued. See Prism Operations, Docket No. P-55, Sub 1120 and DSLnet, Docket No. P-55, Sub 1149. The second conflict is in Attachment 13, Third Paragraph, where the

[1] Attachment 4, page 2 reads at the beginning: "The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions."

interdependency of rates, terms and conditions specified in the Attachment is asserted.[1] The parties have offered no reason, other than their bare assertions, as to why these terms are interdependent. An examination of the terms and conditions set out in Attachment 13 shows that these rates, terms and conditions are not in fact interdependent.

The Commission has already thoroughly addressed the issues pertaining to FCC Rule 809 in Docket No. P-55, Sub 1150. The Commission stated very clearly that if BellSouth wishes to include an integration clause, it must do so in a form which clearly relates the terms and conditions to the interconnection, service or network element. If it does not desire to have the clause rejected, it must provide justification of a legitimate relationship when it submits the interconnection agreement for approval. The burden of proof is on the parties.

The Public Staff argued that the Commission should henceforth summarily reject any claims that rates, terms, or conditions are interrelated within interconnection agreements or amendments unless the parties have shown how they are interrelated. BellSouth has 22 other pending interconnection agreement or amendments currently filed. BellSouth should be required to review all pending interconnection agreements and amendments for compliance with Rule 809, amend any filings which are not in compliance, and desist from filing any future agreements or amendments that do not comport with these standards.

With respect to AT&T's filing, the Public Staff noted Access One's obligation under Attachment 13 to utilize BellSouth for 90% of its total local business in BellSouth's area for a period of seven years. Such an arrangement could allow BellSouth to tie its most attractive rates, terms and conditions to using BellSouth as an almost exclusive source for facilities. The Public Staff also shared AT&T's concerns regarding the volume and term provisions, but argued that the appropriate time for discussion of the legality and appropriateness of such an agreement would exist when another carrier, who is unwilling to commit to the volume and term provisions, has been denied the rates, terms and conditions which the Agreement makes available to Access One. At this point, that has not, according to the Public Staff's knowledge, occurred.

In conclusion, the Public Staff requested that the Commission either (1) reject the Agreement in its entirety, (2) reject Attachment 4 and Attachment 13 of the Agreement, or (3) reject the opening proviso of Attachment 4 and the second and third paragraphs of Attachment 13, pursuant to Section 252(e)(2) of the Act on the grounds that the Agreement or those portions of the Agreement are inconsistent with the public interest, convenience, and necessity inasmuch as they violate Section 252(i) of the Act and Rule 809 and the Commission's Orders in Docket No. P-55, Sub 1150. BellSouth should also be ordered to review all pending interconnection agreements and amendments for compliance with Commission Orders and FCC Rule 809, amend any filings not in compliance, and

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[1]Attachment 13, Third Paragraph reads: "The Parties agree that any telecommunications carrier may obtain the totality of the identical rates, terms and conditions of this Attachment 13 pursuant to Section 252(i) of the Act. The Parties further acknowledge that all of the rates, terms and conditions contained in this Attachment 13 are interdependent upon and related to one another and that the Parties would not have agreed to any or all of this Attachment 13 if any of the rates, terms and conditions of this Attachment 13 were or are altered in any way."

desist from filing any future agreements or amendments which do not comport with established standards.

BellSouth Response to AT&T's Objections

On November 1, 1999, BellSouth filed its Response to AT&T's Objection to Approval of Interconnection Agreement. BellSouth stated that the Agreement between BellSouth and Access One had been negotiated regionally and had been filed in all the other states in BellSouth's region. The only state commission to have ruled on AT&T's objections to date is Louisiana, which rejected all but one of AT&T's arguments (which it did not make here) and approved the Agreement.

BellSouth pointed out that the controlling legal standard for approval of a negotiated agreement is Section 252(e)(2)(A) of TA96, which provides that such an agreement can only be rejected if it is found to discriminate against a telecommunications carrier not a party to the agreement or is inconsistent with the public interest, convenience, and necessity. BellSouth also argued that the term "discrimination" has a particular meaning and that AT&T's assertions that a particular provision is "anticompetitive" does not necessarily rise to that standard.

BellSouth's first substantive point was the TA96 does not prohibit a "coordination fee" to combine UNEs. BellSouth asserted that the present legal standard regarding combinations is to be found in FCC Rule 315(b), which provides that incumbent local exchange companies (ILECs) are not to separate network elements "already combined." FCC Rules 315(c)-(f) remain in limbo while the Eighth Circuit Court of Appeals seeks additional briefing on the impact of the United States Supreme Court decision on them. Currently, there is no affirmative obligation to combine UNEs. Thus, the statement in Attachment 13 is legally correct. To the extent that BellSouth has agreed to do so, it has taken on an obligation outside the scope of the interpretation of TA96.

BellSouth's second point was that the Agreement does not violate the "pick and choose" rule. BellSouth argued that AT&T had overstated the import of the Commission's ruling in Docket No. P-55, Sub 1150 entered on September 15, 1999. This ruling did not contain a blanket rejection of the language at issue, but rather stated that BellSouth has the burden of proof to show that the terms and conditions in question are, in fact, "legitimately related." According to BellSouth, Attachment 13 sets forth particular UNE (both loop and port) charges and coordination fees. The term is for seven years and the Agreement is contingent upon Access One's carrying 90 percent of its traffic over BellSouth's switches. BellSouth did concede that the loop rates in Attachment 13 (those that pertain when purchasing combined UNEs) are the same as those set forth in other portions of the Agreement, which pertain when UNEs are purchased separately and are thus not specifically related to the other provisions of Section 13; but, otherwise, BellSouth maintained that all other aspects of Attachment 13 are interrelated.

BellSouth's third point was that the volume discount of the Agreement is neither discriminatory nor anticompetitive. The standard for discrimination under North Carolina law is that similarly situated customers must be treated the same. Since this exact same Agreement is available to any other competing local provider (CLP) that wishes to have it, including AT&T, it is not discriminatory. There is no force involved here. BellSouth also sought to refute AT&T's argument that the 90% requirement effectively prohibited Access One from building out its own facilities by pointing to testimony by Access One in Louisiana to the effect that the Agreement actually provides more options to serve customers.

BellSouth's fourth point was that different rates for UNEs combined in rural and urban areas are not anticompetitive. BellSouth argued that the Commission need not and should not review a negotiated agreement under TA96 to determine whether the rates contained in it are cost-based. However, in point of fact, the rate differences at issue simply reflect the reality of the differences in underlying costs between serving urban and rural areas. AT&T's position is somewhat ironic given its strenuous arguments for deaveraged UNE rates, which would tend to reflect cost differences between urban and rural areas.

Amendment to Interconnection Agreement filed by BellSouth and Access One

On November 1, 1999, BellSouth and Access One filed an amendment to their negotiated Interconnection Agreement which, in pertinent part, amended page 2 of Attachment 4 by deleting the following language which had been objected to by the Public Staff in its Petition:

"The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions."

BellSouth Response to Public Staff Petition

On November 8, 1999, BellSouth filed its Response to the Public Staff's Petition to Reject Agreement in Whole or in Part.

With respect to Paragraph 2 of Attachment 13, concerning jurisdiction where the Public Staff stated that the language amounts to a "poison pill" that causes the Agreement to "self-destruct" if the Commission exercises jurisdiction, BellSouth argued that the Public Staff had misconstrued the purpose of the paragraph and had overstated the extent of the Commission's jurisdiction. BellSouth noted that the only grounds for rejecting a negotiated agreement are if it discriminates against a telecommunications carrier not a party to the agreement or if it is inconsistent with the public interest, convenience, and necessity. The Commission can approve or reject, but it cannot change the terms and conditions of a voluntary agreement. Paragraph 2 of Attachment 13 renders void an attempt by a body such as the Commission to assert jurisdiction "for the purpose of changing the rates, terms and conditions of this Attachment." This paragraph is not implicated in any way if the Commission asserts its jurisdiction to conduct a review that is within its power--i.e., to approve or reject. The purpose of the paragraph is to show that the parties have negotiated an agreement with the intention that it will be approved in its entirety.

With respect to Attachment 4, page 2, concerning language that conflicts with the "pick and choose" rule, BellSouth stated that it had filed an Amendment to remove this language. Therefore, the Public Staff's objection here is moot.

With respect to the Public Staff's argument that various aspects of Attachment 13 are not "interdependent upon and related to one another," BellSouth disagreed with the Public Staff's conclusions. BellSouth's response to AT&T's objections and the affidavits in support of that response demonstrate that these various terms and conditions are, in fact, interrelated. BellSouth stated that it appears that the Public Staff does not take issue with the interrelation of the terms and conditions and the services to which they apply, but rather finds problematical the relationship between the various UNEs and services set forth in Attachment 13. BellSouth contended that these services are related to each other.

BellSouth noted that, in its response to AT&T's objections, it had conceded that the price of loops is not actually interrelated with the other prices in Attachment 13, since these loop prices are the same as the loop prices that Access One could obtain by purchasing the loops on an unbundled basis. They were included in Attachment 13 only to provide a complete menu of prices. However, every other item identified in Attachment 13 is interrelated because their prices were negotiated as a part of a single, unified package. All non-loop rates in Attachment 13 (including those for office trunk ports, transport, tandem trunk ports, and tandem switching) are set at prices that were negotiated on a regional basis. Thus, Access One selected a pricing option in which every element other than loops would be available to it at a single price in every state throughout the BellSouth region.

BellSouth pointed out that the Commission in Docket No. P-55, Sub 1150 did not prohibit language stating that the terms of an agreement are interrelated. Whether there is interrelationship or not is dependent on the facts of a given case. Here, every element price, coordination fee, term and condition in Attachment 13 fits together as part of a negotiated, unified package.

With respect to the Public Staff's request that BellSouth be required to review its pending interconnection agreements for compliance with Commission Orders and FCC Rule 809, BellSouth stated that it had already undertaken a review of the language in its pending agreements in light of the Commission's Order in Docket No. P-55, Sub 1150. However, BellSouth does not necessarily agree that the language should be changed or removed it every instance.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that, pursuant to Section 252(e)(2) of the Act, the last sentence of paragraph one[1] and the second and third paragraphs of Attachment 13 should be rejected on the grounds that those portions of the Interconnection Agreement are inconsistent with the public interest, convenience, and necessity since they violate Section 252(i) of the Act, FCC Rule 809, and the Commission's Orders in Docket No. P-55, Sub 1150. It is not necessary to reject the opening proviso of Attachment 4 since BellSouth has deleted the questionable language by the amendment to the Interconnection Agreement filed on November 1, 1999. The Commission also believes that BellSouth should be ordered to review all pending interconnection

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[1]AT&T references this sentence on page 6 of its objections. The Public Staff did not specifically object to this sentence in its petition. The Commission concludes that the sentence should be rejected in view of the fact that, like paragraph three of Attachment 13, it is arguably an integration clause notwithstanding the fact that it also contains "pick and choose" language.

agreements and amendments for compliance with the Commission Orders and FCC Rule 809, amend any filings not in compliance, and desist from filing any future agreements or amendments which do not comport with established standards.

Two sets of objections have been raised with respect to the Access One Interconnection Agreement. First, AT&T has emphasized certain portions of the Agreement which it believes to be discriminatory and anticompetitive (e.g., the 90% volume commitment; higher charges for rural as opposed to urban areas; the right to audit; UNE combination by BellSouth for Access One). Second, the Public Staff and AT&T have both criticized the Agreement as violative of the "pick and choose" provisions of Section 252(i) and FCC Rule 809. Both parties focused their fire on the "integration clause" in Attachment 13 which says that "all of the rates, terms and conditions contained in this Attachment 13 are interdependent upon and related to one another. . ."

The Commission believes that the heart of the controversy is related to the "integration clause" and its purported effect with regard to Attachment 13. While the other discriminatory concerns raised particularly by AT&T are by no means unimportant, the Commission agrees with the Public Staff that a more appropriate time for discussion of the legality and desirability of such provisions would exist when another carrier--who is unwilling, for example, to commit to the volume and term provisions--has been denied the rates, terms, and conditions which the Agreement makes available to Access One.

The leading case which the Commission has had on the subject of "pick and choose" and integration clauses is Docket No. P-55, Sub 1150, involving an Interconnection Agreement between BellSouth and Frontier Local Services, Inc.; more particularly the Commission's September 15, 1999 Order on Reconsideration Disapproving Agreement in Part. That docket traced the outlines of the applicable law. Under Section 252(i) of the Act, a local exchange company is obliged to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." FCC Rule 809 implements this provision by providing that the local exchange company is to make available "without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission. . .upon the same rates, terms, and conditions as those provided in the agreement." The Supreme Court in AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999) observed that the FCC "has said that an incumbent LEC can require a requesting carrier to accept all terms that it can prove are 'legitimately related' to the desired term." (Emphasis added). Thus, the burden of proof is on the local exchange company to prove that the terms are "legitimately related."

The Commission agrees with the Public Staff that, once again, BellSouth has not met its burden of proof in this regard. BellSouth concedes that the price of loops is not actually interrelated with the other prices in Attachment 13. But with respect to the other items, boiled to its essentials, BellSouth's argument is that every other item identified in Attachment 13 "is interrelated because their prices were negotiated as a part of a single, unified package." This may be one argument as to how the terms are interrelated but, by itself, it is insufficient. It is not far from saying that the terms are interrelated because we say they are interrelated.

TELECOMMUNICATIONS - INTERCONNECTION AGREEMENTS

The whole area of "pick and choose" and whether an interconnection, service, or network element is "legitimately related" to certain terms and conditions is fraught with difficulty and complexity. In the Order issued in Docket No. P-55, Sub 1150 on August 2, 1999, the Commission sought to bring some order to the process by suggesting the following:

> Implementation of the FCC's "pick and choose" rule will obviously present ongoing issues and controversies which will very likely be brought to the Commission for resolution. A central issue is likely to be what terms and conditions or, more broadly, what classes of terms and conditions are to be considered as "legitimately related" to an "interconnection, service, or network element." BellSouth and the other parties (such as the incumbent LECs, the competitive LECs, the Public Staff, the Attorney General, and others) having an interest in implementing FCC Rule 809 and resolving "pick and choose" issues on a prospective basis are strongly encouraged by the Commission to meet informally to negotiate a reasonable and nondiscriminatory set of guidelines to facilitate implementation of "pick and choose" provisions in an appropriate manner. The interested parties should be able, in the spirit of cooperation, to develop a set of "pick and choose" guidelines designed to avoid, to the maximum extent possible, ongoing complaints and controversies.

The Commission also observed in its September 15, 1999 Order in that same docket:

> . . .Accordingly, if BellSouth wishes to include an integration clause in its interconnection agreements affecting pick and choose rights, it must do so in a form that relates the terms and conditions to the interconnection, service, or network element and, if it does not desire to have the clause rejected, it should provide justification of a legitimate relationship when it submits the interconnection agreement for approval.

While the BellSouth/Access One Interconnection Agreement was submitted for review and approval before the Commission's September 15th Order was entered in Docket No. P-55, Sub 1150, it behooved BellSouth to reexamine its submission in light of that Order, rather than waiting until a controversy arose before providing arguments for the contested terms being "legitimately related." The Commission endorses the Public Staff's views that the Commission should "henceforth summarily reject any claims that rates, terms or conditions are interrelated within interconnection agreements or amendments thereto unless the parties have shown how each rate, term or condition is interrelated to each of the others." The Commission further concludes that, as a general proposition, integration clauses will be looked upon with disfavor unless a legitimate relationship is clearly demonstrated, not merely alleged. To that end, BellSouth should, if it desires to continue to propose the inclusion of integration clauses in future interconnection agreements, convene an informal task force of all interested parties to negotiate a reasonable and nondiscriminatory set of guidelines to facilitate implementation of "pick and choose" provisions in an appropriate manner designed to avoid, to the maximum extent possible, ongoing complaints and controversies. Until such time as a set of such guidelines is developed, the Commission intends to approve integration clauses only under the most compelling and clearest of circumstances--which is certainly not the case in view of the inadequate justification offered by BellSouth with regard to the Access One Interconnection Agreement.

Finally, there is the jurisdictional point raised by the Public Staff concerning a sentence in paragraph two which appears to purport to strip the Commission of jurisdiction if it acts to change rates, terms and conditions in Attachment 13. This one sentence reads:

> To the extent that either party hereto, the FCC, any state public service commission or any other person, entity or party asserts that any such rates, terms and conditions of this Attachment 13, or any other contract or agreement which is based upon this Attachment 13 as a result of any telecommunications carrier exercising its rights under Section 252(i) of the Act, are subject to the jurisdiction of the FCC or any state public service commission for the purpose of changing the rates, terms and conditions of this Attachment 13, or are subject to arbitration, then, the rates, terms and conditions of this Attachment 13 or any such contract or agreement based upon this Attachment 13 under which such assertion is made, shall immediately become null and void and of no effect whatsoever.

The Public Staff characterizes this provision as a "poison pill" which self-destructs Attachment 13 of the contract if the Commission asserts its rightful jurisdiction. BellSouth fastens on the word "change," and argues that the Commission only has the power to approve or reject an agreement or part of it but does not have the power to order specific "changes." The Commission agrees with the Public Staff that this provision should be rejected as being inconsistent with the public interest, convenience, and necessity in violation of Section 252(i) of the Act, FCC Rule 809, and the Commission's Orders in Docket No. P-55, Sub 1150. Furthermore, it is certainly the case that, as a piece of legal drafting, this sentence is a monstrosity. Construing interconnection agreements is difficult enough without the added burden of parsing sentences that cannot be coherently diagramed. In the future, BellSouth is requested, to the maximum extent possible, to present similar provisions in its interconnection agreements for approval in "plain language." The remainder of paragraph 2 regarding BellSouth's statement of its perceived duties and obligations under the Act to combine network elements is also rejected for the same reasons in view of the concerns and objections generally voiced by AT&T and the Public Staff, particularly in view of the unsettled and controversial nature of this matter and its potential jurisdictional consequences.

In conclusion, the BellSouth/Access One Interconnection Agreement is hereby disapproved in part by requiring the last sentence of paragraph one and the second and third paragraphs of Attachment 13 to be deleted. BellSouth and Access One may then refile the Agreement for approval with such language having been deleted. BellSouth shall also review all pending interconnection agreements and amendments to which it is a party for compliance with the Commission's Orders and FCC Rule 809, amend filings not in compliance, and desist from filing any future agreements or amendments which do not comport with established standards.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-55, SUB 1150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc., and Frontier Local Services, Inc., Pursuant to Section 251, 252, and 271 of the Telecommunications Act of 1996	))))	ORDER DISAPPROVING AGREEMENT IN PART

BY THE COMMISSION: On April 21, 1999, BellSouth Telecommunications, Inc. (BellSouth), and Frontier Local Services, Inc. (Frontier), filed an Interconnection Agreement with the Commission for approval pursuant to Section 252(e) of the Telecommunications Act of 1996 (TA96). On July 14, 1999, the Public Staff filed a Motion to Reject Portions of Interconnection Agreement on the grounds that these portions are inconsistent with the public interest, convenience, and necessity.

In support of its Motion, the Public Staff stated the following:

1. Section 252(e)(2)(A)(ii) of TA96 provides that a State commission may reject a portion of an agreement adopted by negotiation under Section 252(a) if it finds that the implementation of that portion of the agreement is not consistent with the public interest, convenience, and necessity.

2. Page 1, Part A, of the proposed interconnection agreement reads, in part:

> The terms and conditions contained within this Part A & Part B were negotiated as a whole and each term and condition within this Part A & Part B is interdependent upon the other terms and conditions.

3. Attachment 1, Page 2, of the proposed agreement concerning resale contains the following language:

> The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions.

4. Section 252(i) of TA96 provides:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

5. The FCC's "pick and choose" rule, 47 C.F.R. 51.809(a), reads, in part:

> An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.

This rule was reinstated by the U.S. Supreme Court in *AT&T Corp. v. Iowa Utilities Board.*, 525 U.S. __, 119 S.Ct. 721 (1999), and subsequently by the Eighth Circuit on June 10, 1999.

6. The apparent purpose of the portions of the proposed agreement set out in Paragraphs 2 and 3 above is to preclude other telecommunications carriers from obtaining individual interconnections, services, or network element arrangements upon the same rates, terms, and conditions provided in the agreement without opting into Parts A & B or Attachment 1 in their entirety. Finding ample authority in the Act for the "pick and choose" rule, the Supreme Court observed that the FCC "has said that an incumbent LEC can require a requesting carrier to accept all terms that it can prove are 'legitimately related' to the desired term. First Report and Order ¶1315. Section 252(i) certainly demands no more than that." 119 S.Ct. at 738. Simply stating in the agreement that rates, terms, and conditions are interdependent, however, does not necessarily make them so. The language referred to by the Court reads:

> Given the primary purpose of section 252(i) of preventing discrimination, we require incumbent LECs seeking to require a third party to agree to certain terms and conditions to exercise its rights under section 252(i) to *prove to the state commission* that the terms and conditions were *legitimately related* to the purchase of the individual element being sought. (Emphasis added.)

The remainder of Paragraph 1315 is also worth noting. It reads:

> By contrast, incumbent LECs may not require as a "same" term or condition the new entrant's agreement to terms and conditions relating to other interconnection, services, or elements in the approved agreement, Moreover, incumbent LECs' efforts to restrict availability of interconnection, services, or elements under section 252(i) also must comply with the 1996 Act's general nondiscrimination provision.

7. There is no reason to assume that the FCC's interpretation of Section 252(i) of the Act applies only to unilateral actions of incumbent LECs and not to negotiated agreements like the one submitted to the Commission for approval in this case. Otherwise, the parties could negotiate away the "pick and choose" rule, Section 252(i), and the general nondiscrimination provisions of the Act by simply stating the obvious: that the agreement is the product of give-and-take negotiation in which unrelated provisions are traded off against each other. These portions of the agreement, therefore, are in direct contravention of Section 252(i) of TA96 and FCC Rule 51.809, and their implementation would not be consistent with the public interest, convenience, and necessity.

8. The same grounds for rejecting the portions of Part A and Attachment 1 set out above apply to Section 15.1 on Page 13, Part A, dealing with modification of the proposed interconnection agreement, which states:

> BellSouth shall make available, pursuant to 47 U.S.C. § 252 and the FCC rules and regulations regarding such availability, to Frontier Local Service, Inc. any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 U.S.C. § 252. The parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement.

Viewed in isolation, this section does not appear to violate the Act or the FCC's rules. The first and third sentences are standard "most favored nation" provisions, and the second, while a waiver of the benefits of the "pick and choose" rule to Frontier, is something the parties to the agreement are permitted to do under Section 252(a)(1). In combination with the other two sections, however, the second sentence would have a "domino effect" by making "any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network being adopted" part of the original agreement whose "rates, terms, and conditions" are already said to be "interdependent." Therefore, this sentence should be approved only if the other two sections are rejected.

9. The proposed interconnection agreement was filed on April 21, 1999, and will be deemed approved if not approved or rejected by act of the Commission by July 20, 1999. [However, on July 15, 1999, BellSouth and Frontier agreed to an extension until August 3, 1999, regarding this matter.]

Accordingly, the Public Staff requested that the Commission rule on its motion expeditiously and reject the portions of the proposed interconnection agreement, identified in its motion, pursuant to Section 252(e)(2) of TA96 on the grounds that it is not consistent with the public interest, convenience, and necessity inasmuch as it violates Section 252(i) of TA96 and 47 C.F.R. 51.809.

<u>BellSouth Response to Public Staff Motion</u>

On July 22, 1999, BellSouth filed its Response to the Public Staff's Motion. BellSouth argued that the portions of the interconnection agreement referred to by the Public Staff were in fact consonant with the public interest. BellSouth agreed that the primary issue related to the meaning and intent of the "pick and choose" provision set out in 47 USC 252(i) but argued that, pursuant to the Supreme Court's holding, it can require the requesting carrier to accept all terms that it can prove are legitimately related to the desired term.

With respect to Page 1 or Part A of the Agreement, BellSouth maintained that this simply serves to memorialize the intent of the parties as they negotiated Parts A and B of the Agreement. The parties intended that Part A should contain all of the various and appropriate terms of the contract intended to apply to the entire Agreement. Part B contains the terms that are utilized in the agreement and their definitions. Each of these various terms, conditions, and definitions are interrelated in that they all commonly and equally apply to the remaining portions of the Agreement--i.e., the terms, conditions, and definitions were negotiated with the intent that the sum and substance of Part A and Part B would apply to the entire remaining portion of the Agreement. Thus, the terms and conditions apply across the board into one coherent section, eliminating the need to restate these common terms and conditions throughout the remainder of the Agreement. Otherwise, a 252(i) requesting carrier could pick only those provisions in Part A that impose an obligation on BellSouth and refuse to take those provisions in Part A that impose obligations on that requesting carrier.

Attachment 1 addresses all the rates, terms and conditions that apply to the purchase of BellSouth's retail service for resale by Frontier. All rates, terms and conditions contained in Attachment 1 relate to the resale arrangement of BellSouth and Frontier. They are interrelated since they are all conditions and obligations of the parties relating to the sale of BellSouth's retail services for the purposes of resale. Again, a 252(i) requesting carrier could pick only favorable provisions if total "pick and choose" were allowed.

With reference to the Public Staff's reliance on the Supreme Court and FCC language, BellSouth argued that the same language actually supports BellSouth's position. For example, Paragraph 1315 of the First Order and Report states that the primary purpose of Section 252(i) is to prevent discrimination. If the Commission were to grant the Public Staff's Motion, the result would be further discrimination because it would allow the 252(i) requesting carrier to get a better deal--i.e., a contract without all of the common terms and conditions negotiated by BellSouth and Frontier or a contract without all of the resale rates, terms and conditions negotiated by BellSouth and Frontier.

Lastly, with reference the Public Staff's advocacy of rejecting the language contained in Section 15.1 on Page 13, Part A, BellSouth rejected the Public Staff's view that the language therein would have a "domino effect." Neither BellSouth nor Frontier desired to narrow the effect of Section 252(i). They simply agreed that Frontier could request the rates, terms, and conditions of any other filed and approved agreement provided that Frontier agreed to include all interrelated rates, terms, and conditions as well as any rates terms, and conditions that were negotiated in exchange for or in conjunction with the rates, terms, and conditions requested.

AT&T Comments

On July 22, 1999, AT&T Communications of the Southern States, Inc. (AT&T) filed a Petition to Intervene and Motion to Reject Portions of the Interconnection Agreement and offered comments. AT&T concurred with the Public Staff's analysis. AT&T also observed that Paragraph 863 (Commission Version, Paragraph 331) of the First Report and Order stated that the "same terms and conditions" relate solely to the individual interconnection, service, or element being requested under Section 252(i) and that "incumbent LECs may not require as a 'same' term or condition the new entrant's agreement to terms and conditions relating to other interconnection, services, elements in the approved agreement." BellSouth's attempt to link all of the various services, elements, terms and conditions in the Agreement into a single, integrated whole clearly fails to meet the unambiguous requirements set out in the First Report and Order. BellSouth must prove that the terms and conditions of Part A and Part B are, in fact, legitimately related to all the services and elements set out therein.

SECCA Comments

On July 23, 1999, the Southeastern Competitive Carriers Association (SECCA) filed a Petition to Intervene and comments urging the Commission to reject the interconnection agreement between BellSouth and Frontier. SECCA said that it fully supports the Public Staff Motion and warned that it is informed that BellSouth's standard interconnection agreement has been revised to include the language cited in the Public Staff's Motion, which will have the effect of subverting the FCC's "pick and choose" rule. In addition to the relief requested by the Public Staff, SECCA requested that the Commission issue an Order requiring BellSouth to omit the offending provisions from its standard interconnection agreement for North Carolina.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission finds that BellSouth has not sustained its burden of proving that the terms and conditions in Part A and Part B are "legitimately related" to each other and that, therefore, the language purporting to do so should be stricken. This is not to say that the legitimate relation between such terms and conditions, either in whole or in part, cannot be proved--only that BellSouth has not done so in this case. With respect to Attachment 1, the Commission is satisfied that these resale provisions are legitimately related to each other for the reasons as generally set forth by BellSouth.

The BellSouth/Frontier interconnection agreement is structured in several distinct parts. There is a Part A consisting of "General Terms and Conditions," which appears to contain in most cases general contract terms such as might appear in any commercial contract between parties negotiating at arms-length. Part B consists of "Definitions." Then there are 11 attachments. On Page 1 of Part A in bold-face, the agreement pronounces that "[t]he terms and conditions contained within this Part A & Part B were negotiated as a whole and each term and condition within this Part A & Part B is interdependent upon the other terms and conditions." Similarly, Page 2 of Attachment 1 concerning "Resale" states: "The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms and conditions."

The apparent intent of the above language in the Agreement is, in the first place, to integrate the terms and conditions of Part A and Part B, such that if one wished to take A.13 (force majeure), one would also have to take, for example, A.7 (liability and indemnification). Similarly, in the second place, if one wanted to take Attachment 1, Resale, one would have to take all of Attachment 1. Somewhat curiously, none of the other Attachments contain such a provision.

With respect to the integration of Part A and Part B, BellSouth maintained that each of these various terms are "interrelated in that they all commonly and equally apply to the remaining portions of the Agreement." BellSouth in its Response says that these terms and conditions "were negotiated with the intent that the sum and substance of Part A and Part B would apply to the entire remaining portion of the Agreement." This allows common terms to go into a common section and prevents a requesting carrier from picking only those provisions of Part A that create a benefit while ignoring those that impose obligations. While the Commission agrees that Part A, Part B, and the Attachments form a single contract as far as BellSouth and Frontier are concerned, for the purposes of Section 252(i) requesting carriers, Part A, Part B, and the Attachments are not integrated by virtue of BellSouth's language. Thus, a requesting carrier could arguably choose any of the Attachments and not necessarily be bound by the provisions of Part A and Part B.

With respect to the integration of the provisions of Part A and Part B among themselves--that is, if one wants "parity," must one take "force majeure"--the Commission does not believe that BellSouth has shown that all of these terms and conditions are legitimately related. Perhaps they can be, but BellSouth has not done so here. The Commission also notes that the question of whether the provisions of Part A and Part B are legitimately related among themselves is separate from the question of whether such provisions are legitimately related to any one of the Attachments. Thus, "parity" and "force majeure" may not be "legitimately related" to each other, but arguably could be related to a given Attachment.

However, there is also a real question in the Commission's mind as to whether most, if not all, of the General Terms and Conditions of Part A or the Definitions of Part B would even be subject to "pick and choose" provisions.[1] Both Section 252(i) of TA96 and the FCC Rule 809 state that LECs are to "make available any interconnection, service, or network element provided under the agreement...to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." (Emphasis added). The emphasis, therefore, is on "interconnection, service, or network element" on the one hand and terms and conditions related to such "interconnection, service, or network element" on the other. It would not seem that provisions such as "parity," "force majeure," or even "liability and indemnification" constitute an "interconnection, service, or network element" which are subject to "pick and choose." At best, these terms and conditions can be viewed as ancillary to an interconnection agreement--in other words, the sort of associated terms and conditions one would expect to find in any commercial agreement between sophisticated parties negotiating at arms length--but not as "interconnection, service, or network element" themselves. What BellSouth appears to have wanted to do--but failed to do with its language--was to integrate the provisions of Part A and Part B with Attachment 1. Thus, if legitimately related to Attachment 1, the terms and conditions of Part A and Part B would apply if a requesting carrier sought the Attachment under "pick and choose."

With respect to the integration of Attachment 1, BellSouth argued that its purpose was to address all of the rates, terms and conditions applying to the purchase of BellSouth's retail services for resale by Frontier. All rates, terms, and conditions contained in Attachment 1 relate to the resale arrangement negotiated between BellSouth and Frontier. BellSouth argued that all of the rates, terms, and conditions in Attachment 1 are interrelated "as they all are conditions and obligations of the parties" relating to resale. The Commission is satisfied that BellSouth has carried its burden here to show legitimate relationship among the terms of Attachment 1.

Regarding the Public Staff's concern about Section 15.1 on page 13, Part A, the Commission believes that--with the language relative to Part A stricken--it is not necessary to strike this language,

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[1]An exception may be A.6 (Bona Fide Request/New Business Request Process for Further Unbundling).

which the Public Staff conceded to be otherwise innocuous. Furthermore, the Public Staff correctly noted that this provision, which constitutes a waiver of the "pick and choose" rule by Frontier, is something the parties to the agreement are permitted to do under TA96.

SECCA also requested that the Commission require BellSouth to omit the provisions in question from its standard interconnection agreement for North Carolina. The Commission declines to rule on this request for the reason that BellSouth has not requested approval to include such provisions in its standard interconnection agreement for North Carolina. This is not a currently pending issue which must be addressed.

Implementation of the FCC's "pick and choose" rule will obviously present ongoing issues and controversies which will very likely be brought to the Commission for resolution. A central issue is likely to be what terms and conditions or, more broadly, what classes of terms and conditions are to be considered as "legitimately related" to an "interconnection, service, or network element." BellSouth and the other parties (such as the incumbent LECs, the competitive LECs, the Public Staff, the Attorney General, and others) having an interest in implementing FCC Rule 809 and resolving "pick and choose" issues on a prospective basis are strongly encouraged by the Commission to meet informally to negotiate a reasonable and nondiscriminatory set of guidelines to facilitate implementation of "pick and choose" provisions in an appropriate manner. The interested parties should be able, in the spirit of cooperation, to develop a set of "pick and choose" guidelines designed to avoid, to the maximum extent possible, ongoing complaints and controversies.

For the reasons stated above, the Commission concludes that the BellSouth/Frontier Interconnection Agreement should be disapproved in part with respect to the provision in Part A, Page 1, purporting to integrate Parts A and B for the reason that such provision is contrary to the public interest, convenience and necessity. BellSouth and Frontier may refile the Agreement for approval with such language having been deleted.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of August, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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DOCKET NO. P-55, SUB 1150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc., and Frontier Local Services, Inc., Pursuant to Sections 251, 252, and 271 of the Telecommunications Act of 1996	)))))	ORDER ON RECONSIDERATION DISAPPROVING AGREEMENT IN PART

BY THE COMMISSION: On August 2, 1999, the Commission issued an Order Disapproving Agreement in Part concerning an interconnection agreement between BellSouth Telecommunications, Inc. (BellSouth) and Frontier Local Services, Inc. (Frontier). That agreement, among other things, contained an "integration clause" in Attachment 1, Page 2 concerning resale as follows:

> The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term, and condition within the Attachment is interdependent upon the other rates, terms, and conditions.

The Public Staff in its July 14, 1999, Motion to Reject Portions of Interconnection Agreement objected to the purport of this language. The Public Staff argued that BellSouth had not sustained its burden of proof to show that such terms and conditions were legitimately related to the purchase of the service or element sought.

The importance of the above language relates to the "pick and choose" provision of the Telecommunications Act of 1996 (TA96 or the Act). Section 252(i) of TA96 provides:

> A local exchange carrier [LEC] shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The Federal Communications Commission (FCC) promulgated a "pick and choose" rule in 47 C.F.R. 51.809(a) (Rule 809) which reads in relevant part:

> An incumbent LEC [ILEC] shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.

This rule was reinstated by the United States Supreme Court in AT&T Corp. v. Iowa Utilities Board, 525 U.S. ___, 119 S.Ct. 721 (1999) and subsequently by the Eighth Circuit Court of Appeals on June 10, 1999. The Supreme Court observed that the FCC "has said that an incumbent LEC can require a requesting carrier to accept all terms that it can prove are 'legitimately related' to the desired term." See FCC First Report and Order, Paragraph 1315 (primary purpose of provision is to prevent discrimination and ILEC must prove to the state commission that terms and conditions are legitimately related to element sought).

When this matter initially came before the Commission, the Commission found that BellSouth had not sustained its burden of proving that the terms and conditions in Part A and Part B had been proved to be "legitimately related," but did find that those of Attachment 1 were:

> With respect to the integration of Attachment 1, BellSouth argued that its purpose was to address all of the rates, terms and conditions applying to the purchase of BellSouth's retail services for resale by Frontier. All rates, terms, and conditions contained in Attachment 1 relate to the resale arrangement negotiated between BellSouth and Frontier. BellSouth argued that all of the rates, terms, and conditions in Attachment 1 are interrelated "as they all are conditions and obligations of the parties" relating to resale. The Commission is satisfied that BellSouth has carried its burden here to show legitimate relationship among the terms of Attachment 1. (Order of August 2, 1999, p. 7)

Public Staff Motion for Reconsideration

On August 23, 1999, the Public Staff filed a Motion for Reconsideration insofar as the Commission concluded that BellSouth had carried its burden of proof under Section 252(i) and Rule 809(a) to show a "legitimate relationship" among the terms of Attachment 1 (Resale).

The Public Staff made several arguments and observations in support of its motion:

First, the Public Staff suggested that a too lenient interpretation of what constitutes a "legitimate relationship" would undercut the purposes of Section 252(i) and Rule 809 and would vitiate the Commission's decision in the initial arbitration proceedings that a competitor cannot be required to accept an entire agreement or entire categories of agreements in order to obtain individual rates, terms, and conditions.

Second, the Public Staff argued that many of provisions of Attachment 1 are not legitimately related. The Public Staff maintained that BellSouth has failed to meet its burden of prof to show that such diverse terms as the availability of white page listings in North Carolina (Paragraph 3.20) and the residence discount rate of 15.75% applicable to resold services in Mississippi (Exhibit A) "are related, much less interdependent."

Third, the Public Staff observed that Attachment 1 includes a number of offerings and provisions which set it apart from other resale agreements, which contain only some of these provisions. For example, it lists rates for Operational Support Systems (OSS) and includes a threshold for acquiring the rate for Electronic and Mechanized LSRs, rather than paying the Manual Rate, as provided in other agreements; but it also includes other provisions not found in other resale agreements, such as a provision for disconnection and reuse facilities that are in a denied state, resale of certain vertical features at a discount, recovery charges for implementation of Number Portability, and specifics regarding the reservation of telephone numbers. Other resale agreements have also omitted the following provisions which appear in the Frontier agreement: recovery of interface costs for LENS, TAG, CRIS, and RSAG; certain language regarding copyrights; and the provision for the competing local provider (CLP) to remit 911 charges. Thus, the rates, terms, and conditions which BellSouth states in Attachment 1 are "interdependent upon the other rates, terms, and conditions" can be offered in other agreements on a different basis depending not on whether they are legitimately related but on whether the parties say they are interdependent. BellSouth must make a stronger showing of interdependence.

Fourth, the Public Staff argued that there may be an incentive for one CLP to enter into a valuable agreement with an ILEC with provisions in it, said to be interdependent, which will work to prevent other CLPs from obtaining the same benefit. The Public Staff also said that it believes that, if BellSouth prevails as to Attachment 1, it intends to insert the controverted language into numerous sections of future interconnection agreements.
In fact, on July 23, 1999, and August 19, 1999, BellSouth filed revisions to its interconnection agreements with DSLnet Communications, Inc., and Prism Operations, LLC, respectively, which would replace the attachment to the original agreements with those companies concerning physical collocation. In both cases, the parties have inserted language identical to the controverted language in Attachment 1 of the Frontier agreement. Rates included in the attachments vary from a nonrecurring charge for replacement of a lost key to a charge for cable installation. The Public Staff warned that the burden of reviewing this and other agreements without the protection against discrimination afforded by Rule 809 would be staggering.

<u>AT&T Motion for Reconsideration</u>

On August 24, 1999, AT&T Communications of the Southern States, Inc. (AT&T) filed a Motion for Reconsideration in this docket.

First, AT&T argued that the terms and conditions in Attachment 1 are not legitimately related to all of the services offered under that attachment. The validity of the integration clause must be tested by comparing each of the terms and conditions set out in the Attachment to the service being offered in the Attachment (in this case, resale). BellSouth has made no such showing, and the presence of only one such provision invalidates the integration clause, since the integration clause purports to bind all the provisions together. The simple statement by BellSouth that each of the terms in the Attachment are "interdependent" is simply insufficient, as a matter of proof, for BellSouth to meet the standard set forth by the FCC.

Second, integration of the terms of Attachment 1 would allow BellSouth to fully integrate terms in its contracts with other CLPs that engage only in resale of its services and thus effectively preclude application of the "pick and choose" rule. AT&T maintained that there will be other CLPs who will engage in resale of BellSouth services and would ordinarily expect to be able to pick and choose between terms of various resale agreements. The integration clause in Attachment 1 will plainly preclude such an option and renders the "pick and choose" rule meaningless for resale. BellSouth could include integration clauses in its Attachments for other services, such as unbundled network elements (UNEs) and interconnection, thereby avoiding the "pick and choose" rule by requiring CLPs to adopt BellSouth's agreements in their entirety.

SECCA Motion for Reconsideration

On August 26, 1999, the Southeastern Competitive Carriers Association (SECCA) filed a Motion for Reconsideration as to the Attachment 1 issue and joined in the Public Staff and AT&T motions for the reasons they have stated. SECCA added that by claiming that all of the interconnections, services and network elements provided by Attachment 1 were interrelated, BellSouth was attempting to extinguish the "pick and choose" rights of SECCA's members and of CLPs generally. Attachment 1 applies to all local exchange and toll telecommunications services of BellSouth contained in its General Subscriber Service Tariff and its Private Line Service Tariff, and BellSouth has made no showing that this broad array of services are interconnected. The mere condition that these services are being resold is no basis on which to say services are themselves interrelated.

BellSouth Response

On September 7, 1999, BellSouth filed a Response to Motions for Reconsideration. BellSouth argued that the language at issue ("The rates, terms and conditions contained within this Attachment were negotiated as a whole and each rate, term and condition within the Attachment is interdependent upon the other rates, terms, and conditions.") merely captures the reality of the negotiating process. While believing that this statement should be given great weight in considering any future request by a new entrant to exercise its rights under "pick and choose," BellSouth conceded that as a matter of law, under Section 51.809, this could not change in any way the extent of the third party's rights. BellSouth also maintained that the interdependent nature of the terms and conditions in Attachment 1 is obvious in light of what it covers. BellSouth pointed out that Attachment 1 sets forth the agreement whereby Frontier can resell any and all services of BellSouth from its General Subscriber Service and Private Line Tariffs in a nine state region. The Agreement specifically lists certain restrictions that apply to the resale of certain services in certain states, but, beyond this, all of the remaining services in the tariffs can be resold without restriction. There is nothing contrary to the public interest in this statement in the Agreement.

BellSouth argued that the process for determining the appropriateness of an incumbent's denial of a request under the pick and choose process is on a case-by-case basis. First, an actual request must have been made and the incumbent must have denied this request. Neither has occurred here. To justify beforehand the relation of every term and condition to each service BellSouth provides would be a massive and, in all likelihood, impossible undertaking.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission finds good cause to grant the Motions for Reconsideration concerning the August 2, 1999 Order. In so ruling, the Commission generally concurs with the reasoning set forth in those motions and concludes, on reconsideration, that BellSouth has not carried its burden of proof to show a "legitimate relationship" among the terms and conditions of Attachment 1.

On reconsideration, the Commission observes that BellSouth's Attachment 1 integration clause, rather than relating terms and conditions to the interconnection, service or element, instead purports to relate them to other rates, terms, and conditions. The appropriate standard for pick and choose analysis is whether the terms and conditions are legitimately related to the interconnection, service, or network element. Thus, as even BellSouth appears to concede, it has set out for itself a nearly impossible task--relating each of the terms and conditions among themselves--rather than restricting the inquiry to a perhaps more manageable level of relating the terms and conditions to the service being offered.

The Commission further observes that BellSouth has also conceded that, while the Attachment 1 integration clause should be given "great weight," it is not dispositive because pick and choose disputes can only arise if someone is refused. This may describe how the matter would come to the Commission on a complaint, but it does not address the Commission's responsibility relating to the approval of interconnection agreements. To the extent that BellSouth has included language in the interconnection agreement which would have an effect on a third-party's ability to exercise its rights under pick and choose, this is a legitimate inquiry for the Commission as to whether such language is in the public interest and comports with the pick and choose standards set out by the courts and the FCC. Accordingly, if BellSouth wishes to an include integration clause in its interconnection agreements affecting pick and choose rights, it must do so in a form that relates the terms and conditions to the interconnection, service, or network element and, if it does not desire to have the clause rejected, it should provide justification of a legitimate relationship when it submits the interconnection agreement for approval.

The Commission also finds good cause to reaffirm that portion of the Order of August 2, 1999, which provided as follows:

> Implementation of the FCC's "pick and choose" rule will obviously present ongoing issues and controversies which will very likely be brought to the Commission for resolution. A central issue is likely to be what terms and conditions or, more broadly, what classes of terms and conditions are to be considered as "legitimately related" to an "interconnection, service, or network element." BellSouth and the other parties (such as the incumbent LECs, the competitive LECs, the Public Staff, the Attorney General, and others) having an interest in implementing FCC Rule 809 and resolving "pick and choose" issues on a prospective basis are strongly encouraged by the Commission to meet informally to negotiate a reasonable and nondiscriminatory set of guidelines to facilitate implementation of "pick and choose" provisions in an appropriate manner. The interested parties should be able, in the spirit of cooperation, to develop a set of "pick and choose" guidelines designed to avoid, to the maximum extent possible, ongoing complaints and controversies.

For the reasons set forth in the Order of August 2, 1999, and this Order on Reconsideration, the BellSouth/Frontier Interconnection Agreement should be disapproved in part with respect to the integration clause provisions in Part A, Page 1 and Attachment 1, Page 2 for the reason that such provisions are contrary to the public interest, convenience and necessity. BellSouth and Frontier may refile the Interconnection Agreement for approval with such language having been deleted.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mr091499.05

Commissioner William R. Pittman dissents.
Commissioner J. Richard Conder did not participate.

DOCKET NO. P-140, SUB 50
(ON REMAND)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Interconnection with BellSouth Telecommunications, Inc.	))))	ORDER RULING ON MOTION FOR RECONSIDERATION, MODIFICATION AND CLARIFICATION

BY THE COMMISSION: On April 27, 1999, the Commission entered an Order in this docket requiring AT&T Communications of the Southern States, Inc. (AT&T) and BellSouth Telecommunications, Inc. (BellSouth) to amend Section 25.5.1 of their interconnection agreement to incorporate the following provision:

> "AT&T shall only resell a CSA [contract service arrangement] to the end user for whom the CSA was constructed or to end users similarly situated to the specific end user for whom the CSA was constructed. Customers shall be deemed to be similarly situated based upon quantity of use; time of use; manner of service; and costs of rendering the service."

The Order of April 27, 1999, required AT&T and BellSouth to submit a signed amendment to their interconnection agreement setting forth the approved language not later than Friday, May 14, 1999.

On May 14, 1999, BellSouth filed the amendment in question, stating that BellSouth had signed the amendment, but that AT&T had informed BellSouth that it would not sign the amendment. On that same date, AT&T filed a letter in this docket stating that it would either appeal or seek reconsideration of the Order of April 27, 1999. For that reason, AT&T requested the Commission to "stay its Order directing the parties to file an executed amendment to their interconnection agreement until such time as the period for appeal of the Commission's Order expires, or until such time as any appeal or reconsideration of its Order may be concluded, whichever is later."

By Order dated May 26, 1999, AT&T and the other parties to this proceeding were granted an extension of time to and including June 28, 1999, to appeal the Order of April 27, 1999.

On June 18, 1999, AT&T filed a motion for reconsideration, modification and clarification in this docket.[1] By its motion, AT&T specifically requested the Commission to (1) reconsider its determination that the CSA amendment proposed by BellSouth is "reasonable and nondiscriminatory" as required by FCC Rule 613(b); (2) modify the Order to provide that to the extent BellSouth is permitted to impose restrictions on the resale of CSAs it must provide to AT&T manner of service and cost of service information for each CSA that it executes; and (3) clarify that to the extent BellSouth objects to AT&T's resale of a CSA, the burden of proof shall be on BellSouth to show that AT&T's customer is not similarly situated to the end user for whom the CSA was originally constructed.

On July 1, 1999, BellSouth filed a response in opposition to AT&T's motion for reconsideration, modification and clarification. BellSouth asserted that AT&T's arguments are legally flawed and that the Commission's Order is legally sound. The issues raised by AT&T do not in any way rise to the level of rendering the reasonable and nondiscriminatory restriction approved by the Commission unlawful.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

By Order entered May 22, 1998, the United States District Court for the Eastern District of North Carolina (Federal District Court) struck Section 25.5.1 from the BellSouth/AT&T interconnection agreement and remanded the matter to the Commission for rearbitration consistent with the Court's opinion. On remand, the Commission required AT&T and BellSouth to execute an amendment to their interconnection agreement. BellSouth signed that amendment, while AT&T, instead of signing the amendment, requested a stay of the Commission's Order pending appeal or reconsideration.

The Commission, having carefully reviewed AT&T's motion, concludes that the motion should be denied insofar as it requests the Commission to reconsider and reject the amendment approved by the Order previously entered in this docket on April 27, 1999. The Commission finds no merit in any of the arguments set forth by AT&T in support of its motion to reconsider. The Commission continues to believe that BellSouth's proposed resale restriction, that CSAs may be resold only to similarly situated customers, is reasonable, nondiscriminatory, and consistent with the Act and FCC Rules. Nevertheless, the Commission does believe that AT&T's request for modification and clarification raises legitimate issues which should be addressed in an appropriate manner.

[1]On July 8, 1999, AT&T filed a letter of clarification with regard to certain references to sections of the FCC's First Report and Order.

Section 25.5.2 of the current interconnection agreement between BellSouth and AT&T provides that "If AT&T identifies a specific CSA, BellSouth shall provide a copy within ten (10) business days of AT&T's request." As a matter of clarification and modification, the Commission concludes that if AT&T has reason to believe that a prospective customer is similarly situated to the original CSA customer and therefore eligible for resale of the CSA, AT&T should submit to BellSouth a written request to resell the CSA to that customer. Within fifteen (15) business days, BellSouth should indicate to AT&T whether or not the prospective customer is similarly situated to the existing CSA customer. A prospective customer who is situated as well as or better than the existing CSA customer relative to BellSouth, based on quantity of use, time of use, manner of service, and costs of rendering the service, considered in the aggregate, will be considered eligible for the CSA.

If BellSouth determines and responds that the CSA may not be resold to the prospective customer, BellSouth will have the burden of proof to show that the two customers are not similarly situated and must, within fifteen (15) business days from the date of the original request, provide AT&T with the basis for its conclusion and the information on which it relies to show that the two customers are not similarly situated. That information must be provided in writing and in sufficient detail, with facility layouts or other supporting material as needed, to enable AT&T to either agree or disagree with BellSouth's answer.

In reaching these conclusions, the Commission notes that certain CSAs, such as master service agreements and volume and term agreements in particular, are not based upon the cost to serve the specific customers, but are based on average costs to serve customers of that type and include as a requisite some minimum volume or term of use. In these less complex cases, the Commission is of the opinion that BellSouth should be able to make its determination as to whether the prospective customer is similarly situated or not in fewer than 15 business days; i.e., perhaps 10 business days or less. To facilitate the CSA resale process, BellSouth is encouraged to always expedite its responses to the maximum extent possible, rather than simply taking the maximum time allowed, and, whenever possible, provide AT&T with a statement of the critical parameters of a particular CSA which should be used for purposes of making a determination regarding the "similarly situated" criterion. Furthermore, BellSouth and AT&T are strongly encouraged to continue negotiations in an attempt to reach a clear understanding of what information BellSouth will require from AT&T in order to make a timely, reasonable, and accurate determination as to whether a prospective customer is similarly situated to an existing CSA customer. The Commission expects the parties to cooperate fully with one another in resolving CSA resale issues on a going-forward basis.

Based on the foregoing, the Commission further concludes that AT&T's pending motion for stay is moot. The Commission expects and hereby directs AT&T and BellSouth to sign and file the contract amendment required by this Order without further delay. The Commission will entertain no further pleadings regarding this matter. If it is deemed necessary, the parties are certainly free to appeal this Order and seek a stay from the appellate court. In the meantime, however, both parties should comply with the requirements of this Order. The Commission cannot see how either AT&T or BellSouth will be irreparably harmed or injured by signing and filing the amendment in question, even if either or both parties decide to appeal.

IT IS, THEREFORE, ORDERED as follows:

1. That Section 25.5 [Contract Service Arrangements ("CSAs")] of the BellSouth/AT&T interconnection agreement be, and the same is hereby, amended to read as follows:

25.5.1 AT&T shall only resell a CSA to the end user for whom the CSA was constructed or to end users similarly situated to the specific end user for whom the CSA was constructed. Customers shall be deemed to be similarly situated based upon quantity of use; time of use; manner of service; and costs of rendering the service.

25.5.2 If AT&T identifies a specific CSA, BellSouth shall provide a copy within ten (10) business days of AT&T's request. If AT&T has reason to believe that a prospective customer is similarly situated to the original CSA customer and therefore eligible for resale of the CSA, AT&T shall submit to BellSouth a written request to resell the CSA to that customer. Within fifteen (15) business days, BellSouth shall indicate to AT&T whether or not the prospective customer is similarly situated to the existing CSA customer. A prospective customer who is situated as well as or better than the existing CSA customer relative to BellSouth, based on quantity of use, time of use, manner of service, and costs of rendering the service, considered in the aggregate, shall be deemed eligible for the CSA.

25.5.3 If BellSouth determines that the CSA may not be resold to the prospective customer, BellSouth shall have the burden of proof to demonstrate that the two customers are not similarly situated and BellSouth shall, within fifteen (15) business days from the date of the original request, provide AT&T with an answer which clearly sets forth the basis for its conclusion and the information on which it relies to show that the two customers are not similarly situated. BellSouth shall provide this information to AT&T in writing and in sufficient detail, with facility layouts or other supporting material as needed, to enable AT&T to either agree or disagree with BellSouth's answer.

2. That AT&T and BellSouth shall, not later than Friday, September 3, 1999, submit a signed amendment to their interconnection agreement consistent with the provisions of this Order.

3. That the request for stay filed in this docket by AT&T on May 14, 1999, is moot.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of August, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz081699.05

Commissioners Judy Hunt and Sam J. Ervin, IV, did not participate.

DOCKET NO. P-582, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition by ICG Telecom Group, Inc. For Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996	))))	RECOMMENDED ARBITRATION ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, August 3, 1999

BEFORE: Chairman Jo Anne Sanford, Presiding; and Commissioners Robert V. Owens, Jr. and Sam J. Ervin, IV

APPEARANCES:

FOR ICG TELECOM GROUP, INC.:

Henry Campen, Jr., Parker, Poe, Adams & Bernstein, First Union Capitol Center, Suite 1400, 150 Fayetteville Street Mall, Raleigh, North Carolina 27602

Albert H. Kramer, Dickstein, Shapiro, Morin & Oshinsky, 2101 L Street NW, Washington, D.C. 20037-1526

FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

Edward L. Rankin, III, General Counsel - North Carolina, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28230

A. Langley Kitchens, General Attorney, and E. Earl Edenfield, Jr., General Attorney, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Atlanta, Georgia 30075

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: This arbitration proceeding is pending before the North Carolina Utilities Commission pursuant to Section 252(b) of the Telecommunications Act of 1996 (TA96 or the Act) and Section 62-110(f1) of the North Carolina General Statutes. On May 27, 1999, ICG Telecom Group, Inc. (ICG) filed a Petition in this docket which initiated this proceeding. By its Petition, ICG requested that the Commission arbitrate certain terms and conditions with respect to interconnection between itself as the petitioning party and BellSouth Telecommunications, Inc. (BellSouth).

The purpose of this arbitration proceeding is for the Commission to resolve the issues set forth in the Petition and Responses. 47 U.S.C.A. Section 252(b)(4)(C). Under the Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission (FCC) regulations pursuant to Section 252. Additionally, the Commission shall establish rates according to the provisions in 47 U.S.C.A. Section 252(d) for interconnection, services or network elements, and shall provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C.A. Section 252(c).

Pursuant to Section 252 of TA96, the FCC issued its First Report and Order in CC Docket Numbers 96-98 and 95-185 on August 8, 1996 (Interconnection Order). The Interconnection Order adopted a forward-looking incremental costing methodology for pricing unbundled network elements (UNEs) which an incumbent local exchange company (ILEC) must sell new entrants, adopted certain pricing methodologies for calculating wholesale rates on resold telephone service, and provided proxy rates for State Commissions that did not have appropriate costing studies for UNEs or wholesale service. Several parties, including this Commission, appealed the Interconnection Order and on October 15, 1996, the United States Court of Appeals for the Eighth Circuit issued a stay of the FCC's pricing provisions and its "pick and choose" rule pending the outcome of the appeals.

The July 18, 1997 ruling of the Eighth Circuit, as amended on rehearing October 14, 1997, was largely in favor of state regulatory commissions and local phone companies and adverse to the FCC and potential competitors, primarily long distance carriers. The Eight Circuit held that 47 U.S.C.A. Sections 251 and 252 "authorize the state commissions to determine the prices an incumbent LEC may charge for fulfilling its duties under the Act." The Court of Appeals also vacated the FCC's "pick and choose rule." Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997).

On January 25, 1999, the United States Supreme Court entered its Opinion in AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999). The Supreme Court held, in pertinent part, that (1) the FCC has jurisdiction under Sections 251 and 252 of the Act to design a pricing methodology and adopt pricing rules; (2) the FCC's rules governing unbundled access are, with the exception of Rule 319, consistent with the Act; (3) it was proper for the FCC in Rule 319 to include operator services and directory assistance, operational support systems, and vertical switching functions such as caller I.D., call forwarding, and call waiting within the features and services that must be provided by competitors; (4) the FCC did not adequately consider the Section 251(d)(2) "necessary and impair" standards when it gave requesting carriers blanket access to network elements in Rule 319; (5) the FCC reasonably omitted a facilities-ownership requirement on requesting carriers; (6) FCC Rule 315(b), which forbids ILECs to separate already-combined network elements before leasing them to competitors, reasonably interprets Section 251(c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements; and (7) FCC Rule 809 (the "pick and choose" rule), which tracks the pertinent language in Section 252(i) of the Act almost exactly, is not only a reasonable interpretation of the Act, it is the most readily apparent. The Supreme Court remanded the cases back to the Eighth Circuit Court of Appeals for proceedings consistent with its opinion.

TELECOMMUNICATIONS - INTERCONNECTION AGREEMENTS

On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules), Rule 809 (the "pick and choose" rule), and Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Eighth Circuit also vacated FCC Rule 319 (specific unbundling requirements). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements. Iowa Utilities Board v. FCC, ___ F.3d ___ (Order Filed June 10, 1999).

By Order dated June 8, 1999, the Commission set this matter for hearing on July 6, 1999. By Order dated June 17, 1999, the Commission rescheduled the hearing in this matter for August 2, 1999.

On July 14, 1999, the Commission issued an Order stating that it would not consider the three issues presented by ICG that dealt with UNEs.

At the start of the hearing, ICG and BellSouth presented a Statement of Stipulation, which withdrew from consideration ten of the remaining twenty-three issues for which arbitration had been requested.

At the hearing which began as rescheduled on August 3, 1999, ICG offered the direct and rebuttal testimony of Karen Notsund, Senior Director of Governmental Affairs for ICG; the direct testimony of Phillip Jenkins, Senior Director of Engineering and Operations for the Southeast Region for ICG; the direct, supplemental, and rebuttal testimony of Michael Starkey, President of Quantitative Solutions, Inc., a consulting firm; and the direct and rebuttal testimony of Cindy Z. Schonhaut, Executive Vice President for Government and Corporate Affairs for ICG. BellSouth offered the direct and supplemental testimony of Alphonso J. Varner, Senior Director for State Regulatory Affairs.

WHEREUPON, based upon a careful consideration of the entire record in this arbitration proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The parties should, as an interim inter-carrier compensation mechanism, pay reciprocal compensation for dial-up calls to Internet service providers (ISPs) at the rate the parties have agreed upon for reciprocal compensation for local traffic and as finally determined by this Order, subject to true-up at such time as the Commission has ruled pursuant to future FCC consideration of this matter.

2. ICG's Charlotte switch serves an area comparable to that served by BellSouth's Charlotte tandem switch and ICG's switch also provides the same functionality as that provided by BellSouth's tandem switch. For reciprocal compensation purposes, ICG is entitled to compensation at the tandem interconnection rate (in addition to the other appropriate rates) where its switch serves a geographic area comparable to that served by BellSouth's tandem switch.

3. The Commission declines to decide at this time whether BellSouth should be required to commit to provisioning the requisite network buildout and necessary support. The Commission encourages BellSouth and ICG to continue to negotiate on this issue. Further, the Commission notes that since a similar provision is found in BellSouth's Revised Statement of Generally Available Terms (SGAT) and at least one interconnection agreement, it would appear reasonable for a similar provision to be voluntarily included in the BellSouth/ICG interconnection agreement.

4. The issue of performance measurements and liquidated damages has been, in essence, withdrawn from the arbitration and accordingly is not in need of resolution in this docket. Further, the Commission will create a new docket, Docket No. P-100, Sub 133k, and issue an Order in that docket establishing the generic docket and requesting that the industry, the Public Staff, the Attorney General, and any other interested parties form a Task Force to attempt to agree on all potential issues concerning performance measurements and enforcement mechanisms. Further, the Commission will issue an Order in Docket No. P-100, Sub 133i (AT&T's Petition for Third-Party Testing) stating that the Commission is investigating performance measurements in a generic docket as a first step, but will keep the third-party testing docket open for future consideration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

MATRIX ISSUE NOS. 1 AND 8: Until the FCC adopts a rule with prospective application, should dial-up calls to ISPs be treated as if they were local calls for the purposes of reciprocal compensation?

POSITIONS OF PARTIES

ICG: Yes. Until the FCC adopts a rule of prospective application, reciprocal compensation is appropriate for calls to ISPs. In the meantime, the FCC's Declaratory Ruling clearly contemplates that state commissions may adopt interim reciprocal compensation arrangements. ICG incurs costs on behalf of BellSouth whenever it terminates calls originated by BellSouth's end users to ISPs served by ICG. Without payment of reciprocal compensation, ICG will not receive compensation at all until the FCC adopts a prospective compensation rule at some indefinite point in the future. ISPs are an important market segment for competing local providers (CLPs) which is well on its way to effective competition. Eliminating ICG's ability to recover its cost for transport and delivery of BellSouth-originated calls to ICG-served ISPs will negatively impact that competition.

Originally, ICG made an adjusted call length (ACL) proposal for development of a reciprocal compensation rate applicable to voice and Internet calls. The ACL proposal spread the set up costs of a call over a longer hold time to derive a per-minute cost for all calls to be more indicative of current traffic patterns. The ACL proposal assumed that all calls were longer and thus derived a single compensation rate ($0.0048 per minute) that would apply to all calls.

However, ICG abandoned this proposal and now advocates that ILECs and CLPs should be compensated for transport and delivery of ISP-bound calls based on the "elemental" rates established in the UNE docket--namely, transport, end office, and tandem switching. ICG argued that such a total element long-run incremental cost (TELRIC)-based compensation mechanism is more likely to be consistent with whatever is ultimately adopted by the FCC.

ICG criticized BellSouth's proposal for an inter-carrier compensation mechanism based on the access charge regime. The FCC has repeatedly and explicitly rejected the proposition that ISPs are purchasers of access services. Similarly, ICG also rejected the view that carriers should simply track ISP traffic and apply the rate ultimately adopted retroactively. This is tantamount to ignoring the issue and puts an unacceptable burden on fledgling competitors.

BELLSOUTH: No. The FCC's Declaratory Ruling confirmed unequivocally that the FCC has and will exercise jurisdiction over ISP traffic as interstate, not local. Under the Act and the FCC rules, only local traffic is subject to reciprocal compensation obligations.

BellSouth proposed an inter-carrier compensation plan which it contended was more in line with the interstate access nature of ISP traffic. BellSouth proposed that the terminating carrier should share 9.3% of the revenue derived from a call with the carrier originating the call. This figure represents half of the switching and transport portion of average voice grade traffic.

PUBLIC STAFF: Yes. The Commission determined in its February 26, 1998, Order in Docket No. P-55, Sub 1027, that calls to ISPs would be treated as local and therefore subject to reciprocal compensation. In its Declaratory Ruling, the FCC not only left such determinations undisturbed but explicitly allowed for the prospective requirement of reciprocal compensation in arbitration proceedings.

DISCUSSION

Testimony regarding this issue was presented by ICG witnesses Starkey and Schonhaut and BellSouth witness Varner.

The issue of reciprocal compensation for ISP-bound traffic is an exceedingly complex one. This arbitration is the first opportunity that the Commission has had since the FCC's Declaratory Ruling released on February 26, 1999, in CC Docket Nos. 96-98 and 99-68 to address what should happen in the interim period between that ruling and the point at which the FCC will presumably furnish further guidance.

The Declaratory Ruling has plainly held that ISP-bound traffic is largely jurisdictionally interstate. The Declaratory Ruling has also plainly held that the FCC will decline "to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending adoption of a rule establishing an appropriate interstate compensation mechanism." (Paragraph 21). The FCC further stated at Paragraph 25, that "[e]ven where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic." The Declaratory Ruling is both a statement of principle — that ISP traffic is interstate — and a concession to practicality — that previous state decisions and interim period decisions not necessarily consistent with this principle will not be disturbed.

The Commission commends ICG and BellSouth for their efforts in presenting interim proposals for ISP compensation in response to the Commission's June 16, 1999, Order Concerning

Interim Proposals for Compensation in which the Commission asked the parties for "creative thinking" concerning interim prospective compensation mechanisms for ISP traffic which would be subject to true-up. Of the proposals received from the parties, the Commission believes that ICG's proposal, which is based on UNE rates, has the greater merit.

In response to a September 29, 1999, data request from the Chair filed on October 11, 1999, the parties indicated that, although they had not agreed upon a rate structure for reciprocal compensation for local traffic, they had agreed on a rate level.[1] The parties now agree that the rates applicable to reciprocal compensation should be the interim elemental rates as ordered by the Commission in Docket No. P-100, Sub 133d, subject to true-up when the Commission issues final rates, under the same terms as those in the current Agreement between the parties.[2]

Thus, the parties have agreed on a proposal for reciprocal compensation for local traffic which is very similar to that proposed by ICG as an interim measure for ISP traffic. Both proposals are based on the UNE rates.

The Commission believes that, in light of the complexity of the task of arriving at a separate interim rate for ISP traffic, the uncertainty as to the substance of the FCC's future decision, and the relative shortness of time in which any interim proposal would be in effect, the better course of action is to require the parties to pay inter-carrier compensation for dial-up calls to ISPs at the same level and in the same manner that the parties have agreed upon for reciprocal compensation for local traffic and as determined by the Commission's Order in this Order[3]. The ISP rate would be subject to true-up based upon the FCC's future decision and this Commission's Order pursuant to it.

The Commission believes that this course of action is preferable to simply keeping track of the minutes for settlement at a later date. The latter proposal may adversely affect competition because CLPs such as ICG will not have the "bird in the hand" to pay their bills, even while they continue to incur costs. At the same time, the application of the reciprocal compensation rate for ISP traffic as an interim inter-carrier compensation mechanism is ultimately just because there will come a time when the parties must settle up based on the new rule. While not perfect, this approach is the one that does the least harm to the companies and to the public interest in a competitive marketplace.

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[1] Tandem switching as part of the rate structure is addressed in Issue No. 2. There are four elements applicable to reciprocal compensation — the end office switch element, the tandem switching element, the common transport element, and the common transport facilities termination element. ICG contends that it should recover the sum of the four elements while BellSouth believes that ICG is not entitled to the tandem switching element.

[2] These rates are: End Office Switching, $0.004 per minute of use (mou); Tandem Switching, $0.0015 per mou; Common Transport, $0.00004 per mile per mou; and Common Transport Facilities Termination, $0.00036 per mou. (Dedicated facilities termination may be used instead of common transport with facilities' termination).

[3] That is, the applicable rate structure for reciprocal compensation tandem switching as determined elsewhere in this Order. It is the Commission's intent that the ISP inter-carrier compensation rate track the reciprocal compensation rate exactly until such point as the Commission has ruled pursuant to the FCC's future ISP Order.

CONCLUSIONS

The Commission concludes that the parties should, as an interim inter-carrier compensation mechanism, pay reciprocal compensation for dial-up calls to ISPs at the rate the parties have agreed upon for reciprocal compensation for local traffic and as finally determined by the Commission's Order in this docket, subject to true-up at such time as the Commission has ruled pursuant to future FCC consideration of this matter.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

MATRIX ISSUE NO. 7: For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch services a geographic area comparable to the area served by BellSouth's tandem switch?

POSITIONS OF PARTIES

ICG: Yes. FCC Rule 51.711 requires that where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent, the appropriate rate for the interconnecting carrier's additional cost is the incumbent's tandem interconnection rate. To be eligible for this rate, the FCC's Order requires only that the interconnecting carrier's switch serve the same geographical area as the incumbent's switch. ICG deploys a single switch to service its Charlotte market served by a common transport network. The advent of fiber optic technologies and multi-function switching platforms has allowed ICG to serve an entire statewide or local access and transport area (LATA)-wide customer base from a single switch. The ability to aggregate unbundled local loops from collocations in a number of ILEC central offices while transporting that traffic to a single location permits ICG to originate, switch, and terminate traffic between callers many miles apart. ICG's switch performs the same functionality as the BellSouth tandem switch. ICG's Lucent 5ESS switching platform meets the definition and performs the same functions identified within the Local Exchange Routing Guide (LERG) for a tandem office and for a Class 4/5 switch.

BELLSOUTH: No. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. BellSouth will pay the tandem interconnection rate only if ICG's switch is identified in the LERG as a tandem. ICG is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide. Therefore, ICG's request for tandem switching compensation when tandem switching is not performed should be denied.

PUBLIC STAFF: The Public Staff did not address this issue in its Proposed Order.

DISCUSSION

Testimony on this issue was presented by ICG witness Starkey and BellSouth witness Varner.

BellSouth witness Varnér stated that "BellSouth's position is that if a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. BellSouth will pay the tandem interconnection rate only if ICG's switch is identified in the local exchange routing guide ("LERG") as a tandem." Witness Varner explained that a tandem switch connects one trunk to another trunk and is an intermediate switch or connection between an originating telephone call location and the final destination of the call. An end office switch is connected to a telephone subscriber and allows the call to be originated or terminated. If ICG's switch is an end office switch, then it is handling calls that originate from or terminate to customers served by that local switch, and thus ICG's switch is not providing a tandem function. Witness Varner contended that ICG is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide.

ICG emphasized that its switch serves a geographic area comparable to that of BellSouth's tandem. ICG witness Starkey testified that "ICG, like many new entrant competing local exchange companies (CLECs), generally deploys its individual switches to cover a large geographic area served by a common transport network. The advent of fiber optic technologies and multi-function switching platforms have, in many cases, allowed carriers like ICG to serve an entire statewide or local access and transport area (LATA)-wide customer base from a single switch platform. Likewise, the ability to aggregate unbundled loops from collocations within a number of ILEC central offices while transporting that traffic to a single location allows these carriers to originate, switch and terminate traffic between callers located many miles apart with a single switch." Witness Starkey further stated that ". . . ICG uses its single switching platform not only to transfer calls between multiple ILEC central offices and the customers that are served by those central offices, but also to transfer calls between the ICG and ILEC network. In this way, the ICG switch provides services to customers in a geographic area at least as large as that serviced by the ILEC tandem."

ICG further contended that its switch performs many of the same functions that the ILEC's tandem performs. ICG witness Starkey testified that ". . . in the case of ICG, its switch also performs many of the same functions that the ILEC tandem performs, further indicating that tandem termination rates are appropriately paid for its use." In addition, witness Starkey stated that "Tandem switches (what are commonly called Class 4 switches in the traditional AT&T hierarchy), generally aggregate toll traffic from a number of central office switches (Class 5 switches) for purposes of passing that traffic to the long distance network. The tandem switch is also a traditional focal point for other purposes as well, including the aggregation and processing of operator services traffic, routing traffic that is to be transferred between the trunk groups of two separate carriers and measuring and recording toll traffic detail for billing. While ILECs have traditionally employed two separate switches to accomplish these Class 4 and Class 5 functions, ICG's Lucent 5ESS platform performs all of these functions in addition to a number of others within the same switch."

Rule 51.711(a)(3) of the FCC's Interconnection Order states "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate."

The Commission is of the opinion that ICG has presented sufficient evidence to show that its switch serves a geographic area comparable to that of BellSouth's tandem switch. The Commission is also of the opinion that ICG has shown that there is comparable functionality between the ILEC's tandem and ICG's switch even though the FCC Interconnection Order requires only that a CLP's switch serve a geographic area comparable to that served by an ILEC's tandem to qualify for the tandem termination rates.

CONCLUSIONS

The Commission concludes that ICG's Charlotte switch serves an area comparable to that served by BellSouth's Charlotte tandem switch and ICG's switch also provides the same functionality as that provided by BellSouth's tandem switch. For reciprocal compensation purposes, the Commission finds that ICG is entitled to compensation at the tandem interconnection rate (in addition to the other appropriate rates) where its switch serves a geographic area comparable to that served by BellSouth's tandem switch.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

MATRIX ISSUE NO. 11: Should BellSouth be required to commit to provisioning the requisite network buildout and necessary support when ICG agrees to enter into a binding forecast of its traffic requirements in a specified period?

POSITIONS OF PARTIES

ICG: Yes. ICG stated that it relies on BellSouth's end office trunks to deliver traffic to ICG's switch and that those trunks are the responsibility of BellSouth to provision and administer. ICG maintained that it provides BellSouth with quarterly traffic forecasts to assist BellSouth in planning for facilities to handle traffic between the BellSouth and the ICG networks. ICG stated that BellSouth is under no obligation to add more end office trunks if ICG's forecast indicates that additional trunking is necessary. ICG stated that it wants the option of requiring BellSouth to provision additional end office trunks as dictated by ICG's forecast. ICG maintained that in exchange, it would agree to pay BellSouth for any trunks which are not fully utilized as indicated by the forecast. ICG argued that under its proposal, BellSouth would not assume any risk that additional trunks are underutilized and that ICG will assume all of this risk. ICG assured that if the Commission ordered this provision, ICG expects to use it sparingly. In fact, in its Brief, ICG stated that it anticipates only using the binding forecast mechanism where it is (1) confident of substantial additional growth and (2) concerned that, absent a binding commitment from BellSouth to timely provision the necessary trunks, there would be an unacceptable risk of blockage of incoming calls to ICG's customers because of BellSouth's inability to handle the traffic flow. ICG also mentioned that BellSouth's Revised SGAT filed in September 1998 contains a binding forecast provision which largely mirrors ICG's proposal.

ICG argued that the Commission has the jurisdiction to require a binding forecast provision as proposed by ICG. ICG stated that Section 251(c)(2) of the Act states that ILECs have the obligation to provide interconnection: (1) for the transport and routing of telephone exchange traffic; (2) at any technically feasible point; (3) at least equal in quality to that provided by the ILEC to itself or an affiliate; and (4) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. ICG maintained that its proposal is clearly for the transport and routing of telephone exchange traffic; and that technical feasibility and equality of interconnection are not at issue. ICG stated that the only issue raised by its proposal is whether the rates, terms, and conditions are just, reasonable, and nondiscriminatory; ICG maintained that its proposal meets this test. ICG also noted that the BellSouth/KMC Telecom, Inc. (KMC) interconnection agreement filed with the Commission on

March 21, 1997 contains a provision substantially identical to the one in the SGAT. ICG stated that as was provided in both the SGAT and KMC binding forecast provisions, the specific terms and conditions of the binding forecast should be negotiated between the parties. ICG recommended that the Commission conclude that it does have jurisdiction under Sections 251 and 252 of the Act to require BellSouth to include a binding forecast provision in the parties' interconnection agreement. Further, ICG recommended that the Commission conclude that BellSouth should be required to include in its interconnection agreement with ICG a binding forecast provision like the ones included in BellSouth's Revised SGAT and in the BellSouth/KMC interconnection agreement. ICG recommended that the provision should require the parties to negotiate in good faith the specific terms and conditions of the binding forecast.

BELLSOUTH: No. BellSouth stated that although it has been analyzing such an offering, it is not required by the Act to commit to a binding forecast with any CLP, including ICG. BellSouth argued that the Commission should not impose a burden on BellSouth that is not required by the Act. BellSouth maintained that while the specifics of such an arrangement have not been finalized, BellSouth is agreeable to continue to negotiate with ICG on this issue. Additionally, BellSouth stated that the standard for arbitration imposed on the Commission is set forth in Section 252(c) of the Act. Specifically, Section 252(c)(1) states that the Commission shall "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251." BellSouth stated that on cross-examination, ICG witness Phillip Jenkins agreed that BellSouth is not required by Sections 251 or 252 of the Act to provide binding forecasts. Therefore, BellSouth maintained, the Commission cannot impose such an obligation on BellSouth and that this topic is not appropriate for arbitration.

PUBLIC STAFF: No. The Public Staff stated that while such a clause would not be an inappropriate term in an interconnection agreement, the Public Staff does not believe that the Act mandates a requirement of this sort. The Public Staff maintained that the issue is not appropriate for arbitration and that the issue of whether to provide a guarantee of the sort requested by ICG, and what to charge for such a guarantee, are essentially business decisions and matters for negotiation between the parties. Therefore, the Public Staff recommended that the Commission decline to require commitment to a binding forecast and that the Commission encourage the parties to continue negotiations toward this goal.

DISCUSSION

Testimony on this issue was presented by ICG witness Jenkins and BellSouth witness Varner.

ICG stated in its Brief that it needs some way of ensuring that BellSouth will provision adequate trunking facilities to carry calls from BellSouth's customers to ICG's growing customer base. Further, ICG argued that this matter is of critical importance because if BellSouth's customers are unable to reach ICG's customers as a result of a blockage on BellSouth's network due to a lack of capacity, it is ICG that will be seen as the cause of the problem. ICG maintained that its binding forecast proposal would obligate BellSouth to, in a timely manner, provision the trunking necessary to carry a forecasted level of traffic and that this would ensure that there is adequate capacity in BellSouth's network to meet demand. ICG stated that this in turn would ensure that there are no blockages; if there were blockages this would frustrate not only ICG's customers who would be unable to receive calls from BellSouth customers but also BellSouth's customers who would be unable to place the calls.

ICG witness Jenkins stated in the summary of his prefiled testimony that ICG is not asking BellSouth to take any risk. Witness Jenkins stated that ICG is willing to commit to BellSouth for a specified volume of interconnection trunks as a part of its binding forecast, whether or not ICG's traffic achieves the forecasted demand. Additionally, witness Jenkins argued that if the traffic volume falls short of the forecasts, ICG will pay BellSouth fully for the full cost of the unused trunks; in other words, ICG will take all of the risk, and BellSouth will assume no risks. On cross-examination, witness Jenkins denied that there is anything specific in Sections 251 and 252 of the Act requiring BellSouth to provide binding forecasts to ICG.

The Commission declines to decide at this time whether the Act mandates a binding forecast requirement of the sort requested by ICG. However, the Commission does note that ICG's request for this type of requirement does not appear inappropriate. In fact, the Commission notes that a similar provision can be found in BellSouth's Revised SGAT and the BellSouth/KMC interconnection agreement. Additionally, the Commission notes that BellSouth has specifically stated that it is agreeable to continue to negotiate on this term. Although the Commission will not require BellSouth to commit to provisioning the requisite network buildout and necessary support, the Commission strongly encourages BellSouth and ICG to continue to negotiate on this issue.

CONCLUSIONS

The Commission declines to decide at this time whether BellSouth should be required to commit to provisioning the requisite network buildout and necessary support. The Commission strongly encourages BellSouth and ICG to continue to negotiate on this issue. Further, the Commission notes that since a similar provision is found in BellSouth's Revised SGAT and at least one interconnection agreement, it would appear reasonable for a similar provision to be voluntarily included in the BellSouth/ICG interconnection agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

MATRIX ISSUE NO. 5: Should BellSouth be subject to liquidated damages for failing to meet the time intervals for provisioning UNEs?

MATRIX ISSUE NO. 19: Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the parties?

MATRIX ISSUE NO. 20: Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?

MATRIX ISSUE NO. 21: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?

<u>MATRIX ISSUE NO. 22</u>: Should BellSouth continue to be responsible when the duration of service's failure exceeds certain benchmarks?

<u>MATRIX ISSUE NO. 23</u>: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?

<u>MATRIX ISSUE NO. 24</u>: Should BellSouth continue to be responsible when the duration of service's failure to meet the grade of service requirements exceeds certain benchmarks?

<u>MATRIX ISSUE NO. 25</u>: Should BellSouth be required to pay liquidated damages when BellSouth fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?

<u>MATRIX ISSUE NO. 26</u>: Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmarks?

POSITIONS OF PARTIES

ICG: Yes. ICG maintained that the Commission has the jurisdiction to adopt performance measurements and enforcement mechanisms. ICG stated that Section 251 of the Act and the FCC's implementing rules require that an ILEC provide interconnection and access to UNEs and resale at parity to that which it provides itself. Additionally, ICG maintained that if the Commission were to decide to adopt such measurements and enforcement mechanisms, it would have the legal authority to do so since G.S. 62-30 and G.S. 62-32 provide the Commission with broad powers to supervise and control public utilities. Further, ICG stated that G.S. 62-110(f1) provides the Commission with statutory authority to "provide reasonable interconnection of facilities" between carriers; "to provide reasonable unbundling of essential facilities"; and "to carry out the provisions of this subsection in a manner consistent with the public interest . . ." ICG further stated that the FCC has encouraged state commissions to adopt performance measurements and that the Commission's decision in the AT&T Communications of the Southern States, Inc. (AT&T)/BellSouth arbitration not to arbitrate this issue at that time does not cut off the Commission's jurisdiction to consider the issue now.

ICG also argued that performance measurements and enforcement mechanisms are necessary to ensure that interconnection, access to UNEs, and resale are provided at parity with what BellSouth provides itself or its affiliates. ICG maintained that as a facilities-based carrier, it is dependent upon BellSouth for essential network elements. ICG maintained that because of the industry-wide implications of the performance measurements and damages issues, they should be considered in a generic proceeding with the results of the dockets at the California and Texas Public Service Commissions to be the starting point for such a proceeding. ICG concluded that the posture of this issue does not require any Commission action in this docket and that ICG has effectively withdrawn this issue from the arbitration. ICG recommended that the Commission issue an Order in the local competition docket (P-100, Sub 133d) soliciting comments on initiation of a generic proceeding to consider performance measurements and enforcement mechanisms.

BELLSOUTH: No. BellSouth stated that the issues of performance measurements and liquidated damages are not appropriate for arbitration. BellSouth stated that the Commission lacks the statutory authority to award or order liquidated damages. BellSouth maintained that state law and Commission procedures are available, and perfectly adequate, to address any breach of contract situation should it arise. BellSouth concluded that the issue of liquidated damages was previously addressed by the Commission in the AT&T/BellSouth arbitration (Docket No. P-140, Sub 50) and that in that case, the Commission concluded that it was not appropriate for the Commission to resolve the issue and that the parties should negotiate reasonable terms and conditions. BellSouth argued that in the instant proceeding, the Commission should find that it lacks the statutory authority to impose liquidated damages on a party to an interconnection agreement for the reasons generally discussed by BellSouth in its Brief.

Concerning performance measurements, BellSouth maintained that this is an industry-wide issue and should not be addressed by the Commission in a two-party arbitration proceeding. BellSouth argued that it is more appropriate to address the issue of performance measurements in the context of BellSouth's Section 271 proceeding, Docket No. P-55, Sub 1022. BellSouth recommended that the Commission agree with BellSouth that this issue is inappropriate in a two-party arbitration proceeding, and to the extent the Commission desires to address performance measurements in the future, it should do so in a more generic context so as to involve the entire industry.

PUBLIC STAFF: The Public Staff recommended that the Commission state that it will take this matter under consideration, but will not rule at this time.

DISCUSSION

Testimony on this issue was presented by ICG witness Notsund and BellSouth witness Varner.

ICG has conceded that this issue does not require any Commission action in this docket and that it has effectively withdrawn this issue from the arbitration. ICG stated in its Brief that the issue is not appropriate for bilateral resolution because it is one of industry-wide relevance and importance. The issue that does remain to be addressed is whether the Commission should establish a generic proceeding to consider performance measurements and enforcement mechanisms. ICG witness Notsund confirmed when asked by Commissioner Ervin that the only relief ICG is requesting that the Commission provide in this proceeding with respect to performance measurements is to convene a generic proceeding.

ICG recommended that the Commission issue an Order in the local competition docket (Docket No. P-100, Sub 133d) soliciting comments on the initiation of a generic proceeding to consider performance measurements and enforcement mechanisms. ICG stated in its Brief that the Commission first addressed the issue of performance standards in the 1997 BellSouth/AT&T arbitration. ICG maintained that by the terms of the Commission's Arbitration Order, the Commission did not foreclose further consideration of performance measurements and reserved the right to revisit the issue. ICG argued that a great deal of experience has been gained by the Commission and the CLP industry since the BellSouth/AT&T Arbitration Order was issued. ICG stated that in the two years since the release of that Arbitration Order, the Commission and the industry have gained the expertise necessary to allow the Commission to revisit the question of performance standards. ICG maintained that the experience of ICG and other CLPs has shown that performance standards are badly needed and are no longer premature. ICG further stated in its Brief that when BellSouth's performance to ICG falls short, ICG's performance to its end users often also suffers. ICG argued that, when BellSouth fails to perform installations in a timely manner, it is the end user who is left waiting. Further, ICG stated, when BellSouth fails to perform a coordinated cutover, it is the end user who experiences a service disruption. ICG maintained that, when any of these things happen, the customer has no way of knowing that it is BellSouth's fault; all the customer knows is that it is ICG's customer and in the customer's eyes, ICG is responsible. ICG asserted that ICG and other CLPs need the performance measurements stick to compel BellSouth to perform its obligations in a satisfactory manner. Finally, ICG stated in its Brief that even BellSouth has acknowledged the need for performance standards and enforcement mechanisms. ICG maintained that in a filing with the FCC made in conjunction with its efforts to win Section 271 approval, BellSouth has proposed a set of performance measurements to assure nondiscriminatory access to UNEs. ICG stated that the BellSouth proposal includes payments which BellSouth would make to CLPs for failure to meet performance benchmarks.

BellSouth recommended that to the extent that the Commission desires to address performance measurements, it should do so in a more generic context so as to involve the entire industry. BellSouth further stated that it is more appropriate to address performance measurements in the context of BellSouth's Section 271 proceeding, Docket No. P-55, Sub 1022.

The Public Staff recommended that the Commission take this matter under consideration but not rule on it at this time.

The Commission concludes that it is appropriate at this time for the Commission to institute a generic proceeding to consider performance measurements and enforcement mechanisms. The Commission notes that state regulatory commissions in several BellSouth states have addressed performance measurements. Therefore, the Commission will establish a newly created generic docket devoted to performance measurements and enforcement mechanisms, Docket No. P-100, Sub 133k. The Commission will issue an Order in Docket No. P-100, Sub 133k creating the generic docket and requesting that the industry, the Public Staff, the Attorney General, and any other interested parties form a Task Force.

Finally, the Commission notes that in May 1999, AT&T filed a Petition for the Establishment of a Third-Party Testing Program of Operations Support Systems (OSS) with the Commission (Docket No. P-100, Sub 133i). In conjunction with opening a generic docket to address performance measurements, the Commission will also issue an Order in Docket No. P-100, Sub 133i stating that the Commission is investigating performance measurements in a generic docket as a first step, but will keep the third-party testing docket open for future consideration.

CONCLUSIONS

The Commission concludes that this issue has been, in essence, withdrawn from the arbitration and accordingly is not in need of resolution in this docket. Further, the Commission will create a new docket, Docket No. P-100, Sub 133k, and issue an Order in that docket establishing the generic docket and requesting that the industry, the Public Staff, the Attorney General, and any other interested parties form a Task Force to attempt to agree on all potential issues concerning performance measurements and enforcement mechanisms. Further, the Commission will issue an Order in Docket No. P-100, Sub 133i (AT&T's Petition for Third-Party Testing) stating that the Commission is investigating performance measurements in a generic docket as a first step, but will keep the third-party testing docket open for future consideration.

IT IS, THEREFORE, ORDERED as follows:

1. That the parties shall, as an interim inter-carrier compensation mechanism, pay reciprocal compensation for dial-up calls to ISPs at the rate the parties have agreed upon for reciprocal compensation for local traffic and as finally determined by this Order, subject to true-up at such time as the Commission has ruled pursuant to future FCC consideration of this matter.

2. That ICG's Charlotte switch serves an area comparable to that served by BellSouth's Charlotte tandem switch and ICG's switch also provides the same functionality as that provided by BellSouth's tandem switch. For reciprocal compensation purposes, ICG is entitled to compensation at the tandem interconnection rate (in addition to the other appropriate rates) where its switch serves a geographic area comparable to that served by BellSouth's tandem switch.

3. That the Commission declines to decide at this time whether BellSouth should be required to commit to provisioning the requisite network buildout and necessary support. BellSouth and ICG are encouraged to continue to negotiate on this issue.

4. That the issue of performance measurements and liquidated damages has been, in essence, withdrawn from the arbitration and accordingly is not in need of resolution in this docket. Further, the Commission will create a new docket, Docket No. P-100, Sub 133k, and issue an Order in that docket establishing the generic docket and requesting that the industry, the Public Staff, the Attorney General, and any other interested parties form a Task Force to attempt to agree on all potential issues concerning performance measurements and enforcement mechanisms. Further, the Commission will issue an Order in Docket No. P-100, Sub 133i (AT&T's Petition for Third-Party Testing) stating that the Commission is investigating performance measurements in a generic docket as a first step, but will keep the third-party testing docket open for future consideration.

5. That BellSouth and ICG shall prepare and file a Composite Agreement in conformity with the conclusions of this Order not later than 45 days after the date of issuance of this Order. Such Composite Agreement shall be in the form specified in paragraph 4 of Appendix A in the Commission's August 19, 1996, Order in Docket Nos. P-140, Sub 50, and P-100, Sub 133, concerning arbitration procedure (Arbitration Procedure Order).

6. That, not later than 30 days from the date of issuance of this Order, a party to the arbitration may file objections to this Order consistent with paragraph 3 of the Arbitration Procedure Order.

7. That, not later than 30 days from the date of issuance of this Order, any interested person not a party to this proceeding may file comments concerning this Order consistent with paragraphs 5 and 6, as applicable, of the Arbitration Procedure Order.

8. That, with respect to objections or comments filed pursuant to decretal paragraphs 6 or 7 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages single-spaced or three pages double-spaced containing a clear and concise statement of all material objections or comments. The Commission will not consider the objections or comments of a party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

9. That parties or interested persons submitting Composite Agreements, objections or comments shall also file those Composite Agreements, objections or comments, including the executive summary required in decretal paragraph 8 above, on an MS-DOS formatted 3.5-inch computer diskette containing noncompressed files created or saved in WordPerfect format.

ISSUED BY ORDER OF THE COMMISSION.

This the _4th_ day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bc110399.02

GLOSSARY OF ACRONYMS
Docket No. P-582, Sub 6

ACL	Adjusted Call Length
Act	Telecommunications Act of 1996
AT&T	AT&T Communications of the Southern States, Inc.
BellSouth	BellSouth Telecommunications, Inc.
CLP	Competing Local Provider
CLEC	Competing Local Exchange Company (Carrier)
Commission	North Carolina Utilities Commission
FCC	Federal Communications Commission
ICG	ICG Telecom Group, Inc.
ILEC	Incumbent Local Exchange Company (Carrier)
ISP	Internet Service Provider
ITC^DeltaCom	ITC^DeltaCom Communications, Inc.
KMC	KMC Telecom, Inc.
LATA	Local Access and Transport Area
LEC	Local Exchange Company (Carrier)
LERG	Local Exchange Routing Guide
MOU	Minute of Use
OSS	Operations Support Systems
Public Staff	Public Staff-North Carolina Utilities Commission
SGAT	Statement of Generally Available Terms
TA96	Telecommunications Act of 1996
TELRIC	Total Element Long-Run Incremental Cost
UNE	Unbundled Network Element

DOCKET NO. P-35, SUB 96

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of MEBTEL, Inc. For Approval of a Price Regulation Plan Pursuant to G.S. 62-133.5(a)	))	ORDER AUTHORIZING PRICE REGULATION

HEARD: Tuesday, July 27, 1999, in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Sam J. Ervin, IV, Presiding, and Commissioners Ralph A. Hunt and J. Richard Conder

APPEARANCES:

FOR MEBTEL, INC.:

Jerry W. Amos, Attorney at Law, Amos, Jeffries & Robinson, LLP, P.O. Box 787, Greensboro, North Carolina 27402

FOR THE USING AND CONSUMING PUBLIC:

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BY THE COMMISSION: G.S. 62-133.5(a) provides that "[a]ny local exchange company, subject to the provisions of G.S. 62-110(f1), that is subject to rate of return regulation pursuant to G.S. 62-133 . . . may elect to have the rates, terms and conditions of its services determined pursuant to a form of price regulation, rather than rate of return or other form of earnings regulation." Although local exchange companies (LECs) with 200,000 access lines or less are exempted from the provisions of G.S. 62-110(f1), they may nevertheless elect to have their rates, terms and conditions of services determined pursuant to a form of price regulation under G.S. 62-133.5(a), if they agree to subject themselves to local competition under the provisions of G.S. 62-110(f1).

G.S. 62-110(f2) provides in pertinent part:

> "...Upon the filing of an application by a local exchange company with 200,000 access lines or less for regulation under the provisions of G.S. 62-133.5(a), the Commission shall apply the provisions of that section to such local exchange company but only upon the condition that the provisions of subsection (f1) of this section are to be applicable to the franchised area and local exchange and exchange access services offered by such a local exchange company."

Under the form of price regulation authorized by G.S. 62-133.5(a), "the Commission shall, among other things, permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices."

The price regulation statute requires notice and a hearing, allows different forms of price regulation as between different LECs, and requires the Commission to decide price regulation cases within 90 days subject to an extension by the Commission for an additional 90 days, or a total of 180 days from the filing of the Application. The statute also requires the Commission to approve price regulation for a LEC upon finding that a proposed plan:

(i) protects the affordability of basic local exchange service, as such service is defined by the Commission;

(ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt;

(iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and

(iv) is otherwise consistent with the public interest.

MEBTEL, Inc. ("MEBTEL") filed its proposed price regulation plan on December 31, 1998 (the "Original Plan"). In the petition accompanying the Original Plan, MEBTEL alleged that the Original Plan was substantially the same as price regulation plans previously approved by the Commission for other LECs.[1]

MEBTEL described the major features of the Original Plan as (a) an annual revenue reduction of approximately $3,666, (b) the elimination of separate charges for touch tone calling, and (c) a rebalancing of its rates.

By Order issued January 14, 1999, the Commission suspended the proposed price regulation plan, scheduled a public hearing, established dates for intervention and the filing of testimony and proposed orders and required MEBTEL to file a proposed public notice regarding its proposed price regulation plan.

On February 12, 1999, AT&T Communications of the Southern States, Inc. (AT&T) filed its Petition to Intervene in the docket. On February 17, 1999, the Chair issued an Order allowing AT&T to intervene in the docket. AT&T has not presented any disagreement over the Stipulated Plan.

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[1]*See* ALLTEL Carolina, Inc., Docket No. P-118, Sub 86 (July 8, 1998, revised September 15, 1998); Concord Telephone Company, Docket No. P-16, Sub 181 (May 30, 1997); Carolina Telephone and Telegraph Company and Central Telephone Company, Docket No. P-7, Sub 825 and Docket No. P-10, Sub 479 (May 2, 1996); GTE South, Inc., Docket No. P-19, Sub 277 (May 2, 1996); and BellSouth Telecommunications, Inc., Docket P-55, Sub 1013 (May 2, 1996).

On March 31, 1999, the Public Staff and MEBTEL filed a Joint Motion for Continuance of the Procedural Dates. In that filing, the Public Staff and MEBTEL reported that they needed a 75-day extension of the procedural schedule to resolve any differences between them and allow them to present the Commission with a stipulated plan. In that filing MEBTEL also indicated its agreement to an extension of the time for the Commission to reach a final decision on its application by an additional 75 days. On April 6, 1999, the Commission issued an Order rescheduling the hearing and the other procedural dates.

On June 14, 1999, MEBTEL filed a revised price regulation plan (the "Revised Plan"). The Revised Plan reflected (1) an agreement between MEBTEL and the Public Staff with respect to certain provisions of the Plan, (2) an agreement between MEBTEL and AT&T with respect to certain provisions of the Plan, and (3) the correction of certain typographical and similar errors.

- Under the Original Plan, the net reduction in revenues was $3,666. The Revised Plan provided a reduction in the annual revenues derived from recurring charges of approximately $165,000. These revenue reductions were partially offset by increases in other charges, for a net revenue reduction of approximately $93,000.

- Under the Original Plan, the rate for residential single line service was reduced from $11.44 to $11.20. Under the Revised Plan, the rate for residential single line service was reduced from $11.44 to $11.30.

- Under the Original Plan, there were no changes in access charges. Under the Revised Plan, upon the implementation of the Plan and on the first, second and third anniversary date of the Revised Plan, the rate for the Intrastate Originating Carrier Common Line (CCL) rate element would be reduced by $0.008.

- Under the Original Plan, Direct Inward Dialing (DID) Service was classified as a Non-Basic 1 Service. Under the Revised Plan, DID Service was classified as a Non-Basic 2 Service.

On June 21, 1999, MEBTEL filed the testimony of James D. Ogg, Chairman and CEO of MEBTEL and a Managing Director of Madison River Telephone Company, to support the Revised Plan.

Public Notice, in a form approved by the Commission, was mailed to each MEBTEL customer on or before June 30, 1999 and published in the Mebane Enterprise on July 14 and 21, 1999. Affidavits of publication were subsequently filed with the Commission.

On July 23, 1999, MEBTEL entered into a Stipulation and Agreement with the Public Staff in which those parties agreed to a revised price regulation plan for MEBTEL (the "Stipulated Plan"). (The Public Staff and MEBTEL are hereafter referred to as the "Stipulating Parties"). The Stipulated Plan and the revised testimony and exhibits of Mr. Ogg were filed with the Commission on July 23, 1999.[1]

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[1] On July 26, 1999, MEBTEL filed a revised Attachment A to the Stipulated Plan.

Under the Stipulated Plan, MEBTEL agreed to a reduction in the annual revenues derived from recurring charges of approximately $223,618. These revenue reductions will be partially offset by increases in other charges, for a net revenue reduction of approximately $145,932. As in the Revised Plan, the Stipulated Plan provided that upon implementation of the Plan and on the first, second and third anniversary date of the Plan, the rate for the Intrastate Originating CCL rate element would be reduced by $0.008.

At the July 27, 1999, evidentiary hearing in Raleigh, MEBTEL offered the testimony of Mr. Ogg. Mr. Ogg testified regarding modifications to the Original Plan and the Revised Plan that MEBTEL had agreed to in reaching an agreement with the Public Staff. He also offered testimony to show how the Stipulated Plan (a) protects the affordability of basic local exchange service, (b) reasonably assures the continuation of basic local exchange service that meets the Commission's service standards, (c) will not unreasonably prejudice any class of telephone customers, including telecommunication companies and (d) is otherwise consistent with the public interest. No other party offered any evidence at the hearing.

In compliance with the schedule set forth in the Commission's March 31, 1999 Order, a joint proposed order was filed by MEBTEL and the Public Staff on August 23, 1999.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant, MEBTEL, Inc., is a "local exchange company" as that term is defined in G.S. 62-3(16a). MEBTEL has agreed to become subject to the provisions of G.S. 62-110(f)(1) on the effective date of a price regulation plan under the provisions of G.S. 62-133.5(a), and it is subject to rate of return regulation pursuant to G.S. 62-133. Thus, this matter is properly before the Commission for consideration, and MEBTEL meets all of the requirements for price regulation under G.S. 62-133.5(a).

2. The Commission-approved price regulation plan, as adopted herein, protects the affordability of basic local exchange service.

3. The Commission-approved price regulation plan, as adopted herein, reasonably assures the continuation of basic local exchange service that meets reasonable service standards.

4. The Commission-approved price regulation plan, as adopted herein, will not unreasonably prejudice any class of telephone customers, including telecommunications companies.

5. The Commission-approved price regulation plan, as adopted herein, is otherwise consistent with the public interest.

6. It is appropriate to reclassify Direct Inward Dialing (DID) Service to the Non-Basic 1 Service Category.

7. Based on the Commission's August 3, 1999 Order in Docket Nos. P-55, Sub 1013, P-7, Sub 825, P-10, Sub 479, and P-19, Sub 277, it is appropriate to insert language into MEBTEL's Stipulated Plan to clarify the reinitialization process after the three-year cap on residence basic local service is removed.

8. Based on the Commission's September 9, 1999 Order in Docket Nos. P-55, Sub 1013, P-7, Sub 825, P-10, Sub 479, P-19, Sub 277, P-16, Sub 181, P-118, Sub 86 and this docket, P-35, Sub 96, it is appropriate for MEBTEL to adhere to the Commission's ultimate decision concerning the proper treatment for reclassified services under its price regulation plan after such decision is issued.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 1

This finding is supported by the record as a whole and is uncontested.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 2

- AFFORDABILITY -

The Commission concludes that basic local exchange service at the rates provided for under the Commission-approved price regulation plan is affordable for the following reasons. First, the basic local service rates provided for in the Commission-approved price regulation plan are lower than the rates currently in effect. Those rates were found to be just and reasonable at the time they were set by this Commission.

Second, the local service rates provided for in the Commission-approved price regulation plan are comparable to the rates recently found to be affordable by the Commission for other LECs within the State. These rates also compare favorably with prices for other goods and services in MEBTEL's service area.

The Commission-approved price regulation plan addresses the affordability of telephone service for low-income customers by maintaining the existing Link-up and Lifeline programs for qualifying residential subscribers who are recipients of Work First or Temporary Assistance for Needy Families, Supplemental Security Income, Food Stamps or Medicaid. The initial rebalanced rates for residential or basic local service are capped for a period of three years. Furthermore, the rebalanced rates produce a net reduction in MEBTEL's annual revenues for the first year of approximately $145,932. This annual revenue reduction will increase in the second and third year of the plan as additional reductions are made in the rate element for the Intrastate Originating CCL rate.

No party offered any testimony which attempted to show that the rebalanced rates provided for under the Stipulated Plan are not affordable.

For the reasons set forth above, the Commission concludes that the rebalanced rates provided for under the Commission-approved price regulation plan are affordable within the meaning of G.S. 62-133.5.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 3

- SERVICE QUALITY -

Evidence in support of this conclusion was undisputed. First, we note that the Commission-approved price regulation plan provides that MEBTEL will continue to operate under existing Commission Rule R9-8, which sets forth detailed service objectives for LECs in North Carolina. Second, the Commission retains statutory authority under G.S. 62-42 to compel efficient service. Thus, in this regard nothing will change by implementation of the Commission-approved price regulation plan for MEBTEL. The Commission retains the same powers and authority which it has always had with respect to the provision of quality service. The Commission can investigate service problems either on its own initiative or upon a complaint by any other party.

Thus, we conclude the Commission-approved price regulation plan reasonably assures the continuation of basic local exchange service that meets the reasonable service standards set forth in existing Commission Rule R9-8.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 4

- NO PREJUDICE AMONG CUSTOMER CLASSES -

In its prior orders authorizing price regulation for other North Carolina LECs, the Commission has consistently concluded that the North Carolina General Assembly, in drafting G.S. 62-133.5(a)(iii), intended to embody within that statute the same principles embodied in G.S. 62-140, and the case law developed thereunder.

For example, in its May 2, 1996 order authorizing price regulation for GTE South, Inc., in Docket No. P-19, Sub 277, the Commission noted that "[t]he test has always been unreasonable preference, unreasonable advantage, unreasonable prejudice, unreasonable disadvantage, and unreasonable discrimination . . . ."

The Commission reached a similar conclusion in authorizing price regulation for BellSouth in Docket No. P-55, Sub 1013:

> "Accordingly, we conclude that the General Assembly, in drafting G.S. 62-133.5(a)(iii), intended to embody within that statutory enactment the same principles embodied in G.S. 62-140 and did, thereby, invoke the body of case law that has been developed under G.S. 62-140. Therefore, the question is whether the Commission-approved price regulation plan unreasonably prejudices or discriminates against any class of telephone customers, including telecommunications companies, as that term has been construed by the Commission and the courts of North Carolina heretofore under G.S. 62-140. See, e.g., *State ex. rel. Utilities Comm'n v. Bird Oil Co.*, 301 N.C. 14, 22, 273 S.E.2d 232, 237 (1981) ('The long-established question of law with respect to rate differentials is not whether the

differential is merely discriminatory or preferential; the question is whether the differential is unreasonable or unjust discrimination.') (Emphasis added). See also *State ex. re. Utilities Comm'n v. Public Staff*, 323 N.C. 481, 502, 374 S.E.2d 361, 373 (1988) and *State ex rel. Utilities Comm'n v. Carolina Utility Customers Assoc.*, 323 N.C. 238, 252, 372 S.E.2d 692, 700 (1988)."

Accordingly, the Commission found and concluded that the BellSouth Commission-approved price regulation plan would not unreasonably prejudice any class of telephone customers, including telecommunications companies.

We have already found that the Commission-approved price regulation plan protects the affordability of basic local exchange service. To the extent that residential and business local exchange services continue to be affordable, those customers are not unreasonably prejudiced.

Under the Commission-approved price regulation plan, the Commission will continue to have jurisdiction over the Company and the terms and conditions of its service to the public. The prices, terms and conditions of those services are consistent and will not unreasonably prejudice any class of customers. The Commission still retains its jurisdiction over any disputes that may arise between the Company and its customers or between the Company and any other telecommunications company. Furthermore, the Commission-approved price regulation plan contains anticompetitive safeguard language which, in conjunction with certain statutory provisions, should provide aggrieved parties with a clearly defined avenue for redress in the event MEBTEL should engage in anticompetitive conduct.

Accordingly, for the reasons set forth herein, the Commission finds and concludes that the Commission-approved price regulation plan does not "unreasonably prejudice any class of telephone customers, including telecommunications companies."

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 5

\- PUBLIC INTEREST STANDARD -

The public interest standard is one that the Commission has employed in its deliberations for many years. *See, e.g.* G.S. 62-2; 62-110(b), (c) and (d); 62-133.3 (repealed by 62-133.5, House Bill 161, Regular Session); and 62-134(h)(8). It is a broad and flexible standard that the Commission is qualified by both experience and law to define and apply.

No party offered any testimony to show that the Stipulated Plan is not in the public interest, and we conclude that, as modified by the Commission, it is in the public interest. First, the Commission-approved price regulation plan provides the rate rebalancing necessary for MEBTEL to begin the transition to competition. Second, as we have previously found, the Commission-approved price regulation plan provides affordable rates and assures that MEBTEL will continue to provide adequate service to its customers. Third, the productivity offsets require MEBTEL to share gains in future productivity with its customers. Fourth, the five-year review and the submission of the annual TS-1 surveillance report and the Annual Report should have a major influence upon

MEBTEL's behavior during the operation of the Commission-approved price regulation plan. Fifth, we believe that the Commission-approved price regulation plan properly shifts the risk of future investment decisions from MEBTEL's ratepayers to its shareholders, which is where that risk must rest in a competitive marketplace. Sixth, we believe that a competitive marketplace is not only consistent with the goals of House Bill 161, but that it will engender significant benefits for the citizens of this State through improved services, lower prices, and greater technological innovation. Finally, we conclude that the Commission-approved price regulation plan offers significant potential for enhanced economic development.

The Commission further believes that it retains sufficient authority under MEBTEL's Commission-approved price regulation plan to protect the public interest and that the Commission-approved price regulation plan is otherwise consistent with the public interest.

MEBTEL, in the Stipulated Plan, has agreed to a Commission review of the operation of the Stipulated Plan in advance of five years from the effective date of the Plan and has agreed to file earnings surveillance reports annually (Section 9). The Commission retains other significant authority, as well, under the Commission-approved price regulation plan such as the authority to monitor and maintain service quality, the authority to review rate structures and the terms and conditions of tariffs against a public interest standard, and oversight over classification and reclassification of services, tariffs, financial impacts of governmental actions, regrouping, and imputation requirements. In short, currently regulated services remain subject to Commission scrutiny under price regulation. In addition, the Commission has authority with respect to complaints concerning anticompetitive behavior. G.S. 62-133.5(e). We are, therefore, persuaded that the Commission-approved price regulation plan strikes a balance between the authority that the Commission needs to continue to protect the public interest and the pricing flexibility that the Company needs to move into a competitive environment.

This leaves, however, the question of whether the Commission has the power to subsequently modify a price regulation plan during the term of the price plan that it has approved herein. Under G.S. 62-80 and other relevant provisions, we believe that the Commission has this authority.

While we are persuaded that the Commission-approved price regulation plan represents a useful means whereby MEBTEL can undertake the process of transition to a more competitive environment, where the rigors of competition gradually reduce the need for Commission oversight, the Commission concludes that it should not -- indeed, cannot -- divest itself of powers and responsibilities which are statutorily conferred. The Commission is, of course, cognizant that changes to the price plan should not be undertaken for light and transient reasons. Nevertheless, especially in view of the fast-changing legal and technological environment of telecommunications in North Carolina and the nation, the Commission must retain the power, consistent with due process, to make truly needful adjustments in the price plan, if changing circumstances and the public interest so require.

Finally, the Commission has also made various other inconsequential language changes to the Stipulated Plan to mirror wording in the ALLTEL, BellSouth, Carolina, Central, GTE, and Concord Commission-approved price regulation plans.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 6

During the hearing, the Presiding Commissioner noted that MEBTEL had included DID Service, which is a form of interim number portability, in the Non-Basic 2 Category of its price regulation plan. The price regulation plans of BellSouth, Carolina/Central, GTE, ALLTEL, and Concord currently in effect all reflect DID Service in the Non-Basic 1 Category. Under the MEBTEL/Public Staff Stipulated Plan, prices for individual rate elements within the Non-Basic 2 Category may be increased or decreased by varying amounts, and the rate changes are not subject to either a rate element constraint or a Category constraint. Rates for services in the Non-Basic 1 Category are restricted based on a rate element constraint and a Category constraint.

The Commission believes that it is important to treat DID Service the same in all Commission-approved price regulation plans, barring any convincing evidence to the contrary. The Commission does not believe that MEBTEL presented persuading evidence which would warrant the MEBTEL price regulation plan classifying DID Service different than the other six companies currently operating under a Commission-approved price regulation plan. Therefore, the Commission believes that it is appropriate to remove DID Service from the Non-Basic 2 Service Category and put it in the Non-Basic 1 Service Category of MEBTEL's price regulation plan.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 7

Given the recent filing by the Public Staff of its review of the Fourth Year Price Plan Filings of BellSouth, Carolina/Central, and GTE and the resulting August 3, 1999 Commission Order Regarding the Fourth Year Price Plan Filings which instructed the incumbent local exchange companies (ILECs) to revise their annual filings to be in compliance with the methodology outlined by the Public Staff, the Commission finds it appropriate to insert language in MEBTEL's Plan which requires MEBTEL to adhere to the Commission's August 3, 1999 Order. On August 16, 1999, BellSouth filed a Petition for Reconsideration of the Commission's August 3, 1999 Order. On September 9, 1999, the Commission issued its Order Denying BellSouth's Petition for Reconsideration. The Commission believes that the Commission's rulings in the BellSouth, Carolina/Central, and GTE Fourth Year Price Plan Filings should be a precedent for other LECs entering price regulation plans, and that the language of MEBTEL's price regulation plan should require MEBTEL to adhere to the Commission's decision on this issue. The modified language is reflected in Section 6, (B)(4) and Section 6, (B)(6) of the Commission-approved price regulation plan.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 8

On September 9, 1999, the Commission issued its Order Requesting Comments and Reply Comments on the Public Staff's Proposed Treatment for Reclassified Services under Price Regulation Plans in Docket Nos. P-55, Sub 1013, P-7, Sub 825, P-10, Sub 479, P-19, Sub 277, P-16, Sub 181, P-118, Sub 86, and P-35, Sub 96. The Commission believes that it is appropriate for MEBTEL to adhere to the Commission's ultimate decision concerning the proper treatment for reclassified services under its price regulation plan after such decision is issued by the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the price regulation plan, attached to this Order as Appendix A, be, and the same is hereby, approved for implementation by MEBTEL effective January 1, 2000, provided that MEBTEL shall, not later than seven days following the date of this Order:

A. File a statement in this docket notifying the Commission that MEBTEL accepts and agrees to all of the terms, conditions, and provisions of the Commission-approved price regulation plan and indicating its willingness to implement said Plan effective not later than January 1, 2000;

B. Incorporate the modifications reflected in the Commission-approved price regulation plan and refile said plan prior to the effective date of the plan; and

C. File appropriate tariffs in conformity with the provisions of this Order and the Commission-approved price regulation plan reflecting an effective date that corresponds with the effective date of said plan.

2. That all North Carolina interexchange carriers are expected to flow through any material reductions in access charges they experience as a result of MEBTEL's price regulation plan.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bc090999.01

Appendix A

PRICE REGULATION PLAN FOR MEBTEL, INC. EFFECTIVE ________, 1999

Table of Contents

DEFINITIONS

The following definitions will apply to the terms as used in this Price Regulation Plan (the "Plan") for Mebtel, Inc.(herein sometimes referred to as the "Company").

Contract Service Arrangement (CSA) - An arrangement whereby the Company provides service pursuant to a contract between the Company and a customer. Such arrangements include situations in which the services are not otherwise available through the Company's tariffs, as well as, situations in which the services are available through the Company's tariffs, but in order to meet competition the Company offers those services at rates other than those set forth in its tariffs. CSAs may contain flexible pricing arrangements, and depending upon the particular competitive situation may also contain proprietary information that the Company desires to protect by deleting such information from the copy filed with the Commission.

TELECOMMUNICATIONS - MISCELLANEOUS

Gross Domestic Product Price Index (GDPPI) - The GDPPI is a measure of change in the market prices of output in the economy. The final estimate of the Chain-Weighted Gross Domestic Product Price Index as prepared by the United States Department of Commerce and published in the Survey of Current Business, or its successor, shall be the measure of price change used in the administration of this Plan.

Interconnection Services - Those services, except Toll Switched Access Services, that provide access to the Company's facilities for the purpose of enabling another telecommunications company or access customer to originate or terminate telecommunications services.

Long Run Incremental Cost (LRIC) - The cost the Company would incur (save) if it increases (decreases) the level of production of an existing or new service or group of services. LRIC consists of costs associated with adjusting future-production capacity that are causally related to the rate elements being studied. These costs reflect forward-looking technology and operational methods. LRIC shall be construed presumptively appropriate for use in this Plan; provided, however, that such use is without prejudice to the right of any party to challenge the propriety of use of LRIC in any complaint proceeding, including but not limited to complaints brought before the Commission alleging anticompetitive conduct on the part of the Company.

New Service - A regulated and tariffed service that is not offered by the Company as of the effective date of this Plan, but which is subsequently introduced.

Offset - The percentage reduction to the change in GDPPI which is applied under this Plan. The Offset for the Basic Services Category, the Interconnection Services Category, and the Non-Basic 1 Services Category will be 2%.

Price Regulation Index (PRI) - PRI is used to limit or otherwise place a ceiling on price changes, in the aggregate, for the Basic Services Category, the Interconnection Services Category and the Non-Basic 1 Services Category. A PRI is not applicable to the Non-Basic 2 Services Category as there is no limit on the price changes and there is no requirement that the prices be adjusted for the effects of inflation. The initial PRI for the service categories listed above for the first year of the Plan is one hundred (100). In all subsequent years of the Plan, the PRI will be developed by using the change in the GDPPI minus the Offset applicable to the respective Services Category. The PRI will be developed by: (1) dividing the most recent quarterly GDPPI results available at the time of the annual filing by the GDPPI results for the same quarter for the previous year; (2) dividing the Offset by 100; (3) subtracting the results of Step 2 from the results of Step 1; and (4) multiplying the results of Step 3 by the PRI for the previous year.

Restructure - A modification of the rate structure of an existing service by introducing one or more new rate elements, establishing vintage rates for the service, deleting one or more rate elements or redefining the functions, features or capabilities provided by a rate element so that the service covered by the rate element differs from that furnished prior to the modification. Restructure does not include a change in an existing rate element price when such change is made in accordance with the provisions of Section 6 of this Plan.

Service Price Index (SPI) - An SPI will be developed for the Basic Services Category, the Interconnection Services Category, and the Non-Basic 1 Services Category. An SPI will not be developed for the Non-Basic 2 Services Category as there will be no limit on price changes for the Non-Basic 2 Services Category and there is no requirement that the prices be adjusted for the effects of inflation. Each SPI is calculated by: (1) multiplying the existing price for each rate element in the category by the demand for that rate element to produce the existing revenue for each rate element, then by adding together the existing revenues for all of the rate elements in the category to produce the existing revenues for that category (the "existing category revenues"); and (2) multiplying the proposed price for each rate element in the category by the demand for that rate element to produce the projected revenue for each rate element, then by adding together the projected revenues for all of the rate elements in the category (the "projected category revenues"); and (3) dividing the projected category revenues obtained in Step 2 by the existing category revenues obtained in Step 1; and (4) multiplying the result obtained in Step 3, above, by the previous SPI. The annual filing will establish the demand to be utilized in calculating the SPIs for the coming Plan year and will reflect the most current demand available at the time the annual filing is prepared.

PROVISIONS OF THE PLAN

Section 1. Applicability of Plan.

The Price Regulation Plan will apply to all tariffed services offered by Mebtel, Inc. that are regulated by the North Carolina Utilities Commission. The effective date of the Plan will be concurrent with the effective date of the tariffs which fully implement the provisions of Section 11 herein.

Section 2. Changes to Plan.

Any change to this Plan will be effective on a prospective basis only and shall be consistent with the provisions of the Plan or such further orders as may be issued by the Commission.

Section 3. Classification of Services.

Each tariffed telecommunications service offered by the Company and regulated by the Commission will be classified into one of four categories: Basic Services, Interconnection Services, Non-Basic 1 Services and Non-Basic 2 Services.

Basic Services (Basic). See Attachment A for a listing of services within this category by tariff reference

Interconnection Services (Interconnection). See Attachment A for a listing of services within this category by tariff reference.

Non-Basic 1 Services (Non-Basic 1). See Attachment A for a listing of services within this category by tariff reference.

Non-Basic 2 Services (Non-Basic 2) As of the effective date of this Plan, this category includes only Centrex Service~~, Direct Inward Dialing (DID) Services~~ and Billing & Collection Services. However, existing services may later be reclassified to the Non-Basic 2 Services Category, and new services may be assigned to the Non-Basic 2 Services Category in accordance with the provisions of Section 4 of this Plan.

Section 4. Classification of New Services, and Reclassification of Existing Services.

Fourteen (14) days prior to offering a new tariffed service and thirty (30) days prior to the reclassification of an existing tariffed service, the Company shall make a written filing with the Public Staff, the Attorney General, and the Commission. In all cases the filing shall include a description of the service, the proposed rates for the service, and the proposed classification or reclassification of the service. The Company shall provide the appropriate documentation to the Commission and Public Staff supporting the proposed classification or reclassification of the service.

(1) Simultaneous with such notification, the Company will designate the service category into which the new tariffed service is classified.

(2) Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the new tariffed service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service. The new offering shall be presumed valid and shall become effective fourteen (14) days after the filing unless otherwise suspended by the Commission for a term not to exceed forty-five (45) days. For the purposes of determining the service classification only, the Commission may extend the term for an additional thirty (30) days; provided, however, such extension shall not result in the further postponement of any new service.

(3) Any interested party shall be afforded an opportunity, by timely petition to the Commission, to oppose the reclassification of an existing tariffed service or propose that the service be reclassified in a category different from that proposed by the Company. The reclassification shall become effective thirty (30) days after the filing, unless otherwise suspended by the Commission for a term not to exceed seventy-five (75) days.

(4) The Commission may modify or disapprove the classification or reclassification proposal at any time prior to the end of the 75-day suspension term.

Section 5. Tariff Requirements.

A. General Requirements.

The Company will file tariffs for services included in any of the four service categories. These tariffs will specify the applicable terms and conditions of the services and associated rates.

(1) Any tariff filing changing the terms and conditions, increasing rates, restructuring rates or introducing a new service will be presumed valid and become effective, unless disapproved, modified or otherwise suspended by the Commission for a term not to exceed forty-five (45) days, fourteen (14) days after filing. In the case of a tariff filing to restructure rates as defined in the Definitions Section of this Plan, the Commission may extend the term for an additional thirty (30) days and may disapprove or modify the tariff filing if it finds that any of the rates, terms or conditions of the tariff and the resulting effects on new and existing customers are not in the public interest. The Commission may on its own motion, or in response to a petition from any interested party, investigate whether a tariff is consistent with this Plan and the Commission's rules, and whether the terms and conditions of the services are in the public interest; provided, however, that a tariff filing limited to a price change in an existing rate element shall only be investigated with respect to whether it is in compliance with Section 6 of this Plan.

(2) Any tariff filing reducing rates will be presumed valid and become effective seven (7) days after filing unless otherwise suspended by the Commission for a term not to exceed forty-five (45) days.

(3) The Company will provide customer notification by bill insert or direct mail to all affected customers of any price increase at least fourteen (14) days before any public utility rates are increased. Notice of a rate increase shall include at a minimum the effective date of the rate change(s), the existing rate(s) and the new rate(s).

B. Contract Service Arrangements.

The Company will provide CSAs under the terms, conditions, and rates negotiated between the Company and the subscribing customer(s). Such terms, conditions, and rates will be set forth in contractual agreements executed by the parties and filed as information with the Commission. When those contracts contain proprietary information, the Company will delete that information from the copy filed with the Commission. CSAs may be, but are not required to be, tariffed.

Section 6. Pricing Rules.

A. General.

(1) This Plan establishes a pricing structure that allows the Company to adjust its prices for rate elements included in all service categories, except the Non-Basic 2 Services Category, to reflect the impacts of inflation less an Offset. The aggregate percentage change in prices for the affected rate elements, however, cannot exceed the percentage change of inflation (as represented by the PRI) minus the Offset. The new prices are lawful when the SPI for a service category is less than, or equal to, the PRI for the same service category, and when the prices for the rate elements within that service category have been established in accordance with the rules set forth in this Plan.

(2) Forty-five (45) days prior to each anniversary of the effective date of the Plan, the Company will make an annual filing. The purpose of this filing is to update the SPI and the PRI for all service categories, except the Non-Basic 2 Services Category, based upon the change in the GDPPI over the preceding year minus the Offset. These filings may or may not include proposed price changes.

(3) In the event the annual change in the GDPPI minus the Offset is a negative amount, the Company will reduce prices except: (1) for any service included in the Non-Basic 2 Services Category, and (2) for any service currently priced below its Long Run Incremental Cost (LRIC), or (3) when such a reduction would result in reducing prices below LRIC for any service currently priced above LRIC, or (4) if the SPI is below the newly-defined PRI. If, because of (2) or (3) above, it is not possible to reduce the SPI to the required level, the Company will propose equivalent revenue reductions in other categories.

(4) The Company will file tariffs with documentation demonstrating that all price changes comply with the pricing constraints set forth in this Plan.

(5) If the Company elects not to increase its rates by the full amount allowed under the terms of the Plan in a given year, the Company may increase its rates in future years to reflect the full amount of the allowable increases previously deferred. The Company will not, however, attempt to recover any revenues foregone as a result of deferring the increase in prices.

(6) The price for any individual rate element for any service offered by the Company shall equal or exceed its LRIC unless; (1) specifically exempted by the Commission based upon public interest considerations or, (2) the Company in good faith prices the service to meet the equally low price of a competitor for an equivalent service.

(7) In the event <u>that</u> the U.S. Department of Commerce ceases publication of the GDPPI, or significantly modifies the GDPPI, or the GDPPI becomes otherwise unavailable, the Company may select and recommend to the Commission, subject to the Commission's approval, another comparable measurement of inflation to be used in the administration of this Plan.

(8) The Company shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function. The details of specific imputation requirements, if contested, and whether to allow any rate increases to end users, which the Company might propose as a result of applying an imputation requirement are public interest questions which the Commission will address and decide on a case-by-case basis. The Commission retains the authority under this Plan to exempt any service from an imputation requirement based upon public interest considerations.

(9) This Plan shall not operate to permit anticompetitive practices. The Company shall not engage in predatory pricing, price squeezing, price discrimination or anticompetitive bundling or tying arrangements as those terms are commonly applied in antitrust law. Nor shall the Company give any unreasonable or unlawful preference or advantage to the competitive services of affiliated entities.

B. Basic, Interconnection, and Non-Basic 1 Services.

(1) The prices for rate elements in the Basic, Interconnection and Non-Basic 1 Services Categories in effect on the effective date of the Plan shall be the initial prices under the Plan.

(2) The establishment of a PRI and SPI for the Basic Services Category, the Interconnection Services Category and the Non-Basic 1 Services Category is required in order to test any change in the aggregate prices for rate elements included in those Categories.

(a) The PRI places an aggregate ceiling on the prices for rate elements within the Basic, Interconnection and Non-Basic 1 Services Categories. At the time the Plan is implemented, the value of the PRI for each of these Services Categories will be set at one hundred (100). In the second and subsequent years of the Plan, the PRI will be adjusted to reflect any change in the GDPPI occurring over the preceding year minus the Offset. For example:

- if the result of dividing the most recent quarterly reported GDPPI by the reported GDPPI for the same quarter for the preceding year is 1.04, and
- the result of dividing the Offset (assume 2%) by 100 is .02, and
- the result of subtracting the results of Step 2 is 1.02, and
- the result of multiplying the results of Step 3 by the PRI for the previous year is 102, then
- the PRI for the Category for the second year of the Plan would be 102.

(b) The SPI is an index that reflects the relative change in revenue that would be generated by the new prices as compared to revenue generated by the old prices at equal demand for all the rate elements within the Basic, Interconnection and Non-Basic 1 Services Categories. When the Plan is implemented, the initial value of the SPI will be set at one hundred (100). In the second and subsequent years of the Plan, the SPI will be adjusted to reflect the amount of change between the new and old prices for all the rate elements within the Category. Except for price changes associated with the financial impact of governmental action as set forth in Section 7, as prices for rate elements within the Category are changed, a new SPI is calculated, compared to the PRI and then included with the tariff filing. The SPI is applied to the entire service category and not individual services or rate elements within the Category. The Company may increase some rates, while decreasing others, as long as the SPI is less than, or equal to, the PRI and as long as the increase in any individual rate element does not exceed the GDPPI plus the percentage specified in the table set forth in Subparagraph (5) below.

(3) The initial prices for Residence Basic Local Exchange Service shall be the maximum prices charged for a period of three years from the effective date of the Plan (the "cap period").

The specific Residence Basic Local Exchange Service rates to be capped are the Residence Individual Line Service charge, the Residence Service Order charge, the Residence Premises Visit charge and the Residence Central Office Work charge (the "capped Basic Local Exchange Services"). The initial prices, in the aggregate, for Toll Switched Access Services shall be the maximum that the Company will charge under the Plan.

(4) During the cap period, the capped Residence Basic Local Exchange Services will be excluded from the calculation of the SPI for the Basic Services Category. When the cap period expires, i.e. 3 years from the effective date of the Plan, MEBTEL is required to adhere to the methodology outlined by the Commission in its August 3, 1999 Order issued in Docket Nos. P-55, Sub 1013, P-7, Sub 825, P-10, Sub 479, and P-19, Sub 277.

(5) During the cap period, prices for individual non-capped rate elements within the Basic Services Category and prices for any rate elements within the Interconnection and Non-Basic 1 Services Categories may be increased or decreased by varying amounts. Price increases for individual rate elements cannot exceed the percent change in the GDPPI over the preceding year, plus the percentages shown in the table below.

Service Category	Change in GDPPI plus
Basic	3%
Interconnection	7%
Non-Basic 1	15%

For example, the price increases for individual rate elements in the Basic Services Category cannot exceed five percent (5%), assuming a plus two percent (+2%) change in the GDPPI for the previous year. Price increases can be made at any time, subject to Commission review and approval; however, only one increase per individual rate element is allowed within the twelve-month period between anniversary dates of the Plan. Price decreases may be made at any time and are not limited as to the number of decreases in the twelve-month period between anniversary dates of the Plan. This provision shall apply to both capped and non-capped Basic rate elements after the expiration of the cap period and to all rate elements in the Interconnection and Non-Basic 1 Services Categories.

(6) In the annual filing to be effective at the beginning of the fourth year of the Plan, the PRI and the SPI associated with the Basic Services Category will be re-initialized following the methodology outlined by the Commission in its August 3, 1999 Order as a result of removing the cap on capped Residence Local Exchange Services. The PRI for the Basic Services Category will be determined by re-initializing the index in a manner which reflects any allowable increases previously deferred for non-capped Basic rate elements only plus an adjustment to reflect the percent change in the GDPPI from the previous year, minus the Offset. In the same annual filing at the beginning of the fourth year, the SPI for the Basic Services Category will also be re-initialized to 100. For example:

- If the PRI = 103 and the SPI = 101 for the Basic Services Category at the end of the third year of the Plan, excluding the capped Residence Local Exchange Services, then

- the PRI and SPI would be re-initialized to 102 and 100, respectively, as the first step.

- Next, the difference between the PRI and SPI would be reduced by the percentage of capped Residence Local Exchange Service revenues to total Basic Services Category revenues. If the percentage is 50%, then

- the PRI would be reduced to 101 and the SPI would remain at 100 and a further adjustment would be made to establish a new PRI for the fourth year based upon the percent change in the GDPPI from the previous year, minus the Offset.

(7) As set forth in Section 7 following, price changes resulting from changes in the PRI will not be impacted, or in any way affected, by changes resulting from governmental action.

(8) Upon implementation of the Plan and on the first, second and third anniversary dates of the Plan, the rate for the intrastate toll switched access originating carrier common line (CCL) rate element will be reduced by $0.008.

C. Non-Basic 2 Services.

Prices for individual rate elements within the Non-Basic 2 Services Category may be increased or decreased by varying amounts, and the rate changes are not subject to either a rate element constraint or a Category constraint. Price increases and decreases may be made at any time and are not limited to any specific number of increases or decreases in the twelve-month period between anniversary dates of the Plan.

D. **New Services.**

New tariffed services, excluding those assigned to the Non-Basic 2 Services Category, will be included in the SPI associated with the assigned service category in the first annual filing after the service has been available for six months. As set forth in Section 4 above, the Commission shall make the final determination regarding the classification or reclassification of any service.

Section 7. Financial Impacts of Governmental Actions.

A. With Commission approval, the Company may adjust the prices of any service(s) due to the financial impacts of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the Company, to the extent that such impacts are not measured in the GDPPI. Such governmental actions would include, by way of illustration and not limitation, general changes such as "separations" matters (involving the separation of investment, expenses, and revenues, between the intrastate and interstate jurisdictions), as well as extended area services or Commission-required technological innovations. In such an event, the Company or another interested party may request the Commission to adjust the rates accordingly. The request shall include a description of the governmental action, the proposed adjustment to prices, the duration of the adjustment, and the estimated revenue impact of the governmental action. The Company may request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment at any time during each Plan year to reflect the financial impact of governmental actions. A Plan year shall run from an anniversary date of the effective date of the Plan to the next anniversary date of the effective date of the Plan. The Commission may approve the request if the Commission finds that:

(1) the governmental action causing the financial impact has been correctly identified;

(2) the financial impact of the governmental action has been accurately quantified;

(3) the proposed rates produce revenue covering only the financial impact of governmental actions;

(4) the rates would be applicable to the appropriate class or classes of customers; and

(5) the adjustment in rates is otherwise in the public interest.

B. Price changes resulting from governmental action will not impact or otherwise affect the price changes provided for under the terms of the pricing rules set forth in Section 6 preceding. In addition, any price changes resulting from approved governmental action requests will not be constrained by the pricing rules set forth in Section 6.

C. The Commission may, on request of the Company or another interested party, or on its own initiative, require the Company to adjust prices for circumstances that meet the above criteria.

Section 8. Annual Filing.

The Company shall make an annual filing containing the following information:

A. The annual percent change in the GDPPI;

B. The applicable change to the PRI for the Basic, Interconnection and Non-Basic 1 Services Categories based upon the percent change in the GDPPI minus the Offset;

C. The change in the SPI for the Basic, Interconnection and Non-Basic 1 Services Categories; and

D. Complete supporting documentation.

Section 9. Commission Oversight.

A. The Commission retains oversight for service quality, complaint resolution and compliance by the Company with all elements of this Plan.

B. The Company will annually file the TS-1 financial surveillance reports which are now filed with the Commission. Any claim of confidentiality with regard to these reports shall be made by the Company and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act.

C. The Company will file its Annual Report (ARMIS 43-02 and 43-08) as well as the following North Carolina schedules instead of the complete Form M filed in previous years:

Schedule	Title
B-1	Balance Sheet Accounts
B-5-1	Analysis of Accumulated Depreciation
B-7	Bases of Charges for Depreciation
B-12	Net Deferred Income Taxes
I-1	Income Statement Accounts
S-5	Statistical Data

D. The Commission shall undertake a review of the operation of the Plan in advance of five years from the effective date of the Plan to determine how the operation of the Plan comports with House Bill 161 and specifically how the Plan:

1. Protects the affordability of basic exchange service, as such service is defined by the Commission;

2. Reasonably assures the continuation of basic local exchange service and meets reasonable service standards that the Commission may adopt;

3. Will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and

4. Is otherwise consistent with the public interest.

Following its review, the Commission may make modifications to the Plan consistent with the public interest.

Section 10. Depreciation.

Coincident with the effective date of the Plan, the Company will determine and set its own depreciation rates.

Section 11. Rebalancing of Rates and Reduction in Revenues.

A. Rebalancing of Rates. Upon implementation of the Plan, the Company's rates will be rebalanced as shown on Attachment B. The Company shall file tariffs for the rate changes as soon as reasonably possible after the Commission approves the Plan, to become effective January 1, 2000. If the Commission approves a modified Plan, the Company will file tariffs for the initial rate changes at the time it accepts the modified Plan, to become effective within ninety (90) days from the date the Company accepts the modified Plan or on January 1, 2000, whichever is later.

B. Touch Calling. Currently there is a separate charge for Touch Calling service. This charge is eliminated under the Plan for all classes of service.

C. Reduction in Revenues. Upon implementation of the Plan, the rebalancing of rates is designed to reduce annual revenues derived from recurring charges by approximately $223,618. These revenue reductions will be partially offset by increases to Directory Assistance, Operator assisted station-to-station customer dialed calls, and Service Charges for a net revenue reduction of approximately $145,932. In addition, upon implementation of the Plan and on the first, second, and third anniversary date of the Plan, the rate for the Intrastate Originating CCL rate element will be reduced by $0.008 in accordance with Section 6.B.(8).

Section 12. Election of Competition.

The Company agrees that if it should receive a bona fide request for interconnection, services or network elements, it will not claim an exemption under Section 251(f)(1) of TA96.

Attachment A to Price Regulation Plan

List of Services

BASIC SERVICES

General Subscriber Services Tariff

Section	2	General Regulations
	2.3.9	Provision and Ownership of Directories
Section	3	Basic Local Exchange Service
	3.2.1	Monthly Flat Rate
	3.2.2	Key System Trunk Rate
	3.2.3	PBX System Trunk Rate
	3.2.4	Network Access Register Rate
	3.8	Joint User Service
	3.9	Directory Assistance Service
	3.12	Lifeline
Section	4	Service Charges
	4.3	Service Order Charge
	4.3	Premise Visit Charge
	4.3	Central Office Work Charge
	4.3	Line Work Charge
	4.5	Miscellaneous Charges
	4.10	Link-Up
Section	13	Miscellaneous Service Arrangements
	13.4	Touch Calling Service
Section	14	Auxiliary Equipment
	14.11	Volume Control Equipment

Industry Access Service Tariff of North Carolina

Section	I3	Carrier Common Line Access
	I3.8	Rates and Charges
Section	I5	Ordering Options for Switched Access Service

	I5.2	Access Order
	I5.4	Planned Facilities Order
Section	I6	Switched Access Service
	I6.8	Rates and Charges
	16.9	Rate Categories
Section	I21	IntraLATA Toll Originating Responsibility Plan (ITORP)
	I21.2	Payment Arrangements

NON-BASIC 1 SERVICES

General Subscriber Services Tariff

Section	3	Basic Local Exchange Service
	3.10	Operator Assisted Local Calls
	3.11	Verification and Interrupt Service
Section	5	Charges Applicable Under Special Conditions
Section	6	Directory Listings
	6.4	Non-Published Number Service
	6.6	Additional Listings
	6.7	Miscellaneous Listings
Section	9	Foreign Exchange Service
Section	13	Miscellaneous Service Arrangements
	13.2	Extension Line Mileage
	13.3	Tie Line Service
	13.6	Direct Inward Dialing (DID) Service
	13.7	Special Billing Services
	13.8	Arrangements for Night, Sunday and Holiday Service
	13.9	Custom Calling Features
	13.10	Remote Call Forwarding
	13.11	Electronic Toll and Operator Restriction
	13.12	Customized Code Restriction (CCR)
	13.13	Advanced Calling Services
	13.14	Personal Ringing
	13.15	Billed Number Screening
	13.16	Simplified Message Desk Interface (SMDI)
Section	15	Connections with Certain Facilities and/or Equipment of Others
	15.2.1	Data Transmitting and/or Receiving Terminal Equipment
	15.2.5	Connection of Customer-Provided Voice Transmitting and/or Receiving Terminal Equipment for Recording of Two-Way Telephone Conversations

	15.4	Maintenance Service Charge
	15.2.7	Alarm Detection and Reporting Equipment
Section	16	Data Service
	16.1	Switched Data Services
	16.2	Integrated Services Digital Network (ISDN)
Section	18	Long Distance Message Telecommunications Service
Section	19	Wide Area Telecommunications Service
Section	20	Private Line Service and Channels
	20.1	Local Private Line Service
	20.2	Channels for Metering, Control or Other Purposes Not Involving Telephonic Communications
	20.3	Speaker-Microphone Service
	20.5	Channels for Program Transmission
	20.7	Interexchange Private Line Service
	20.8	DS-1 Local Loop

NON-BASIC 2 SERVICES

General Subscriber Services Tariff

Section	12	Central Office Non Transport Service Offerings
	12.1	Mebtel Digital Centrex
	~~12.2~~	~~Direct Inward Dialing (DDD) Services~~

Industry Access Service Tariff of North Carolina

Section	I8	Billing and Collection Services
	I8.1	Recording Service
	I8.2	Billing Service
	I8.3	Billing Analysis Service
	I8.4	Billing Information Service

INTERCONNECTION SERVICES

General Subscriber Services Tariff

Section	7	Coin Telephone Service
	7.3	Public (Pay) Telephone Access Service (PTAS)
Section	23	Sharing and Resale
	23.1	Sharing and Resale of Telephone Services

Industry Access Service Tariff of North Carolina

Section	I5	Ordering Options for Special Access Service
	I5.2	Access Order
	I5.4	Planned Facilities Order
Section	I7	Special Access Service
	I7.5	Rates and Charges
Section	I9	Directory Assistance Service
	I9.5	Rate Regulations and Charges
Section	I11	Special Facilities Routing of Access Services
	I11.2	Rates and Charges for Special Facilities Routing of Access Services
Section	I12	Specialized Service or Arrangements
	I12.2	Rates and Charges
Section	I13	Additional Engineering, Additional Labor and Miscellaneous Charges
	I13.1	Additional Engineering
	I13.2	Additional Labor
	I13.3	Miscellaneous Services
Section	I14	Special Construction
	I14.3	Rates and Charges
Section	I18	Operator Services Access Service
	I18.2	Operator Transfer Service

Attachment C to Price Regulation Plan

MEBTEL, INC.
Intrastate Access Charge Rate Analysis

	Current Rate	1st Anniversary	2nd Anniversary	3rd Anniversary
Originating Carrier Common Line (CCL) Rate	$0.024	$0.016	$0.008	$0.000

DOCKET NO. P-55, SUB 1013
DOCKET NO. P-7, SUB 825
DOCKET NO. P-10, SUB 479
DOCKET NO. P-19, SUB 277

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1013 In the Matter of Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation DOCKET NO. P-7, SUB 825 DOCKET NO. P-10, SUB 479 In the Matter of Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plan Pursuant to G.S. 62-133.5 DOCKET NO. P-19, SUB 277 In the Matter of Application of GTE South, Inc. for, and Election of, Price Regulation	)	ORDER REGARDING FOURTH YEAR PRICE PLAN FILINGS

BY THE COMMISSION: On June 3, 1999, the Public Staff filed its Response to the Fourth Year Price Plan Filings of BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central), and GTE South, Incorporated (GTE). Each Company is required under the terms of its Price Regulation Plan (Price Plan) to make an annual filing to update the Price Regulation Index (PRI) and Service Price Index (SPI) based upon the change in the Gross Domestic Product Price Index (GDP-PI) over the preceding year minus the Offset.

RESPONSE TO FOURTH YEAR PRICE PLAN FILINGS

The Public Staff specifically identified a problem that it had discovered regarding the application of the net inflation-productivity factor to the Basic service revenues in each Company's annual filing. The Public Staff believes that the Companies' proposal for uncapping and integrating Basic residence rates and service connection charges into the Basic category through the re-initialization process of the PRI and SPI does not comply with Section 6 - Pricing Rules of the Price Plans. The Public Staff stated in its Response that the methodology used in the Companies' filings has no basis in the Price Plans and is contrary to the agreed-upon language regarding the fourth year and serves only to mitigate the effects of low inflation on the Companies' revenues. The Public

Staff recommended that the Commission order the Companies to revise their annual filings so that their calculations comply with the requirements of the Price Plans and to propose further rate changes to accomplish the required reduction.

On June 8, 1999, the Chair issued an Order Seeking Comments on the Public Staff's Response. The Chair concluded that BellSouth, Carolina/Central and GTE should file comments on the Public Staff's Response no later than June 15, 1999 with the Public Staff responding to the comments if it chose to do so by June 18, 1999. Carolina/Central filed for an extension of time to file comments, and the Chair granted an extension until June 22, 1999 for BellSouth, Carolina/Central, and GTE and until July 2, 1999 for any reply comments of the Public Staff. By Order dated July 6, 1999, the Chair granted the Public Staff an extension until July 7, 1999 to file its reply comments.

COMMENTS

BELLSOUTH: BellSouth asserted in its comments that the current dispute between the Public Staff and BellSouth concerns the question of exactly what should be done to properly include residence revenues in the Price Plan now that the three-year freeze on residence basic local exchange service rates has expired. BellSouth stated in its comments that the Public Staff's recommended $3.1 million dollar *further* reduction is neither required by nor consistent with a fair and reasonable reading of the Price Plan. BellSouth stated that until now, the basket adjustment has been applied to the Basic basket revenues at the end of each Price Plan year, but not to the residence revenues, because those residence revenues were capped. BellSouth stated that in the past, there has been no dispute about the calculation, but now at the end of the third year, a dispute has arisen. BellSouth asserted in its comments that the Public Staff argued that residence revenues should be included in the Basic basket revenues when the adjustment is applied and BellSouth contended that these revenues should be excluded. BellSouth stated that the Public Staff leaves the impression that the language of the BellSouth Price Plan unequivocally affirms the Public Staff's conclusion which BellSouth argued is simply not the case. BellSouth stated that its Price Plan does not clearly and unambiguously address the dispute at hand and that the Public Staff and BellSouth have interpreted the language of the Price Plan differently. BellSouth argued that its treatment of the *capped* revenues is the only treatment that comports properly with the underlying purpose of the basket adjustment. BellSouth stated that an adjustment is done at the end of the year to reflect the effects of inflation and productivity that have occurred during the past year. BellSouth asserted that every change made to BellSouth's prices since the inception of the Price Plan has been consistent with this theory and the Public Staff has not, until now, taken exception. BellSouth further maintained that every Price Plan that BellSouth is aware of, at both the federal and state level, operates in a manner consistent with this approach. BellSouth further maintained that capping residence revenues has implications for residence service's ***prices and revenues.*** BellSouth argued that a "cap" relates to two separate, and readily distinguishable, aspects of residential service. First, BellSouth maintained, it means that the ***prices*** for residence service cannot be increased during the capped period. Second, according to BellSouth, it means that the aggregate ***revenues*** associated with basic residential service are excluded from adjustments made to the basket. Therefore, BellSouth argued, capping has implications for residence service's prices and revenues. BellSouth maintained that the current dispute relates to when the uncapping of the residence prices should be implemented. BellSouth argued that the residence prices and revenues need to be treated in this third year of the capped period (beginning June 24, 1999) in the same manner they were treated in the first two years of the capped period, i.e., they remain capped, that is, they are not subject to being updated for changes in inflation and productivity. BellSouth asserted that these prices and revenues must remain unadjusted, just as they did at the conclusion of Years One and Two of the Price Plan. However, the Public Staff argued otherwise; residential revenues should be included along with other Basic basket revenues and submitted to the Basic basket adjustment. BellSouth argued that this treatment is wholly inconsistent with the treatment administered to the Basic basket revenues and the capped residential revenues up to this point. BellSouth stated that a proper three-year capping of residential service means that the cap is removed at the start of Year Four. According to BellSouth, the *price* cap comes off, which means that the prices can be changed, just like the other Basic basket prices. However, BellSouth argued, to be consistent with every adjustment made to the Price Plan since its genesis, the inflation and productivity changes experienced in the fourth year should be reflected in an adjustment made at the end of Year Four. BellSouth maintained that its treatment of the capped residential revenues in the annual filing is theoretically sound and comports with the language and the procedures specified in the Price Plan. BellSouth suggested that the Public Staff has a clear vision of what it wishes to accomplish: to require BellSouth to make another $3.1 million in reductions in addition to the $26 million in reductions already included in the annual filing. BellSouth asserted that there is no theory to support the Public Staff's result which is consistent with the purpose of the Price Plan, and there is no explicit authority in the Price Plan's language to support this conclusion. BellSouth maintained that the Price Plan is simply silent on this point, and it is up to the Commission to look to the Price Plan's underlying purposes to reach a decision that is internally faithful to the Price Plan in its entirety. Finally, BellSouth stated that without a doubt, consumers have received exceptionally favorable treatment under the Price Plan and that this fact should be remembered as the Commission searches for a reasonable and consistent interpretation of the Price Plan's provisions.

BellSouth also raised the question of how reclassifications should be handled. BellSouth believes that the Commission needs to address and decide what is the proper treatment when services are reclassified - in effect, moved - from one basket to another, i.e., what inflation and productivity adjustments should apply. BellSouth specifically requested Commission clarification on the proper treatment for services that are reclassified.

Finally, BellSouth commented that if the Commission desires further explanation of BellSouth's position, it should consider setting this matter for an oral argument or even a limited hearing in which the parties have the opportunity to present testimony.

CAROLINA/CENTRAL (including Correction/Addendum filed on June 28, 1999): Carolina/Central stated in comments that the three-year cap on residence basic local exchange service rates expired on June 24, 1999, and the fundamental question before the Commission is "what happens now?" with respect to rates for residence basic local exchange service. Carolina/Central stated in their comments that to answer that question requires careful reading and interpretation of the Price Plan. Carolina/Central maintained that the Public Staff mis-read a few key words in the Price Plan and misquoted Section 6.B.(6) of the Price Plan which resulted in an erroneous interpretation of the Price Plan. Carolina/Central maintained that the Public Staff misquoted Section 6.B.(6) to state that an adjustment is made "to reflect the percent change in the GDP-PI <u>from the beginning of the fourth year</u>". In fact, Carolina/Central stated, Section 6.B.(6) of the Price Plan states that the adjustment is made "to reflect the percent change in the GDP-PI <u>from the previous</u>

year". Carolina/Central maintained that the correct interpretation of the Price Plan recognizes and adheres to three essential points: (1) The Price Plan does not allow price changes for capped residential services during the fourth year of the Price Plan based on inflation occurring during the third year; and (2) The precise definition of "capped" as used in the Price Plan exempts residential service from price increases resulting from inflation or regrouping; and (3) The SPI/PRI initialization procedures and the practice of adjusting prices for inflation and productivity in the following year were established at the inception of the Price Plan, and should be applied to the re-initialization process for capped services. Carolina/Central stated that upon expiration of the three-year capped period, the prohibition on increasing capped service prices as a result of regrouping would be removed, and inflation/productivity related price increases would be allowed prospectively. Carolina/Central argued that prospective increases would be determined by measuring future changes in the GDP-PI from the expiration date of the three-year capped period. Carolina/Central maintained that to adjust prices for capped basic residential local service now at the end of the third year, would really apply an adjustment for the effects of inflation and productivity during the third year of the Price Plan. Carolina/Central maintained that this would be ***inconsistent with the intent of the Price Plan since those revenues are to be capped during this period.*** Carolina/Central concluded that the most reasonable and logical interpretation of the Price Plan's language is that the percent change in the GDP-PI from the previous year should only apply to non-capped services. Carolina/Central maintained that the Public Staff, through its June 3rd filing, is seeking additional rate reductions that are not supported by the language or the intent of the Price Plan and recommended that the Commission affirm Carolina/Central's methodology with respect to the re-initialization process and confirm that reductions in Local Service rates are not currently required by the Price Plan's re-initialization process.

Finally, Carolina/Central requested an oral argument before the Commission to further explain the re-initialization provision or, in the alternative, an evidentiary hearing before the Commission.

GTE: GTE stated in its comments that it disagrees with the Public Staff's contention that capped revenues should be included in the calculation of the Basic Category revenue base for GTE's Fourth Year Price Plan Filing. GTE stated that it correctly applied the PRI/SPI less productivity factor to the ***uncapped*** revenue base comprising the Basic Category as denoted in Section 6 B.(6) of the Price Plan. GTE noted that the Public Staff asserted that GTE did not include *capped* revenues in the Basic Category consistent with what GTE has done since the inception of the Price Plan and now, after three years, the Public Staff disagrees with this methodology. GTE maintained that if the reduction proposed by the Public Staff is deemed appropriate, it would create a reduction to GTE's revenue streams that was not anticipated or provided for in the Price Plan. GTE asserted that nothing in the Price Plan provides that the ***capped*** revenues should be reduced at the end of the three-year cap period through the PRI/SPI less productivity calculation. GTE further asserted that the Public Staff used the example in the Price Plan in the wrong context to support its position. GTE stated that the intent of the example is to give a "roadmap" as to how the index should be adjusted in the fourth year of the Price Plan and the Public Staff instead used it to support its new proposal. GTE argued that the Public Staff's proposal regarding the application of the SPI to the ***capped*** revenues is not a provision contained in GTE's Price Plan and was not litigated during the proceeding which initially established the Price Plan. GTE concluded that the Public Staff has confused the methodology for adjusting the PRI/SPI index with the base to which the adjustment should be applied and recommended that the Commission affirm GTE's calculation which does not include *capped* revenues in the Basic Category of services.

ATTORNEY GENERAL: Although not specifically requested by the Commission, the Attorney General filed comments on this matter on July 2, 1999. The Attorney General stated that he concurs with the Public Staff's Response to the Fourth Year Price Plan Filings and recommended that the Commission adopt the Public Staff's interpretation.

REPLY COMMENTS

PUBLIC STAFF: The Public Staff emphasized in its reply comments that the three-year cap on residence basic local rates meant that between June 24, 1996 (the effective date of the Price Plans) and June 23, 1999, the Companies were allowed to adjust rates for all services in the Basic basket *except* residence basic local service, subject to the revenue and rate element constraints. According to the Public Staff, ***after*** the cap period (i.e., June 24, 1999) this flexibility applies to ***all*** services in the Basic basket. The Public Staff maintained that since rates for residence basic local exchange service were capped during the first three years, the Price Plans specify that the revenue from those services be excluded from the total basket revenue before calculating the SPI for the second and third years of the Price Plans (i.e., and ***not*** the fourth year of the Price Plans). The Public Staff stated that the controversy between the Companies and the Public Staff stems from the fact that the net inflation-productivity factor is less than zero because of low inflation, resulting in a requirement of rate reductions in the Basic basket. The Public Staff's view is that the time to integrate rates for services in the Basic category is when the cap period ends and that the way to do this is by **including** the revenues for those services in the calculation of the new SPI without further adjustment. The Public Staff argued that this procedure is faithful to both the intent and the language of the Price Plans and to do otherwise would deprive customers of the full benefit of the bargain that was struck in 1996, namely, that the inflation-based indices and price protection work in both directions.

Addressing BellSouth's comments, the Public Staff maintained that nothing in the Price Plan even remotely suggests that the annual adjustments are a way of flowing additional benefits to (or imposing additional burdens on) consumers prospectively based on past events. The Public Staff stated that the Price Plan is essentially forward-looking, with the change in inflation minus productivity during one year serving as the basis for the pricing constraints to apply during the following year. The Public Staff argued that Section V. Paragraph B.4. of the Price Plan states that, "**during** the cap period, the capped Basic Local Exchange Services will be ***excluded*** from the calculation of the SPI for the Basic Services Category." (Emphasis added.) The Public Staff maintained that the clear implication is that once the cap period ends (i.e., June 24, 1999), the capped services will be *included* in the SPI calculation. Further, the Public Staff asserted, since the SPI is a function of revenues, inclusion of capped services must mean inclusion of the revenues associated with those services. The Public Staff asserted that under BellSouth's proposed treatment, only part of the cap is removed after the three years: prices for those services can now be increased subject to the aggregate revenue and rate element constraints, but the exclusion from basket adjustments during the cap period must continue for another year. The Public Staff believes that, according to BellSouth, there are actually two cap periods: one on price increases from June 24, 1996 through June 23, 1999, and another on basket adjustments from June 24, 1997 through June 23, 2000. The Public Staff maintained that BellSouth's two-cap period approach is flawed. The Public Staff further maintained that its theory on this matter is well grounded, beginning with BellSouth's original application for election of price regulation dated October 5, 1995. The Public Staff stated that the October 5, 1995 filing provided the basis of the negotiations and ultimate Stipulation between BellSouth and the Public Staff. The Stipulation, with minor modifications by the Commission, became the approved Price Plan and provided the basis for the Carolina/Central and GTE Price Plans.

Concerning Carolina/Central's comments, the Public Staff stated that Carolina/Central mischaracterized the Public Staff's answer to the question "what happens now" by assuming that the Public Staff seeks reductions in local service rates. The Public Staff maintained that such reductions are not the Public Staff's objective; the Public Staff's objective is to fulfill the Price Plan requirement that aggregate revenues in the Basic Category be reduced enough that the SPI is less than, or equal to, the PRI. Further, the Public Staff conceded that it had misquoted Section 6, Paragraph B.(6) of the Pricing Rules, however, denied that the mistake led to a misinterpretation of the Price Plan's intent regarding the re-initialization of the SPI and the PRI. The Public Staff asserted that the Commission clearly anticipated that residence rates could be increased during the fourth year of the Price Plans and that the increases would be subject to both the aggregate revenue constraint and the individual rate element constraint for the Basic category. The Public Staff stated that Carolina/Central apparently believe that the first paragraph of Section 6.B.(6) together with the reference to "the percent change in the GDP-PI from the previous year" in the fourth bullet indicates that the percent change in the GDP-PI from the previous year applies only to non-capped services. However, the Public Staff maintained, if that was what was intended when the Price Plan was written, surely it could have been stated more clearly and succinctly. The Public Staff concluded that a straightforward reading of the Section requires a different conclusion - that the PRI re-initialization should enable the Company that preserved some pricing flexibility by deferring allowable increases to maintain that flexibility once the re-initialization was completed.

The Public Staff commented that GTE's fourth year filing was the least acceptable. The Public Staff maintained that not only did GTE err by excluding capped revenues from the revenue base in the SPI/PRI re-initialization calculation for the Basic category, GTE originally calculated the SPI and PRI incorrectly for every category. The Public Staff noted that if capped revenues were not intended to be included in the revenue base, there would be no need to re-initialize the indices at all. The Public Staff further maintained that it did not take the example in Section 6.B(6) out of context as GTE contended, but that the whole purpose of subsection (6) and the example is to address the fact that, when the cap is lifted from the rates for residence basic local exchange services, the entire Basic category will come under both the aggregate revenue constraint and the rate element constraint. The Public Staff asserted that this fact is the reason why the SPI and PRI must be re-initialized, and that is the context of the example. The Public Staff concluded that there is no other reason for the language to be in the Price Plan.

The Public Staff summarized its position as follows:

(1) The Price Plans require annual filings at the end of the third year that differ from the filings at the end of the first and second years because of the expiration of the three-year cap period for residence basic local rates. As the cap is removed, the aggregate revenue constraint and the rate element constraint must be applied to residence rates and charges.

(2) The language in the Price Plans regarding the PRI adjustment at the end of the third year is unambiguous, particularly in the Carolina/Central and GTE Price Plans which contain an example to illustrate steps that make up the required calculation.

(3) All four companies have proposed less than the full reductions called for in their Price Plans by excluding the previously capped revenues from the full effect of the net inflation-productivity factor. This was accomplished by reducing the factor by the ratio of capped revenues to total basket revenues and using the result in the PRI/SPI mechanism for the Basic category of services. Such a step is not part of the Price Plans and is inconsistent with the language of the Price Plans and the Commission's orders authorizing price regulation.

The Public Staff also concluded that while it is not opposed to a limited hearing on this matter, the Public Staff believes that the issue has been thoroughly presented and argued in the context of the comments filed by the parties. Therefore, the Public Staff requested that the Commission decide the matter based on the comments of the parties.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Origin of Dispute: Under the Price Plans, residence basic local exchange rates were capped for a three-year period (June 24, 1996 through June 23, 1999). The dispute arises from the appropriateness of either ***including*** or ***excluding*** the revenues generated from residence basic local services when applying the net inflation-productivity factor at the beginning of the fourth year.

Dispute of the Parties: BellSouth, Carolina/Central and GTE maintain that the revenues generated from the capped rates (i.e. residence basic local exchange rates) should be **excluded** from the Basic basket when the net inflation-productivity factor is applied. The Public Staff and the Attorney General maintain that the revenues generated from the capped rates should be **included** in the Basic basket when the net inflation-productivity factor is applied.

Issue Commission Has to Decide: Under the Price Plans, does the three-year cap on residence basic local exchange service mean:

(A) That the residence basic local exchange rates are technically frozen from June 24, 1996 until June 23, 2000 (i.e., they are not subject to increases or decreases based on the inflation-productivity factors for June 24, 1999 through June 23, 2000); **OR**

(B) That the residence basic local exchange rates are frozen from June 24, 1996 until June 23, 1999 and are subject to increases or decreases based on the inflation-productivity factors anytime after June 24, 1999.

The Price Plans clearly discuss the re-initialization of the PRI and SPI at the beginning of the fourth year of the Price Plans (i.e., June 24, 1999). However, the Price Plans do not specifically and undeniably state that the previously capped residence basic local service revenues will be **included** or **excluded** from the Basic category at the beginning of the fourth year of the Price Plan. The Price

Plans do state, "During the cap period, the capped Basic Local Exchange Services will be excluded from the calculation of the SPI for the Basic Services Category." [Emphasis added.] The Commission agrees with the Public Staff that this language implies that after the cap period (June 24, 1999 and beyond), the uncapped Basic Local Exchange Services will be included in the calculation of the SPI for the Basic Services Category.

Specifically, *Section V. Pricing Rules [B(6)]* of BellSouth's Price Plan states:

> In the beginning of the fourth year of the Plan [i.e., June 24, 1999], the PRI and the SPI associated with the Basic Services Category will be re-initialized as a result of removing the cap on capped Basic Services. In the annual filing to be effective at the beginning of the fourth year, the PRI for the Basic Services Category will be determined by re-initializing the index to one hundred (100) and calculating a new PRI for the fourth year based upon the percent change in the GDP-PI from the previous year, minus the Offset. In the same annual filing at the beginning of the fourth year, the SPI for the Basic Services Category will also be re-initialized to 100.

Section 6. Pricing Rules [B(6)] of Carolina/Central and GTE's Price Plans states, in part:

> In the annual filing to be effective at the beginning of the fourth year of the Plan [i.e., June 24, 1999], the PRI and the SPI associated with the Basic Services Category will be re-initialized as a result of removing the cap on capped Residence Local Exchange Service. The PRI for the Basic Services Category will be determined by re-initializing the index in a manner which reflects any allowable increases previously deferred for non-capped Basic rate elements only plus an adjustment to reflect the percent change in the GDPPI from the previous year, minus the Offset. In the same annual filing at the beginning of the fourth year, the SPI for the Basic Services Category will also be re-initialized to 100.

Based on the language in the Price Plans and the comments and reply comments filed by the parties, the Commission believes that the Public Staff's interpretation of "what happens now" as described in its June 3, 1999 filing is appropriate. There is no confusion that the cap period for residence local rates expired on June 23, 1999. The Commission believes that the expiration of the cap implies that residence local rates are now subject to increases (or decreases) under the terms of the Price Plans. In order for increases or decreases to occur, the revenues generated from the capped service need to be ***included*** in the Basic basket when applying the net inflation-productivity factor. Therefore, it is logically appropriate to ***include*** the revenue associated with residence local rates in the Basic basket when applying the net inflation-productivity factor.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission hereby concurs and approves the recommendations and conclusions set forth in the Public Staff's Response to the Fourth Year Price Plan Filings.

2. That BellSouth, Carolina, Central, and GTE shall revise their Fourth Year Price Plan filings in accordance with the methodology outlined by the Public Staff in its Response to the Fourth Year Price Plan Filings and re-file their annual filings within two weeks of this Order. The Companies shall propose further rate changes to accomplish the required reductions.

3. That the Companies' requests for an oral argument or an evidentiary hearing are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of August, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bc080299.01

DOCKET NO. P-55, SUB 1013
DOCKET NO. P-7, SUB 825
DOCKET NO. P-10, SUB 479
DOCKET NO. P-19, SUB 277
DOCKET NO. P-16, SUB 181
DOCKET NO. P-118, SUB 86
DOCKET NO. P-35, SUB 96

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1013 In the Matter of Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation DOCKET NO. P-7, SUB 825 DOCKET NO. P-10, SUB 479 In the Matter of Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plan Pursuant to GS 62-133.5	ORDER RULING ON THE PROPER TREATMENT FOR RECLASSIFIED SERVICES UNDER PRICE REGULATION PLANS

DOCKET NO. P-19, SUB 277

In the Matter of
Application of GTE South, Inc. for, and Election of, Price Regulation

DOCKET NO. P-16, SUB 181

In the Matter of
Application of The Concord Telephone Company for Approval of a Price Regulation Plan Pursuant to N.C. Gen Stat. § 62-133.5(a)

DOCKET NO. P-118, SUB 86

In the Matter of
Application of ALLTEL Carolina, Inc. For Approval of a Price Regulation Plan Pursuant to N.C.G.S. §62-133.5(a)

DOCKET NO. P-35, SUB 96

In the Matter of
Application of MEBTEL, Inc. For Approval of a Price Regulation Plan Pursuant to N.C.G.S. §62-133.5(a)

BY THE COMMISSION: On June 3, 1999, the Public Staff filed its *Response* to the Fourth Year Price Plan Filings of BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), and GTE South, Inc. (GTE). Each Company is required under the terms of its Price Regulation Plan (Price Plan) to make an annual filing to update the Price Regulation Index (PRI) and Service Price Index (SPI) based upon the change in the Gross Domestic Product Price Index (GDP-PI) over the preceding year minus the Offset. On August 3, 1999, the Commission issued its Order Regarding Fourth Year Price Plan Filings. On August 16, 1999, BellSouth filed its Petition for Reconsideration and Motion for Stay of the Commission's August 3, 1999 Order. In its Petition and Motion, BellSouth stated that there was another reason that further consideration of the Commission's decision was warranted. BellSouth stated that neither the Public Staff's filings nor the Commission's Order address an underlying issue raised: reclassification. BellSouth stated that as services become more competitive, increased "migration" among baskets is inevitable; therefore, BellSouth argued that a determination of the treatment of associated prices and revenues is critical. BellSouth argued that it has proposed the simple rule that reclassified revenues should be adjusted based on the basket which the service has occupied for most of the year. BellSouth concluded that it is incumbent on the Commission to provide guidance on the reclassification issue so that BellSouth may proceed with administrative certainty, and not bear the risk of attempted compliance with rules established ad hoc or after the fact.

On August 23, 1999, the Public Staff filed its Response to BellSouth's Petition for Reconsideration and Motion for Stay. The Public Staff stated that the reclassification issue BellSouth raised in its Petition is not raised by the Fourth Year Price Plan Filings and need not be resolved in conjunction with them. The Public Staff maintained that unlike the reinitialization of the Basic basket at the end of the cap period, the treatment of reclassified services is not addressed in the Price Plans. The Public Staff maintained that it believes that reclassified services should be treated uniformly under all of the Price Plans. The Public Staff recommended a procedure based on the six-month concept. Under the six-month concept procedure, there would be only one reclassification filing during a Plan year, and that filing would be made 45 days prior to the six-month anniversary of the annual filings. Revenues for services reclassified at that time would be included in the annual adjustments for their new baskets. The Public Staff suggested that rate element increases for services within a basket would continue to be permitted at any time and limited to only one per year even if services are reclassified.

On September 9, 1999, the Commission issued its Order Requesting Comments and Reply Comments on the Public Staff's Proposed Treatment for Reclassified Services Under Price Regulation Plans. In its Order, the Commission noted that both BellSouth and the Public Staff have raised the issue of the proper treatment for services that are reclassified from one basket to another basket under the Price Plans in their filings. The Commission further recognized that the issue of reclassification needs to be resolved since the issue is not adequately addressed in the Price Plans now in effect.

COMMENTS (filed September 28, 1999)

JOINT RESPONDENTS (BellSouth, Carolina, Central, GTE, Concord Telephone Company (Concord), and MEBTEL, Inc. (MEBTEL)): The Joint Respondents noted in their comments that there are two workable and relatively straightforward ways to resolve the issue: (1) treat the service in question according to the basket in which it resides at the end of the Plan year (i.e., June 23rd for BellSouth); or (2) treat the service according to the basket in which it has resided for most of the year, regardless of the basket in which it ended the year. The Joint Respondents maintained that BellSouth has previously advocated the second approach, but now the Joint Respondents believe that **either approach is fair and equitable and the Joint Respondents would support either.** The Joint Respondents argued that the "predominance of the year" approach could arguably yield a more equitable result and that modifying this approach to utilize the end of the calendar year would be best from an administrative standpoint. In a footnote, the Joint Respondents noted that the mid-point of BellSouth's Plan year is December 23. Thus, under the "predominance of the year" approach, a service reclassified before this date would spend most of the Plan year in the new basket and would be treated accordingly. Reclassifications after this date would result in the service being included in the old basket for the Plan year. It was also noted that to administer reclassification more easily, it would make sense to use December 31 as the cut off date rather than December 23. Further, the Joint Respondents stated in their comments that the Public Staff had expressed concern over potential manipulation under either of the two approaches. The Joint Respondents stated that they cannot envision a practical scenario in which an incumbent local exchange company (ILEC) would utilize either of these proposals in some manipulative, i.e., improper, manner. The comments noted that BellSouth's Plan, Section III, B.2. allows any "interested party . . . to oppose the reclassification of an existing service, or to propose that the service be reclassified in a category different from that proposed by the Company."

The Joint Respondents stated that the Public Staff has not endorsed either of the proposed approaches and has proposed an altogether different approach, which the Joint Respondents believe is inconsistent with both the spirit and the letter of the Plans. The Public Staff's proposal restricts reclassifications to one per year per service and restricts that the reclassifications be done on a date certain which the Joint Respondents maintained cannot be supported by the language that is in the Plans. The Joint Respondents stated that the Public Staff's proposal is, in effect, a revocation of reclassification rights that have been granted by the Commission in the Plans.

The Joint Respondents noted that the fundamental purpose of service reclassification -- and, in a larger sense, of the entire Plans -- is to provide for the provisioning of telecommunications services in an emerging competitive environment. The Joint Respondents argued that the Plans were structured to allow the companies greater flexibility to respond to competition and that without question, further competition will be more widespread and more intense. Therefore, the Joint Respondents maintained that it is necessary for all competitors to be as nimble as possible in their ability to respond to the market. The Joint Respondents stated that the Public Staff's proposal would restrict the flexibility of the ILECs by severely limiting their ability to reclassify services. The Joint Respondents noted that the Public Staff's proposed limitation of the number of times per year that reclassification can occur, although the Joint Respondents do oppose it, would likely do little harm to competitive flexibility since the possibility of multiple reclassifications of a single service in a single year seems, at best, remote. However, the Joint Respondents argued that the Public Staff's proposal to limit reclassifications to a single day per year imposes a much more potentially damaging restriction upon ILECs. The Joint Respondents stated that restricting the ability of ILECs to reclassify services in response to market conditions to a single day - as compared to the 365 days per year in which reclassifications can now occur - has the obvious potential to hamstring ILECs in their efforts to compete. Further, the Joint Respondents maintained that the Public Staff's proposal creates incentives for non-ILEC competitors to "game" the reclassification process by timing their efforts in the market so that almost a year would pass before incumbents could respond. In conclusion, the Joint Respondents recommended that the Commission adopt one of the two practical and fair proposals of the Joint Respondents.

ALLTEL CAROLINA, INC. (ALLTEL): ALLTEL stated in its comments that its Price Regulation Plan does not contain any restrictions as to when the Company may file to reclassify a service or as to how often filings may be made to reclassify services. ALLTEL maintained that adoption of the Public Staff's proposal would alter the language in ALLTEL's Commission-approved Price Plan. ALLTEL further stated that the current language in the Plan is clear and workable and should not be changed. Additionally, ALLTEL noted that under the Public Staff's proposal, revenues for services reclassified would be included in the annual adjustments for their new baskets. ALLTEL stated that its Plan does not specifically address this issue, however ALLTEL recommended that if a service has been reclassified during the Plan year, when the annual filing is made, the reclassified service should be included in the service category in which it resides **at the time of the annual filing (i.e., the "end of the year" approach)**. Finally, ALLTEL stated that the Public Staff's proposal included that element increases for services within a basket should continue to be permitted at any time and limited to only one per year even if services are reclassified. ALLTEL stated that its Plan allows one rate element rate increase per year and unlimited rate element rate decreases per year in the Basic, Interconnection, and Non-Basic 1 Service Categories which is consistent with the Public Staff's proposal. However, ALLTEL further stated that Section 6.C. of its Plan allows Non-Basic 2

Services Category rate elements to incur price increases and decreases at any time throughout the Plan year. Also, ALLTEL stated, the Plan indicates that there are no limits in the frequency with which these price changes to Non-Basic 2 Service Category rate elements may be made. Therefore, ALLTEL argued, its Plan should continue to be implemented as previously agreed and price changes for services reclassified as Non-Basic 2 Services should be allowed at any time and not be limited as to frequency of changes.

REPLY COMMENTS (filed October 11, 1999)

PUBLIC STAFF: The Public Staff stated in its reply comments that in proposing that the frequency of reclassification filings be limited and that they be made on a date certain, it was concerned about simplifying the review process. The Public Staff maintained that it recognizes that flexibility is one of the underlying purposes of price regulation and that although its proposal was not intended to interfere with flexibility permitted under the Plans, the Public Staff conceded that its proposal could have that effect. The Public Staff argued that reclassification filings require careful scrutiny and it expects such filings to increase as competition develops. The Public Staff stated that if the task of reviewing the filings becomes administratively burdensome, it will likely ask the Commission to revisit the issue.

The Public Staff further commented that in proposing that rate element increases be limited to one per year per service, it was concerned about maintaining Plan provisions that only one increase per individual rate element be allowed during a Plan year in categories that are subject to rate element constraints; the Public Staff maintained that the limitation would not apply to services that are reclassified to the Non-Basic 2 category.

The Public Staff concluded that it would recommend that the Commission adopt **a slightly modified "end of the year" approach** to the "predominance of the year" approach because of the anomalies that could result from the application of two sets of constraints to a service at the time of the annual filing. The Public Staff maintained that for the purpose of service classification in the annual filing, **the "end of the year" should be construed to mean the date of the annual filing, rather than the day before the anniversary date of the Plan.** The Public Staff argued that this would avoid revisions to the voluminous annual filings if a service is effectively reclassified in the 45-day period between the filing date and the anniversary of the effective date of the Plan. The Public Staff ultimately recommended the modified "end of the year" approach with a limit to the number of individual rate element increases to one per year except for services in the Non-Basic 2 category.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The following issue is before the Commission in the instant regard: What is the proper treatment of services (and revenues attributable to services) that are reclassified (i.e., moved from one basket to another) during the course of a particular Plan year?

It appears from the comments received that all parties agree to the "end of the year" approach to reclassification. Under this approach, the revenues of a reclassified service would be adjusted based on the basket in which the service resides at **the end of the year**.

However, there is disagreement over the appropriate definition of the "end of the year." The Public Staff recommended defining the "end of the year" as the date of the annual filing which under the terms of the Price Plans is due 45 days prior to the anniversary of the effective date of the Plans and not the day before the anniversary date of the Plans. BellSouth's Price Plan became effective on June 24, 1996. Under the Public Staff's definition of the "end of the year" for BellSouth the end of the year would be 45 days prior to June 24th rather than June 23rd. ALLTEL agreed with this definition. The Joint Respondents argued that the "end of the year" should be defined as the day before the anniversary date of a Price Plan (i.e., June 23rd for BellSouth). The Commission agrees with the Public Staff's assertion that adoption of its definition of the "end of the year" would avoid revisions to the voluminous annual filings if a service is effectively reclassified in the 45-day period between the filing date and the anniversary of the effective date of the Plan. Therefore, the Commission believes that it is more reasonable and efficient for the "end of the year" to be defined as the date of the annual filing; the Commission adopts the definition of the Public Staff and ALLTEL of the "end of the year."

Further, initially the Public Staff was recommending that there only be one reclassification filing during a Plan year, and that filing be made 45 days prior to the six-month anniversary of the annual filings. In its reply comments, the Public Staff stated that in making its proposal it was concerned about simplifying the review process. However, the Public Staff conceded in its reply comments that its proposal could have the effect of limiting the companies flexibility under Price Plans. The Public Staff remarked that if the task of reviewing the filings becomes administratively burdensome, it will likely ask the Commission to revisit the issue; therefore, it appears that the Public Staff no longer supports this proposal. The Commission does not believe that the Price Plans now in effect contain any language that would support limiting reclassification to one time per year in one filing made 45 days prior to the six-month anniversary of the annual filings. In fact, the Price Plans in effect have language which states, ". . . thirty (30) days prior to reclassifying an existing service, the Company shall make a written filing with the Commission, the Public Staff, and the Attorney General. In all cases the filing shall include a description of the service, the proposed rates for the service, and the proposed classification or reclassification of the service. The Company shall provide the appropriate documentation to the Commission and the Public Staff supporting the proposed classification or reclassification of the service." There is no language in any of the Price Plans currently in effect which limits the number of reclassification filings within a given Plan year. Therefore, the Commission does not find it appropriate to adopt the Public Staff's initial proposal of limiting reclassifications to one time per year in one filing.

Finally, as noted by ALLTEL and the Public Staff, the Price Plans now in effect limit rate element increases to one per year per service, except for services in the Non-Basic 2 Category which have no limitation on the number of increases in a given Plan year. The Commission does not believe this provision should be or is altered by the Commission's decision on the proper treatment of reclassified services as outlined in this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the "end of the year" approach shall be used for reclassifying services under Price Regulation Plans. Under this approach, revenues of a reclassified service will be adjusted based on the basket in which the service resides at the end of the year.

2. That the "end of the year" shall be defined as the date of the annual filing (i.e., 45 days prior to the anniversary of the effective date of a Price Plan).

3. That the Commission does not find it appropriate to adopt the Public Staff's initial proposal of limiting reclassifications to one time per year in one filing.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bc112299.01

DOCKET NO. W-408, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Cross-State Development Company,	)	RECOMMENDED ORDER
Post Office Box 830186, Miami, Florida 33283-0186,	)	GRANTING PARTIAL RATE
for Authority to Increase Rates for Water Utility	)	INCREASE AND ASSESSING
Service in All of its Service Areas in Ashe and Wilkes	)	RATE OF RETURN
Counties, North Carolina	)	PENALTY

HEARD IN: Courtroom, Ashe County Courthouse, Jefferson, North Carolina, on Thursday, April 29, 1999 at 7:00 p.m.

BEFORE: Ronald D. Brown, Hearing Examiner

APPEARANCES:

For Cross-State Development Company:

Theodore C. Brown, Jr., 4608 Woodridge Drive, Raleigh, North Carolina 27612

For the Using and Consuming Public:

Lucy E. Edmondson, Staff Attorney, Public Staff- North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BROWN, HEARING EXAMINER: On October 19, 1998, Cross-State Development Company (Cross-State, Company, or Applicant) filed an application with the Commission seeking authority to increase its rates for water utility service in all of its service areas in Ashe and Wilkes Counties, North Carolina.

On November 17, 1998, the Commission issued an Order establishing a general rate case and suspending rates.

On December 1, 1998, the Commission issued an Order approving interim rates, scheduling hearing, and requiring customer notice.

On February 16, 1999, the Commission issued an Order rescheduling the hearing to April 29, 1999 and requiring customer notice following motion by the Public Staff and response of the Applicant.

On March 10, 1999, the Applicant filed a Certificate of Service for the Order dated February 16, 1999.

On March 24, 1999, the Commission issued a subpoena for the appearance of Wade McDonald, Jr., Assistant Regional Engineer, Public Water Supply Section, Winston-Salem Regional Office of the North Carolina Department of Environment and Natural Resources.

On April 7, 1999, the Public Staff filed the Affidavit of Calvin C. Craig, III, Financial Analyst with the Public Staff's Economic Research Division, and on April 9, 1999, it filed the testimony and exhibits of Katherine A. Fernald, Water Supervisor in the Public Staff's Accounting Division, and O. Bruce Vaughan, Utilities Engineer with the Public Staff's Water Division.

On April 19, 1999, the Applicant filed notice that it wished to cross-examine Calvin C. Craig, III and requested that his affidavit not be entered into the record without cross examination.

The public hearing was held on April 29, 1999. Three customers, Mark Goss, James Thomas, and H. C. Woodall, Jr., testified in opposition to the Applicant's request for a rate increase. Houston Blair, a former customer, also testified.

The Applicant presented the testimony of Don Raff, general manager for the Applicant, and Morris Trammel, Jr., certified operator of Cross-State's four water systems.

The Public Staff presented the testimony of Wade McDonald, Jr., Katherine A. Fernald, Calvin C. Craig, III, and O. Bruce Vaughan.

On June 4, 1999, the Public Staff filed its Proposed Recommended Order Granting Partial Rate Increase. In its filing, the Public Staff included witness Fernald's revised schedules reflecting updated operating and maintenance expenses.

On June 28, 1999, the Applicant filed its Response to the Proposed Recommended Order. The Response cited the Applicant's accomplishments versus the requirements from the Final Order in Sub 6, disagreed with certain characterizations ("refused", "recalcitrant") contained in the Proposed Recommended Order, and suggested adjustments to expenses for interest, salaries, and rate case expenses.

On July 12, 1999, the Applicant filed a further Response to the Proposed Recommended Order. The further Response requested that the Hearing Examiner review certain court decisions regarding utility regulation and provided the appropriate references.

Based upon the foregoing, the verified application, the evidence and exhibits presented at the hearing, and the entire record in this matter, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant is a public utility as defined by G.S. §62-3(23) and is properly before the Commission for a determination of the justness and reasonableness of its proposed rate increase.

2. The test period for use in this proceeding is the twelve months ended June 30, 1998.

WATER AND SEWER - RATES

3. The Applicant's present rates and the Applicant's proposed rates are as follows:

Metered Rates: (Residential Service)	Present Rates	Proposed Rates
Base charge, zero usage	$13.31	$15.95
Usage charge, per 1,000 gallons	$ 3.50	$11.97

4. The Applicant's requested interim rates and the approved interim rates are as follows:

Metered Rates: (Residential Service)	Requested Interim Rates	Approved Interim Rates
Base charge, zero usage	$13.31	$13.31
Usage charge, per 1,000 gallons	$ 5.02	$ 4.82

5. The Applicant provides water utility service to 189 metered connections on four water systems: Parkway East (unfranchised and nonregulated by DEH), Ashe Lake (Holiday Lane Section), Ashe Lake (Beaver Creek Section), and Nikanor.

6. As of November 30, 1998, there were 227 residential equivalent units (REUs) in these service areas. These REUs, which essentially are the actual water using customers, are divided among Cross-State's water systems as follows:

Service Area	No. of REUs (Customers)	Metered Connections
Ashe Lake	78	53
Nikanor/New River	142	129
Parkway East	7	7
Total	227	189

The difference between the number of customers and the number of connections is due to five multiple-customer connections in Nikanor and three multiple-customer connections in Ashe Lake, accounting for 46 of 227 customers.

7. The annualized level of water service revenues under the Applicant's present and proposed rates is $54,461 and $105,710, respectively.

8. The appropriate level of other revenues for use in this proceeding is $67.

9. The appropriate level of original cost rate base is $44,380, as follows:

Plant in service	$ 55,180
Accumulated depreciation	(6,334)
Contributions in aid of construction	(12,000)
Cash working capital	8,601
Average tax accruals	(1,067)
Original cost rate base	$ 44,380

10. The appropriate level of salaries and wages for use in this proceeding is $42,432.

11. The appropriate level of rate case expense for use in this proceeding is $1,044.

12. The appropriate levels of testing and chemicals expense for use in this proceeding are $4,049 and $296, respectively.

13. The appropriate level of operating and maintenance expenses for use in this proceeding is $68,807.

14. The appropriate level of depreciation and taxes under present rates for use in this proceeding is $8,883.

15. In the previous general rate case, Docket No. W-408, Sub 6, the Company and the Public Staff entered into a Stipulation whereby the Applicant would be permitted to charge certain rates if it complied with the recommendations of the Public Staff which included among other items, meter installation, reimplementation of required testing, and installation of chlorination equipment. In its Final Order in that docket, dated August 28, 1997, the Commission ordered the Applicant to comply with the Stipulation. The Applicant did not satisfactorily comply with the provisions of the Stipulation. Failure to comply with the Stipulation constitutes inadequate system management.

16. In Docket No. W-408, Sub 6, the Commission also ordered the Applicant to comply with certain Public Staff recommendations not included in the Stipulation. The Company did not satisfactorily comply with the Commission's Order regarding these requirements. Failure to comply with the Commission's Order constitutes inadequate system management.

17. The Parkway East system has a number of deficiencies. From its inception in the mid-seventies, the Parkway East system has never been approved by DEH. DEH placed a moratorium on this system for further connections on June 29, 1989. In May 1992, DEH removed it from its inventory of regulated systems. The majority of landowners in the Parkway East Subdivision have not been allowed to connect to the water system because of the nature of its construction, and thus are unable to receive service from the Applicant. These deficiencies constitute inadequate system design/construction.

18. There are water system deficiencies in all phases of the overall Blue Ridge Manor water systems operated by the Company, which include the Nikanor/New River Section, the Ashe

Lake Holiday Lane Section, and the Ashe Lake Beaver Creek Section. In most instances, these deficiencies have existed for several years. These deficiencies constitute inadequate system design/construction.

19. There have never been approved plans and specifications for the two Ashe Lake water systems. The water system for Nikanor is operationally inadequate and is operating outside of approved plans and specifications. The Company has failed to make many improvements, thereby adversely affecting storage and supply capabilities, as well as reliability and efficiency. Failure to make these improvements constitutes inadequate system management.

20. The Company has some deficiencies in its record keeping, documentation, and operations. This constitutes inadequate system management.

21. The Applicant is providing adequate water service and system operations within its service area, despite inadequate system management and system design/construction. General outages are very infrequent and localized outages have not been unduly burdensome. The Applicant addresses and resolves any billing problems promptly.

22. A rate of return or margin on operating revenue deductions of 8.5% is just and reasonable assuming a finding that the Applicant is providing adequate service (system management, system design/construction, <u>and</u> system operations).

23. The overall level of utility service is inadequate and warrants a penalty in the form of a 100 basis points reduction to the otherwise appropriate 8.5% margin on operating revenue deductions requiring a return.

24. A 7.5% margin on operating revenue deductions requiring a return is just and reasonable in this proceeding. This margin equates to operating ratios of 93.50% (including taxes) and 93.10% (excluding taxes) and will allow the Applicant sufficient revenues to provide adequate service and to cover its interest expense.

25. The additional annual gross revenues necessary to allow the Applicant the opportunity to earn the 7.5% return found just and reasonable are $32,091.

26. The following rates will allow the Applicant an opportunity to earn the 7.5% margin found just and reasonable:

<u>Metered Rates</u>: (Residential Service)

Base charge, zero usage	$20.00
Usage charge, per 1,000 gallons	$ 6.17

27. The Applicant is in arrears in its payment of gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence supporting this finding of fact is contained in the application, the testimony of Public Staff witness Fernald, and the Commission's records. This evidence is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witness Vaughan, the Commission's records, and the evidence of record. This evidence is uncontroverted.

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

The evidence supporting these findings of fact is contained in the testimony and exhibits of Public Staff witness Fernald and Company witness Raff. Public Staff witness Fernald testified that the service revenues under present and Company proposed rates were $54,461 and $105,710, respectively. Ms. Fernald further testified that other revenues for the test year totaled $67, consisting of late payment fees and reconnection fees. Since the Applicant did not contest these numbers, the Hearing Examiner concludes that these service revenue and other revenue figures are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witness Fernald and the testimony of Company witness Raff. The level of original cost rate base recommended by the Public Staff in its revised exhibits which were filed with its proposed order is $43,747, consisting of the following:

	Amount Per Public Staff
Plant in service	$ 55,180
Accumulated depreciation	(6,334)
Contributions in aid of construction	(12,000)
Cash working capital	7,898
Average tax accruals	(997)
Original cost rate base	$ 43,747

The only issue the Company raised at the hearing concerning plant in service was the inclusion of plant additions made by the Company in 1999. On May 24, 1999, the Company filed a late filed exhibit detailing the cost of these plant additions. In its revised schedules which were filed with the proposed order, the Public Staff included these plant additions and depreciated them over three years. With the Public Staff's revisions, there are no remaining differences between the parties.

However, as the expenses found below in Findings of Fact Nos. 10 and 11, have increased, the amount of cash working capital should increase by $703. Likewise, as a result of findings below, the payroll taxes have increased. Therefore, the amount of average tax accruals should increase by ($70).

Therefore, the original cost rate base should increase and/or decrease by the same amount as well. The Hearing Examiner concludes that the original cost rate base is $44,380, as follows:

Plant in service	$ 55,180
Accumulated depreciation	(6,334)
Contributions in aid of construction	(12,000)
Cash working capital	8,601
Average tax accruals	(1,067)
Original cost rate base	$ 44,380

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10, 11, 12, AND 13

The evidence supporting these findings of fact is contained in the testimony and exhibits of Public Staff witnesses Fernald and Vaughan and Company witness Raff. The level of operating and maintenance expenses recommended by the Public Staff in its revised exhibits which were filed with its Proposed Order is $63,185, consisting of the following:

	Amount Per Public Staff
Salaries and wages	$ 36,888
Certified operator	7,200
Administrative and office	3,307
Maintenance and repairs	2,107
Transportation	1,117
Electric power	6,755
Testing	4,049
Chemicals	296
Permit fees	500
Rate case expense	966
Interest expense - meters	0
Total operation & maintenance expense	$ 63,185

At the hearing, Company witness Raff testified that the Company disagreed with the level of salaries recommended by the Public Staff. Also, on May 24, 1999, the Company filed a late filed exhibit concerning rate case expense and the addition of chlorinators. Since the Company did not contest the Public Staff's levels of certified operator, administrative and office, maintenance and repairs, transportation, electric power, or permit fees, the Hearing Examiner concludes that the levels recommended by the Public Staff for these items are reasonable.

Salaries and wages

The first difference between the parties relates to the appropriate level of salaries paid to Mr. Raff. Company witness Raff testified that he included a salary of $350 per week based on working an average of 17 hours per week. Mr. Raff further testified that he does all the billing for Cross-State, prepares the monthly accounting and year-end accounting, files annual reports, files quarterly payroll tax reports, handles customer complaints, and arranges plant additions. Mr. Raff further explained that he based the $350 per week on an hourly rate of $20. Mr. Raff determined this hourly rate using the $24 an hour rate he is paid in his other job, where he works 20 hours a week. However, on cross-examination, Mr. Raff acknowledged that he did not keep time sheets during the test year.

Public Staff witness Fernald testified that the $18,200 salary requested by the Company for Mr. Raff is a 125% increase over the level determined to be reasonable by the Public Staff in the Company's last rate case, which is an unreasonable increase for approximately a two year period. Ms. Fernald further testified that she recommended an annual salary of $8,600 based on the amount recommended by the Public Staff in the prior rate case of $8,100 adjusted for an annual increase of 3% for each of the last two years. Furthermore, Ms. Fernald stated that $8,600 was a reasonable level of salaries based on the administrative duties for a Company of this size.

On cross-examination, Ms. Fernald further explained that in evaluating her recommended level of salary, she applied an hourly rate of $12.75 to a reasonable level of hours based on the work that would be required. In support of the $12.75 hourly rate, Ms. Fernald testified that she reviewed the wage listings from the Employment Security Commission and they were typically $9.00 to $10.00 for a bookkeeper up to $15.00 to $17.00 for an accountant. Based on the work being done, Ms. Fernald determined that $12.75 was a reasonable hourly rate. Ms. Fernald also explained that she compared her recommended level of total salaries to those of other water companies in evaluating the reasonableness, and that the total salaries, including contract operator costs, recommended by the Public Staff in this case are $16.00 per customer per month. Ms. Fernald testified that this level was more than reasonable in comparison to other water rate cases in 1997 and 1998, which had levels which ranged from $6.00 to as high as $13.00 per customer per month.

Based upon the foregoing, the Hearing Examiner concludes that the administrative salary requested by the Company is excessive. The Public Staff advocates the position that administrative salary should be based upon a rate of $12.75 per hour at 13 hours per week, yielding an annual salary of $8,600. The Company's position is that administrative salary should be $350 per week (approximately $20 per hour at 17 hours per week), yielding an annual salary of $18,200. While the number of hours per week used by the Company is an estimate, the Public Staff did not show that this level was incorrect. The Hearing Examiner is of the opinion that the duties of Mr. Raff are more that merely bookkeeping or clerical duties; there is some aspect of management duties, also. The Hearing Examiner is of the opinion that an appropriate level of salary for Mr. Raff is at the high end of the range suggested by witness Fernald, $16 per hour.

The appropriate level of administrative salary, based upon a rate of $16 per hour at 17 hours per week, is $14,144 per year. Thus, the appropriate level of salaries and wages is $42,432.

Rate case expense

In its revised exhibits which were filed with its Proposed Order, the Public Staff included $2,899 of total rate case costs. On May 24, 1999, the Company filed a late filed exhibit listing total rate case costs of $2,192. On June 28, 1999, the Company filed its Response to the Proposed Recommended Order. In its Response, the Company suggested a $233 adjustment to rate case expense for the cost of the transcript of the hearing. The following table summarizes the differences between the Public Staff and the Company concerning total rate case costs:

	Company	Public Staff	Difference
Cost to mail notices	$ 0	$ 225	$ 225
NCUC filing fee	0	100	100
Legal expense	1,200	1,200	0
Travel costs	706	706	0
Lost wages	186	0	(186)
Miscellaneous	100	0	(100)
Hearing Transcript	233	0	(233)
Unamortized cost from prior rate case	0	668	668
Total rate case costs	$ 2,425	$ 2,899	$ 474

As shown on the preceding table, the Public Staff and the Company agree on several components of rate case costs. The Hearing Examiner agrees with those items where there is no disagreement between the parties. The first difference between the parties concerns the cost of mailing notices and the NCUC filing fee. The Public Staff included these costs in their calculation of rate case expense. The Hearing Examiner agrees that these costs are related to the rate case proceeding and are appropriate to include in rate case costs. This treatment is consistent with the treatment of these items in other rate case proceedings.

The second difference between the parties concerns the request of the Company to include what it calls "lost wages from second job" in rate case expense. The Hearing Examiner concludes that it is not appropriate to include any costs in rate case expense associated with "lost wages" since these costs are not costs that were actually incurred by the utility for the provision of utility service.

The third difference pertains to the inclusion of $100 of miscellaneous charges by the Company. The Company did not provide any documentation to support this amount. Therefore, the Hearing Examiner concludes that it would be inappropriate to include miscellaneous charges of $100 since they are not supported by any documentation.

The fourth difference between the parties concerns the cost of the transcript of the hearing. The amount of this cost was not known at the time of the hearing, but was included in the Company's Response to the Proposed Recommended Order. The Hearing Examiner agrees that this cost is related to the rate case proceeding and is appropriate to include in rate case costs.

The final difference between the parties relates to the inclusion of the unamortized costs from the prior rate case proceeding. In its late filed exhibit, the Company indicated that the prior rate case costs should also be amortized. However, the Company did not provide any specific amounts for this amortization. In its revised schedules filed with its proposed order, the Public Staff included $668 of unamortized rate case costs from the prior proceeding based on the period of time from the effective date of the order in the last rate case to the projected effective date of the order in this proceeding. The Hearing Examiner concludes that the unamortized balance of rate case costs to be included in this proceeding is $668. This amount is based on the total rate case costs allowed in that proceeding of $2,005 less the two years of amortization that have already occurred of $1,337.

Based on the foregoing, the total rate case costs to be amortized in this proceeding is $3,132. The Public Staff recommended that these costs be amortized over three years. The Company did not contest this recommendation. Therefore, the Hearing Examiner concludes that the appropriate level of rate case expense for use in this proceeding is $1,044.

Testing and Chemicals

In its revised exhibit, the Public Staff included testing and chemicals for all the Cross-State systems based on the Company's late filed exhibit. The Hearing Examiner concludes that the levels recommended by the Public Staff are appropriate since chlorinators have been installed on all of the systems.

Interest expense - meters

Witness Fernald testified that it has been the Public Staff's policy and the Commission's continuing policy that a reasonable level of interest should be recovered as a component of net operating income for return, and the entire structure of the Commission's procedures (as it pertains to the determination of a reasonable level of net operating income) is premised on that policy. The Hearing Examiner concurs with witness Fernald's statement that the net operating income for return should provide for interest coverage. The Hearing Examiner concludes that the appropriate level of interest expense for meters to be included in total operating and maintenance expenses is $0.

Summary

Based on the foregoing, the appropriate level of operating and maintenance expenses for use in this proceeding is $68,807, as follows:

Salaries and wages	$ 42,432
Certified operator	7,200
Administrative and office	3,307
Maintenance and repairs	2,107
Transportation	1,117
Electric power	6,755
Testing	4,049
Chemicals	296
Permit fees	500
Rate case expense	1,044
Interest expense - meters	0
Total operating & maintenance expense	$ 68,807

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witness Fernald and the testimony of Company witness Raff. The level of depreciation and taxes under present rates recommended by the Public Staff in its revised exhibits which were filed with the Proposed Order is $8,883, consisting of the following:

	Amount Per Public Staff
Depreciation expense	$ 3,334
Property taxes	239
Payroll taxes	3,080
Regulatory fee	49
Gross receipts tax	2,181
State income tax	0
Federal income tax	0
Total depreciation and taxes	$ 8,883

Based on a review of the record, the Company did not contest the levels of property taxes, regulatory fee, gross receipts tax, and state and federal income taxes. The Hearing Examiner agrees with these items since there is no disagreement between the parties.

Depreciation Expense

At the hearing, the Company raised the issue of the inclusion of other plant additions made by the Company in 1999. On May 24, 1999, the Company filed a late filed exhibit detailing the cost of these plant additions. In its revised schedules which were filed with the proposed order, the Public Staff included these plant additions. The Public Staff also included depreciation expense for these plant additions. With the Public Staff's revisions, there are no remaining differences between the parties concerning depreciation expense. Therefore, the Hearing Examiner concludes that the level of depreciation expense recommended by the Public Staff is appropriate for use in this proceeding.

Payroll Tax

The difference in the amount of payroll tax is purely a function of the amount allowed for salaries and wages. Having determined the appropriate levels of salaries and wages elsewhere in this Order, the Hearing Examiner concludes that the appropriate level of payroll taxes for use in the proceeding is $3,504.

Based upon the foregoing, the Hearing Examiner concludes that the appropriate level of depreciation and taxes under present rates is $9,337.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witnesses Vaughan and MacDonald, in the testimony of Applicant witnesses Raff and Trammel, in the evidence of record, and in the Commission's records. This evidence is uncontroverted.

Mr. Vaughan's testimony includes the following in regard to the Applicant's compliance with the Stipulation: the Applicant completed meter installation and reported such to the Commission; the Applicant failed to negotiate contracts with an approved lab to test the water system within 30 days of the Order in the prior case; the Applicant failed to file a report with the Commission and Public Staff confirming reimplementation of testing; the Applicant failed to install chlorination equipment and put it into operation within 180 days of the Order in the prior case; and, the Applicant failed to file a report with the Commission and the Public Staff by January 1, 1998, confirming the installation of the chlorination equipment and appurtenances.

The Hearing Examiner finds that the Applicant failed to comply with a substantial portion of the Stipulation in the prior docket within the time specified. The Hearing Examiner is of the opinion that the failure to comply with the Stipulation constitutes inadequate system management.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witnesses Vaughan and MacDonald, in the testimony of Applicant witnesses Raff and Trammel, in the Commission's records, and in the evidence of record. This evidence is uncontroverted.

In his testimony, Mr. Vaughan set out the Applicant's record of compliance with the Commission's Order in the prior docket. From this testimony, the improvements ordered by the Commission which the Applicant has failed to make or has not made satisfactorily are as follows:

A. Ashe Lake Section - Well Number 1 (PWSID# 01-05-101).

The Applicant was ordered to install a blow-off and to provide adequate freeze protection for the well, i.e., heater and insulation. The Applicant has not complied with these portions of the Order in a satisfactory manner.

B. Ashe Lake Section - Well Number 2 (PWSID # 01-05-109).

The Applicant was ordered to provide adequate freeze protection for the well, i.e., heater and insulation. The Applicant has not complied with these portions of the Order in a satisfactory manner.

C. Nikanor Section - Well Number 2 - Back up well.

The Applicant was ordered to provide freeze protection, i.e., heat and insulation. The Applicant has not complied with these portions of the Order in a satisfactory manner.

D. Nikanor Section - Well Number 3.

The Applicant was ordered to replace the well house, and while doing so, provide a well house slab with at least the required 3 foot radius, and extend the well casing above its current 10" due to its location in the flood plain; the Applicant was also ordered to install a quality well house door. The Applicant has not complied with these portions of the Order in the prior docket. The Applicant was ordered to provide adequate freeze protection for the well, i.e., heater and insulation. The Applicant has not complied with this portion of the Order in a satisfactory manner.

E. Nikanor Section - New Well Capacity and Storage.

The Applicant was ordered to upgrade storage by adding 25,000 gallons of additional capacity on the Nikanor side of the river, to add twin booster pumps to boost water from the new storage tank into the system and to the storage tank on top of the mountain, and to install additional wells. The Applicant has not complied with these portions of the Order in the prior docket.

F. Parkway East.

The Applicant was ordered to construct well houses which would provide freeze protection and a space to house chlorinators and related appurtenances, and in the off-season, to have the operator check this system twice per week, blow-off the wells monthly, and flush the distribution system monthly. The Applicant has not complied with these portions of the Order in a satisfactory manner.

G. The Applicant was also ordered to make all system improvements that are discussed in the DEH letter dated October 16, 1995, and the DEH inspection reports dated November 25 and 26, 1996, to maintain a complete file of DEH violations letters, and to maintain and file with appropriate regulatory offices, all required reports such as water usage reports, etc. The Applicant has not complied with these portions of the Order in the prior docket.

H. The Applicant was ordered to investigate the feasibility of the use of telemetry to reduce the overall run time of the well pumps and install same. The Applicant has complied with this requirement since the hearing on April 29, 1999, according to a late-filed exhibit dated May 24, 1999, on the Nikanor system but not on either of the Ashe Lake systems.

I. The Applicant was ordered to fence or otherwise protect the well houses from trespass and possible vandalism. The Applicant has not complied with this portion of the Order in the prior docket.

J. The Applicant was ordered to install blow-offs whenever and wherever a line break is discovered and repaired and in other strategic locations, thereby allowing for more flushing of the water lines. The Applicant has not complied with this portion of the Order in a satisfactory manner.

K. The Applicant was ordered to submit an application for a certificate of public convenience and necessity for Parkway East as soon as possible. The Applicant has not complied with this portion of the Order in the prior docket.

L. The Applicant was ordered to provide the Company's accounting of its debt to the testing lab within sixty days. The Applicant did not comply with this portion of the Order in the prior docket.

M. The Applicant was ordered to provide the status of the repayment of delinquent debt (to the testing lab) within one year. The Applicant did not comply with this portion of the Order in the prior docket.

N. The Applicant was ordered to provide the Company's calculation of the amount to be refunded to each customer (overcollection of EPA testing surcharge), including the 10% interest, within 60 days. The Applicant did not comply with this portion of the Order in the prior docket.

The Hearing Examiner concludes that the Applicant failed to comply with or has only marginally complied with a substantial portion of the requirements of the Order in the prior docket. The Hearing Examiner is of the opinion that the Applicant's failure to comply with the requirements of the Order in the prior docket constitutes inadequate system management. The Hearing Examiner further finds that it is imperative that any of these requirements which have yet not been fulfilled be completed immediately.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence supporting this finding of fact is contained in the testimony of Public Staff witnesses Vaughan and MacDonald and in the Commission's records.

In his testimony, Public Staff witness Vaughan made several recommendations concerning improvements necessary at Parkway East based on his review of DEH files (dated prior to removal of the system from DEH's inventory of public water systems) and from his inspection of the system. His recommendations were:

1. Develop plans and specifications for upgrading the water system, using the same guidelines which would be used if seeking approval from the NC DENR.

2. Develop the two (2) existing well sites per the RGPWS. The well sites (area within a 100-foot radius of the well) should be properly owned/controlled and restricted from potential sources of pollution.

3. Perform all required water quality monitoring. Initial testing requirements shall include the (1) Coliform bacteria testing and (2) Trihalomethane testing.

4. Properly construct the wells with a water meter, sample tap, blowoff, and concrete slab.

5. Construct storage facilities of adequate size to meet minimum storage requirements for existing customers and to allow for some future growth.

6. Install additional blowoffs in order to permit adequate flushing.

The Hearing Examiner is of the opinion that the present state of the Parkway East system constitutes inadequate system design/construction. The Hearing Examiner finds that, in order for the Applicant to satisfactorily serve the customers of Parkway East, it is imperative that these requirements be satisfied immediately.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence supporting this finding of fact is contained in the testimony of Public Staff witnesses Vaughan and MacDonald, and in the evidence of record.

Public Staff witness Vaughan testified that he inspected the Nikanor, Holiday Lane, and Beaver Creek water systems during the process of this rate case. In his testimony, witness Vaughan identified problem areas that he observed during his inspections. Witness MacDonald testified that he performed field inspections of these three regulated public water supply systems and provided a summary letter of his findings to the Public Staff, along with new field inspection reports. In his oral testimony, witness Vaughan recommended that the requirements for system improvements in these three systems, previously provided in his prefiled testimony, be superseded or replaced by the recommendations supporting Mr. MacDonald's April 6, 1999, letter and his April 5, 1999, inspection reports.

According to Company witness Trammel, the Company installed chlorination equipment at all three wells prior to the hearing on April 29, 1999. He further testified that the two chlorinators at Ashe Lake were operational; however, the telemetry and automatic controls required by DEH for pump operation had not been completed at Nikanor yet; thus, actual chlorination had not commenced. MacDonald testified that DEH had required automatic controls at Nikanor because the pump has historically run nonstop, creating the risk of a fairly continuous discharge of chlorinated water into the New River. Witness MacDonald further testified that he did not know, until after he made his recommendations in April of 1999, that the pumps at Ashe Lake also ran continuously. He stated that had he known this earlier, "I probably would have put the same restrictions in my letter for it (Ashe Lake), for the telemetry, that I did for Nikanor."

In his testimony and reports, witness MacDonald made the following recommendations:

A. Ashe Lake, Holiday Lane Section - Well Number 1

1. Have a professional engineer who is licensed to practice in the State of North Carolina prepare and submit plans and specifications to DEH for approval.

2. Install an additional well since this system has more than 50 active connections, following the guidelines for yield and well head construction provided in the <u>Rules Governing Public Water Supplies.</u>

3. Improve the existing well house by adding a new door, insulation, and a thermostatically controlled heater to replace heat lamp.

4. Install automatic well pump controls (to prevent Well #1 from running 24 hours a day, 365 days per year).

5. Provide Inorganic and Corrosivity test results to DEH.

6. Obtain a source waiver for Asbestos monitoring.

7. Clear up questions concerning Lead and Copper monitoring.

B. Ashe Lake, Holiday Lane Section - 10,000 gallon storage tank

1. Install a float control system with telemetry to the automatic controls at the well.

2. Inspect and repair the storage tank where needed, including paint.

C. Ashe Lake, Beaver Creek Section - Well Number 2

1. Have a professional engineer who is licensed to practice in the State of North Carolina prepare and submit plans and specifications to DEH for approval.

2. Improve the existing well house by adding a new door, insulation, and a thermostatically controlled heater to replace heat lamp.

3. Install automatic well pump controls (to prevent Well #2 from running when not necessary).

4. Provide Inorganic, Corrosivity, and Lead and Copper test results to DEH.

5. Obtain a source waiver for Asbestos monitoring.

D. Ashe Lake Section, Beaver Creek Section - 70,000 gallon tank

1. Install a float control system with telemetry to the automatic controls at the well.

2. Inspect and repair the storage tank where needed, including paint.

3. Close and plug several openings on the top of the tank.

E. Nikanor Section - Main Well, Number 3

1. Have a professional engineer who is licensed to practice in the State of North Carolina prepare and submit *revised* plans and specifications to DEH for approval.

2. Upgrade the existing well house to DEH standards contained in the Rules Governing Public Water Supplies (RGPWS), providing a well house slab with at least the required 3 foot radius, extending the well casing above its current 10" due to its location in the flood plain, and providing sufficient insulation.

3. Provide a thermostatically controlled heater. (Current practice of replacing the light source with a heat lamp in cold weather is unsound.)

4. Install automatic well pump controls (to prevent Well #3 from running 24 hours a day, 365 days per year).

5. Provide Inorganic and Corrosivity test results to DEH.

6. Provide verification of a "distribution system operator" certification to DEH by July 1, 1999.

F. Nikanor Section - Emergency Back-up, Well Number 2

1. Discontinue all use of Well #2.

G. Nikanor Section - New Well Capacity and Storage

1. Install an additional well or wells, as determined by revised plans and specifications (on Nikanor side of New River) since this system has over 50 active connections, following the guidelines for yield and well head construction provided in the RGPWS.

2. Upgrade storage by adding additional capacity (on Nikanor side of the New River), as determined by the engineer as he produces revised plans and specifications for the system.

3. Add twin booster pumps to boost water from the new storage tank into the system and to the storage tank on top of the mountain.

4. Repair or replace the existing ground storage tank which has a substantial crack at ground level.

5. Install a float control system in the existing storage tank with telemetry to the automatic well pump controls at Well # 3.

6. Resolve the problem of water line freezing in the water main which is attached to the bridge for the Daniels Daughter / New River development.

The Hearing Examiner finds that these recommendations are reasonable and necessary for the continued viability of the Applicant's water system. The Hearing Examiner is of the opinion that the present state of the Blue Ridge Manor system (Nikanor/New River, Ashe Lake - Holiday Lane, Ashe Lake - Beaver Creek) constitutes inadequate system design/construction.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witnesses Vaughan and MacDonald, and in the evidence of record.

In its Response to the Proposed Recommended Order, the Company states that "(s)ince August 28, 1997, the date of the final order of our last rate case, we have accomplished a substantial number of its recommendations. We have:

1. Completed the installation of all customer meters.

2. All required water testing is current, including inorganic, lead and copper testing mentioned in the recommended order.

3. All 5 chlorinators have been installed and are operational.

4. Telemetry is installed and operating at the Nikanor well and reservoir (the largest producing well).

   The Ashe Lake well have been wired by the phone company and electrician. The only remaining step is to install the float valves in the tanks.

WATER AND SEWER - RATES

5. Well #1 - Ashe Lake:

   a. Blow-off installed.
   b. Heat lamps installed; ceiling insulated.
   c. Door replaced.

6. Well #2 - Ashe Lake:

   a. Trash removed.
   b. Heat lamp & ceiling insulation installed.
   c. Walls have been sealed to repair cracks.
   d. Door & frame repaired.

7. 70,000 gallon tank - Ashe Lake:

   a. Tank checked for leaks - none found.
   b. Visual water level indicator is sealed properly at top.
   c. Painting done to repair freeze damage.
   d. Tank is kept less than full in winter to prevent freeze damage.

8. Well #2 - Nikanor:

   a. Door replaced & roof repaired.
   b. Heat lamp & ceiling insulation installed.

9. Well #1 - Nikanor:

   a. Heat lamp & ceiling insulation installed.
   b. Door painted & repaired.
   c. Light installed.

10. Parkway East - operator is checking system at least twice weekly; blowing off wells & flushing system monthly.

11. Nikanor Reservoir:

    a. Shack & debris removed.
    b. Fencing installed.

12. Name & phone number of company & operator placed in phone book & monthly billing statement.

13. Well houses have been locked & repaired to prevent vandalism.

14 Blow-offs installed throughout system to allow more flushing of lines.

15. EPA Testing Surcharge + 10% interest refunded to each customer per the previous final order requirements.

16. A certified operator was hired February 1999 at an additional cost of $600/month. Additionally, a "distribution system operator" has been retained.

17. All wells have master meters."

Referring to Nikanor, witness MacDonald testified, "the distribution piping meets the original approval as far as our office knows, but the wells have changed, storage has changed, and the system is operationally inadequate." Witness MacDonald stated that other than improvements related to an ORC, chlorination, and meter installation, "I don't think anything really has changed", since he started having supervision over Cross-State's water systems.

In testifying about the need for approved plans and specifications for the Cross-State systems, as well as for the need for subsequent improvements, witness MacDonald testified or his reports indicated the following:

1. There is a large distribution system, though not entirely approved, in Nikanor but there is inadequate supply to serve it if the development grows larger.

2. If the well serving Nikanor fails due to pump outage or water line breakage, there's no alternate storage source to replace it in time of need.

3. At Nikanor, approximately one half day's supply of water is stored, but due to system design, if a line breaks or the line across the river is washed out, the storage tank would be immediately drained, and there would be zero reserve storage.

4. At Nikanor, originally, an approved hydropneumatic storage tank was operational for the customers at higher elevations, but now they require private booster pumps for pressure.

5. A significant environmental concern and a rule allowing a well to be pumped for no more than 12 hours per day requires the installation of float devices, automatic pump controls, and telemetry to eliminate the chance for continuous discharge of chlorinated water from the storage vault at Nikanor and the tank at Holiday Lane (possibly Beaver Creek also).

6. Pumping of wells on demand, instead of around the clock, will reduce the electric bill substantially, and will bring well operation back into compliance with DEH rules. It is likely that the reduced cost of electricity could easily pay for the telemetry system. Allowing wells to rest is also beneficial.

7. A community water system with 50 or more connections is required to have a minimum of two operational wells with yields suitable to maintain pressure when one of the wells is out of service. There is only one suitable well at Nikanor (142

connections) and this well, at Daniel's Daughter, was not part of the plan approval in the early 1970's for three wells. The only approved well is the well which should now be placed out of service due to very low production. There is only one well in operation at Ashe Lake - Holiday Lane (55 connections).

8. It would not be good idea to lift the current moratorium due to the current condition of the systems. This is especially true at Nikanor and Holiday Lane, where additional wells are needed.

9. The moratoriums could be lifted only if new plans and specifications for Ashe Lake and revised plans and specifications for Nikanor were submitted and approved, and if all required new wells were installed.

10. Plans and specifications have been required for 20+ years for both Ashe Lake systems. An engineer would have to start "from scratch".

11. For Nikanor, an engineer would need to locate enough of the water lines to satisfy himself that what was shown on the original drawings is what is in the ground and then he should show any changes and required upgrades.

The Hearing Examiner concludes that the Ashe Lake and Nikanor systems have numerous deficiencies as set out above which must be corrected at once to ensure future viability of the Cross-State system. These corrections must include the development, implementation, and approval of plans and specifications for all systems. The Hearing Examiner is of the opinion that the present lack of plans and specifications constitutes inadequate system management.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence supporting this finding of fact is contained in the testimony of Public Staff witness Vaughan.

In his testimony, Vaughan made the following recommendations as to record keeping, documentation, and operations:

1. All wells must have master meters, if not previously installed, in order to permit the operator to provide accurate water usage reports.

2. File a progress report with the Commission every 90 days until the Company has fully complied with the Final Order in this case.

3. File a report with the Commission and the Public Staff within 60 days of the date of this order, confirming the installation of all chlorination equipment reportedly already installed by the Company. This report should include the installation log of dates and locations, man-hours required and personnel involved, and the documented costs of equipment installed.

4. File a report with the Commission and the Public Staff within 60 days of the date of this order, confirming the installation of automatic pump controls and telemetry used to reduce the overall run time of the well pumps at Nikanor and Ashe Lake. This report should include the installation log of dates and locations, man-hours required and personnel involved, and the documented costs of equipment installed.

5. Maintain an up-to-date yearly file of compliance sampling data, especially previous sample analysis for tests not required annually.

6. Maintain a complete file of DEH violation letters and/or administrative penalties.

7. Maintain and file with appropriate regulatory offices all required reports such as water usage reports, sampling/monitoring data, etc.

8. Develop and implement a routine flushing program tailored to seasonal residency.

9. Keep records of utility related expenses so that they can be easily retrieved for each year of service.

10. Maintain a system log book, accounting for equipment and water line problems and repairs, master meter reading, chronic problems, customer complaints and requests, and special disconnection requirements due to seasonal usage.

11. If vandalism becomes a problem, fence or otherwise protect the well houses from trespass.

The Hearing Examiner finds these recommendations to be reasonable and necessary for the continued viability of the Company's systems. The Hearing Examiner is of the opinion that the present state of record keeping, documentation, and operations constitutes inadequate system management.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

In its Proposed Recommended Order, the Public Staff suggested that the Operator in Responsible Charge (ORC), Morris Trammel, Jr., and the maintenance operator, Rick Phillips, monitor and operate the water supply systems as well as can be expected under current system configuration.

The evidence supporting this finding of fact is contained in the testimony of the public witnesses, Public Staff witness MacDonald, Applicant witnesses Don Raff and Morris Trammell, Jr., and in the testimony and exhibits of Public Staff witness Vaughan. This evidence is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 22, 23, AND 24

The evidence for these findings of fact is contained in the Company's application, the affidavit and testimony of Public Staff witness Craig, and the testimony of Company witness Raff.

In his testimony, Mr. Craig recommends using the operating ratio method for determining the overall fair rate of return in this proceeding pursuant to G.S. §62-133.1(a) and §62-133(b). The operating ratio methodology produces a higher revenue requirement for the Company than does the rate base methodology because of the relative sizes of its operating revenue deductions and rate base.

The Hearing Examiner concludes that it is appropriate to use the operating ratio methodology in calculating the Company's revenue requirement to establish rates for the Applicant's water operations.

Mr. Craig recommended to the Hearing Examiner that Cross-State be granted an 8.5% margin on expenses after the Company has complied with the Order in this case. His recommendation would produce operating ratios of 92.64% (including taxes) or 92.17% (excluding taxes) for the water utility service.

Mr. Raff testified that he finds the 8.5% margin on expenses proposed by Mr. Craig to be inadequate because the Company needs a 20% margin on expenses. He further contended that the ratepayers should have to pay rates based on a 20% margin on expenses because they will benefit from any system improvements. Mr. Raff provided no objective basis for seeking a 20% margin on expenses, nor did he provide any rate of return model that supports this request.

Based on all of the evidence in the record, the Hearing Examiner concludes that an 8.5% margin on operating expenses requiring a return, as recommended by the Public Staff, is appropriate in this proceeding assuming a finding that the Applicant is providing adequate service (system management, system design/construction, and system operations). The Hearing Examiner finds that the appropriate rate of return on expenses should be based on objective financial market conditions rather than the particular financial needs of the applicant.

In its response to the Public Staff's Proposed Recommended Order, the Company asked the Hearing Examiner to take judicial notice of several cases, as noted below:

> "In this respect, we ask you to review the case of State ex rel. Utilities Comm. v. Public Staff, 317 N.C. 26, 343 S.E.2d 898 (1986), holding that an increase in rates is permissible even if there are some inadequacies in the company operations. Also, the Company feels that the fixing of rates should be such that the Company can earn a fair rate of return on its investment for its stockholders, and also balance the customers rights. See State ex rel. Utilities Comm. v. Nantahala Power & Light Co., 313 N.C. 614, 332 S.E.2d 397 (1986).
>
> Lastly, the Company would submit that as a public utility, under the laws of North Carolina, it is entitled to earn a reasonable rate of return. See State ex rel. Utilities Comm. v. City of Greensboro, 244 N.C. 247, 93 S.E.2d 151 (1956). And also see State ex rel. Utilities Comm. v. Carolinas Committee for Industrial Power Rates and Area Development, Inc., 257 N.C. 560, 126 S.E.2d 325 (1962)."

The Commission has dealt with similar matters in prior Orders. In is Recommended Order Granting Partial Increase in Rates and Assessing Rate of Return Penalty, issued on September 22, 1995, in Docket No. W-899, Sub 14, the Commission made the following analysis of case law:

> The Commission has historically imposed quality of service penalties only on rare occasions and under extreme conditions. Perhaps the leading case in which such a penalty was imposed is a case from the early 1970's, State ex rel. Utilities Commission v. General Telephone Company, 285 N.C. 671, 208 S.E.2d 681 (1974). In that case, the Commission found that General Telephone was rendering "chronically poor service" and that this was due to "bad management" and demonstrated "an attitude of a complacent monopoly." Id. At 680, 208 S.E.2d at 687. General Telephone appealed, and the Court held that when, on substantial evidence the Commission finds that a utility is rendering inadequate service due to bad management and managerial indifference, it may deny the utility's request for a rate increase. Id. The Court said it was adhering to the construction of G.S. 62-133 enunciated in State ex rel. Utilities Commission v. Morgan, 277 N.C. 255 ,266, 177 S.E.2d 405, 412-13 (1970), reaffirmed, 278 N.C. 235, 179 S.E.2d 419 (1971), that
>
>> [i]t is not reasonable to construe G.S. 62-133(b) to require the Commission to shut its eyes to "poor" and "substandard" service resulting from a company's willful, or negligent, failure to maintain its properties or to heed complaints from its subscribers when the Commission is called upon by the company to permit it to increase its rates for its inadequate service.
>
> 285 N.C. at 682-683, 208 S.E.2d at 688. The Court further said it was not addressing whether the Commission may fix rates at a confiscatory level for inadequate service, since the Commission had found that General Telephone's existing rates were sufficient to yield a return of 6.65% on its rate base after paying all of its expenses, including maintenance, depreciation, and taxes, and to pay a 6% dividend on the portion of its common stock allocable to North Carolina service after paying all interest on its indebtedness, taxes, and dividends on preferred stock. Central to the Court's holding was what it called "ample evidence to support the Commission's findings of service inadequacies due to the condition of the properties and others due to the quality of the management and personnel of this company." Id. at 684, 208 S.E.2d at 689. These inadequacies, the Court said, did not require the attraction of additional capital for construction programs or the acquisition of equipment.
>
> In contrast to the General Telephone case, the Court upheld a Commission decision not to penalize Glendale Water Company despite a finding of inadequate service. State ex rel. Utilities Commission v. Public Staff, 317 N.C. 26, 343 S.E.2d 898 (1986). Noting that the Commission had required Glendale to make extensive and specific improvements, the Court found that "the revenue increase was necessary not only to keep Glendale financially afloat due to its present difficulties, but also to implement these ordered improvements." Id. at 36, 343 S.E.2d at 905.

More recently, the Commission imposed a 1% rate of return penalty on Carolina Water Service, Inc. of North Carolina (CWS), on a finding of inadequate service but was reversed on appeal for lack of competent, material, and substantial evidence in the record to support its decision. State ex rel. Utilities Commission v. Carolina Water Service, 335 N.C. 493, 439 S.E.2d 127 (1994). In that case, the Court said:

> Although a number of complaints regarding the quality of water furnished were presented by customers at the hearings scheduled throughout the state, these quality and service complaints were made by a small fraction of 1% of the customers, there were no complaints made from fifty of the eight-nine subdivisions that CWS services, and most of the complaints came from seven subdivisions. Yet the Commission penalized CWS based on its overall service to all customers.

Id. at 501, 439 S.E.2d at 131. The Court also held that the Commission's Order was defective because it failed to specify why CWS's service was inadequate, what the Commission's standards were, or what corrective actions were required. Indeed, CWS had presented evidence that it complied with state health standards and no Public Staff witness had recommended a penalty.

With the foregoing case law as a guide, the Hearing Examiner concludes that a rate of return penalty is not only justified but demanded by the record in this case. Unlike CWS, the problems and deficiencies with the Applicant's systems are extensive and represent a significant portion of the Company's operations. They have been clearly identified along with the necessary corrective actions.

The Company strongly disagreed with the wording in the Public Staff's Recommended Proposed Order regarding the Company's efforts to comply with the Stipulation and the Order. The Company said,

> "We have not refused and are not recalcitrant in complying with the stipulations of the prior rate case. It is simply impossible to make improvements when the rates are not even covering expenses! Whenever we have had extra money from the sale of property, we have used it to accomplish whatever improvements possible." (emphasis in original)

The Hearing Examiner believes that, under the reasoning set forth in the Glendale case, some increase is reasonably required for the Company to have the personnel and the operating funds to make the improvements specified in this Order.

The increase approved herein makes allowances for field and office personnel and other ongoing operating expenses and produces $5,686 in net operating income. It provides interest coverage on the Company's existing debt (the application claimed $5,155 in interest expense). Elsewhere in this Order it was noted that witness Fernald recommended (and the Hearing Examiner concurred) that interest expense should be removed from O&M expenses and provided for in net operating income for return.

WATER AND SEWER - RATES

In accordance with the Stipulation agreed to by the Public Staff and the Company in the previous rate case, the Company was granted a full rates upon issuance of the Order, with the prospect of the rates being reduced to a level that covered only operating expenses (no margin on expenses) if the required improvements were not completed within a certain time frame.

The Public Staff recommended that the Commission establish two sets of rates for the Company in the present rate case proceeding. Because many of the improvements were never completed and the "no margin" rates were not imposed before the current rate case was initiated, the Public Staff recommended that the "no margin" (pre-compliance) rates be granted upon issuance of this Order and full (post-compliance) rates be granted upon completion of the required improvements.

The Hearing Examiner admits that such a course of action is very tempting. To say that the Hearing Examiner is disappointed that the Company has not complied with the Stipulation and the previous Order would be an understatement. Nor is the Hearing Examiner happy that the parties are still discussing many of the same deficiencies in yet another rate case proceeding. In the passage of time since the hearing in this matter, the Company has been able to report why it did not make the required improvements prior to initiation of this rate case, but it has not reported the completion of any additional required improvements. The Hearing Examiner is dismayed by the lack of continued progress. However, as noted above, the Hearing Examiner is of the opinion that the establishment of two sets of rates ("no margin" rates and full rates) is inappropriate, but imposition of a 1% rate of return penalty is justified.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 25 AND 26

Based upon the foregoing findings and conclusions, the Hearing Examiner concludes that annual gross revenues of $86,619 will allow the Applicant an opportunity to recover its reasonable expenses and earn a 7.5% return. The following schedules summarize the gross revenues, operating revenue deductions, and rate base based upon conclusions reached elsewhere in this Order.

SCHEDULE I

CROSS-STATE DEVELOPMENT COMPANY
DOCKET NO. W-408, SUB 7
STATEMENT OF ORIGINAL COST RATE BASE
For the Test Year Ended June 30, 1998

Item	Amount
Plant in service	$ 55,180
Accumulated depreciation	(6,334)
Contributions in aid of construction	(12,000)
Net plant in service	36,846
Cash working capital	8,601
Average tax accruals	(1,067)
Original cost rate base	$ 44,380

SCHEDULE II

CROSS-STATE DEVELOPMENT COMPANY
DOCKET NO. W-408, SUB 7
STATEMENT OF NET OPERATING INCOME FOR RETURN
For the Test Year Ended June 30, 1998

Item	Present Rates	Increase Approved	After Approved Increase
Operating revenues:			
Service revenues	$ 54,461	$ 32,091	$ 86,552
Other revenues	67	0	67
Total operating revenues	$ 54,528	$ 32,091	$ 86,619
Operating revenue deductions:			
Salaries and wages	42,432	0	42,432
Certified operator	7,200	0	7,200
Administrative and office	3,307	0	3,307
Maintenance and repairs	2,107	0	2,107
Transportation	1,117	0	1,117
Electric power	6,755	0	6,755
Testing	4,049	0	4,049
Chemicals	296	0	296
Permit fees	500	0	500
Rate case expense	1,044	0	1,044
Interest expense - meters	0	0	0
Total operation & maintenance expense	68,807	0	68,807
Depreciation expense	3,334	0	3,334
Property taxes	239	0	239
Payroll taxes	3,504	0	3,504
Regulatory fee	49	29	78
Gross receipts tax	2,181	1.284	3,465
State income tax	0	503	503
Federal income tax	0	1,003	1,003
Total operating revenue deductions	78,114	2,819	80,933
Net operating income for return	$(23,586)	$ 29,272	$ 5,686
Margin	(31.08%)		7.50%

The Hearing Examiner further concludes that the rates contained in the attached Schedule of Rates will produce the revenue requirements found appropriate in this Order and are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

The evidence supporting this finding of fact is contained in the testimony of Public Staff witness Fernald and Company witness Raff. Public Staff witness Fernald testified that the Company was not current on its payment of gross receipts tax. Witness Fernald recommended that the Company pay any past due gross receipts tax within 30 days and file a report with the Commission within 60 days confirming the payment of gross receipts tax. On cross-examination, Company witness Raff acknowledged that the Company had not filed gross receipts tax returns in about three years.

The Hearing Examiner concludes that the Company should pay any past due gross receipts tax within 30 days of the date of this Order. Furthermore, the Company should file a report with the Commission within 60 days of the date of this Order confirming that it is current on its payment of gross receipts tax. The rates being paid by the customers include an amount for gross receipts tax, and the Company should not collect these amounts in rates and then fail to pay the tax.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates attached hereto as Appendix A, be, and hereby is, approved and deemed to be filed with the Commission pursuant to G.S. §62-138. Said Schedule of Rates is hereby authorized to become effective for service rendered on and after the effective date of this Order.

2. That a copy of the Notice to Customers, attached as Appendix B, be mailed with sufficient postage or hand delivered by the Applicant to all customers no later than 15 days after the date of this Order; and that the Applicant submit to the Commission the attached Certificate of Service properly signed and notarized not later than 30 days after the date of this Order.

3. That within 30 days of the date of this Order, the Company shall pay any past due gross receipts tax.

4. That within 60 days of the date of this Order, the Company shall file a report with the Commission confirming that it is current on its payment of gross receipts tax.

5. That the Applicant in a satisfactory manner rectify all deficiencies and comply with all recommendations made by Public Staff witnesses Vaughan and MacDonald as set out in the Evidence and Conclusions for Findings of Fact Nos. 16, 17, 18, 19, and 20.

6. That the Applicant file a written report with the Commission and the Public Staff delineating its progress in rectifying each deficiency and complying with each recommendation 90 days from the date of this Order and every 90 days thereafter until the Commission orders otherwise.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

SCHEDULE OF RATES

for

CROSS-STATE DEVELOPMENT COMPANY

for providing water utility service in

ALL OF ITS SERVICE AREAS

in Ashe and Wilkes Counties, North Carolina

Metered Rates: (Residential Service)

Base charge, zero usage	$20.00, minimum
Usage charge, per 1,000 gallons	$ 6.17

Connection Charge: $ 750 (New Connection Only)

Reconnection Charge:

If water service cut off by utility for good cause:	$15.00
If water service discontinued at customer's request:	$15.00

If water service is reconnected to the same customer at the same address within nine months of disconnection, then the reconnection charge shall be the base charge times the number of months disconnected.

Bills Due: On billing date

Bills Past Due 25 days after billing date

Billing Frequency: Shall be quarterly for service in arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-408, Sub 7, on this the 29th day of October, 1999.

WATER AND SEWER - RATES

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX B

DOCKET NO. W-408, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Cross-State Development Company, Post Office Box 830186, Miami, Florida 33283-0186, for Authority to Increase Rates for Water Utility Service in All of its Service Areas in Ashe and Wilkes Counties, North Carolina	))))	NOTICE TO CUSTOMERS OF NEW RATES

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has granted a partial rate increase to Cross-State Development Company, Inc., for water utility service provided in Blue Ridge Manor in Ashe County and in Parkway East, located in Ashe and Wilkes County, North Carolina. This decision was based upon evidence presented at the public hearing held on April 29, 1999, in West Jefferson, North Carolina. The new rates are as follows and are effective for service rendered on and after the date of this Notice.

Metered Rates: (Residential Service)

Base charge, zero usage	$20.00, minimum
Usage charge, per 1,000 gallons	$ 6.17

ISSUED BY ORDER OF THIS COMMISSION.

This the 29th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-503, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Blythe Utility Company, Post Office Box 189, Little River, South Carolina, for Authority to Increase Its Rates for Water and Sewer Utility Service in All Its Service Areas in Brunswick County, North Carolina.	))))))	RECOMMENDED ORDER APPROVING RATE INCREASE

HEARD IN: Carolina Shores Property Owners Association Building, Corner of Highway 179 and Country Club Road, Calabash, North Carolina, on Tuesday, November 17, 1998, at 7:00 p.m.

BEFORE: Danny Stallings, Hearing Examiner

APPEARANCES:

For the Applicant:

Robert F. Page, Crisp, Page & Currin, L.L.P., 1305 Navaho Drive, Suite 302, Raleigh, North Carolina 27609-7444

For the Using and Consuming Public:

Paul L. Lassiter, Public Staff Attorney, Public Staff – North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27662-0520

STALLINGS, HEARING EXAMINER: On June 25, 1998, Carolina Blythe Utility Company ("Applicant," "Company," or "Carolina Blythe") filed an application with this Commission for authority to increase its rates and charges for water and sewer utility service in Brunswick County, North Carolina.

By Order issued on July 24, 1998, the Commission declared the matter to be a general rate case, suspended the proposed rates, scheduled a public hearing and required customer notice. Public Notice was given by the Applicant as evidenced by the Certificate of Service filed on August 25, 1998.

On October 16, 1998, the Public Staff filed testimony and exhibits of Public Staff Engineer David Furr, and Public Staff Accountant Windley Henry, as well as the Affidavit of Calvin Craig, Financial Analyst with the Public Staff.

The matter came on for hearing on November 17, 1998. Due to the large number of consumer witnesses, the parties hereto agreed that the evening's hearing would be limited to taking the testimony from public witnesses with the hearing thereafter to be reconvened in Raleigh, if necessary, for the taking of the Company's and the Public Staff's testimonies. The following consumer witnesses testified: Alden Craft, Dick Wilson, Lee Weddig, Tedd Palibowa, Ruth O'Hagon, Alfred Powell, John Farley, Jim Porter, Harry Bourguignon, Alexander Schaffer, Rosemarie Raleigh, Michael Orovello and Ronald Lief.

WATER AND SEWER - RATES

On January 15, 1999, the Applicant filed a letter with the Commission requesting that the further evidentiary hearing not be scheduled until the Applicant is able to locate and obtain an expert witness to file rebuttal to the Public Staff's testimony on the Applicant's behalf. On September 29, 1999, the Public Staff and the Applicant filed a Joint Stipulation. Pursuant to the Joint Stipulation, the Applicant and the Public Staff agreed upon an annual revenue requirement, appropriate rate design and other incidental matters amounting to a settlement proposal with regard to the pending general rate application of Carolina Blythe.

By Order dated October 1, 1999, the Hearing Examiner approved the rates and charges set forth in the Joint Stipulation as interim rates pending the issuance of this Recommended Order.

Upon consideration of the verified Application, the prefiled testimonies and exhibits, the testimonies of the public witnesses, the Joint Stipulation, and the entire record in this proceeding, the Hearing Examiner finds and concludes that the Joint Stipulation between the Public Staff and the Applicant, which is incorporated herein by reference thereto, should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Joint Stipulation between the Public Staff and the Applicant, as heretofore filed with the Commission on September 29, 1999, be, and the same is hereby, approved.

2. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved and deemed filed with the Commission pursuant to G.S. 62-138 and the Applicant is authorized to charge such rates and fees.

3. That in any future general rate increase application or complaint proceeding filed by or against Carolina Blythe Utility Company, or its successors, if any, neither this Order nor the Joint Stipulation may be relied upon by any party as precedent concerning any of the rate making, rate base, or any other cost of service issue contained in this Docket.

4. That Carolina Blythe's wells and treatment equipment shall not be used to provide a permanent supply of public drinking water, and Carolina Blythe shall purchase all water from Brunswick County, except under interim emergency conditions when Brunswick County may not be able to provide the water. If any water is produced from Carolina Blythe's wells for long term sale to customers or any other entity for any purpose, such as golf course irrigation, approval of the Commission is required, at which time new rates will be established.

5. That Carolina Blythe shall set aside plant modification fees collected in Brunswick Plantation in a separate account to pay for a future sewer treatment plant in Brunswick Plantation to serve these customers, and that, if the Company is sold to another utility, these funds will be transferred with the sale.

ISSUED BY ORDER OF THE COMMISSION.
This the __7th__ day of __October__, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

WATER AND SEWER - RATES

APPENDIX A

SCHEDULE OF RATES
for
CAROLINA BLYTHE UTILITY COMPANY
for providing water and sewer utility service in
ALL ITS SERVICE AREAS
Brunswick County, North Carolina

Water: (Metered Service)		
Base charge per month, no usage included		$ 8.25, minimum
Usage charge, per 1,000 gallons		$ 2.75
Sewer:		
Flat Rate Residential Service, monthly		$16.79
Metered Commercial Service		$4.21 per 1,000 gallons
Availability Charges:		
Water:	$6.00 per quarter	
Sewer:	$6.00 per quarter	
Connection Charge:		
Carolina Shores:		
Water:	$300 for ¾" tap (includes meter)	
	$400 for 1" tap (includes meter)	
	$500 for 1 ½" tap (includes meter)	
	$800 for 2" tap (includes meter)	
Sewer:	$600	
Brunswick Plantation:		
Sewer:	$750	
Plant Modification Fee:		
Brunswick Plantation:	$1,000 per lot (to be paid by developer at closing)	
Reconnection Charge:		
If water service cut off by utility for good cause:		$25.00
If water service cut off by utility at customer's request:		$25.00
If water service cut off by utility for good cause:		$25.00

Note: The sewer reconnection charge is waived where the customer also receives water service from Carolina Blythe Utility Company.

Bills Due:	On billing date
Bills Past Due:	15 days after billing date
Billing Frequency:	Shall be quarterly for service in arrears. In resort areas billing may be monthly for service in arrears.
Finance Charges for Late Payment:	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-503, Sub 9, on this the 7th day of October, 1999.

DOCKET NO. W-503, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Blythe Utility Company, Post Office Box 189, Little River, South Carolina, for Authority to Increase its Rates for Water and Sewer Utility Service in All Its Service Areas in Brunswick County, North Carolina	ORDER DISMISSING EXCEPTIONS AND ALLOWING RECOMMENDED ORDER TO BECOME FINAL

BY THE COMMISSION: On June 25, 1998, Carolina Blythe Utility Company (Company or Carolina Blythe) filed an application with the North Carolina Utilities Commission (NCUC or Commission) for authority to increase its rates and charges for water and sewer utility service in Brunswick County, North Carolina. According to its application, Carolina Blythe's revenues from water utility service would increase from $215,628 to $514,798, for an increase of 139%, and its revenues from sewer utility service would increase from $184,355 to $415,309, for an increase of 125% in the event that the Company's proposed rates were to be approved. The water and sewer rates proposed by Carolina Blythe would have raised the cost of water service in the Carolina Shores service area from $8.82 per month (with a minimum charge of $18.00 per quarter) to $24.65 per month (assuming a customer usage level of 4,200 gallons per month) for an increase of 179%; raised the cost of sewer service in the Carolina Shores area from $8.82 per month (with a minimum charge of $18.00 per quarter) to $24.65 per month (assuming a customer usage level of 4,200 gallons per month) for an increase of 179%; and raised the cost of sewer service in the Brunswick Plantation area from a flat rate of $18.00 per month to $24.65 per month calculated using a metered rate design (assuming a customer usage level of 4,200 gallons per month) for an increase of 37%.

On July 24, 1998, the Commission issued an Order Establishing General Rate Case, Suspending Rates, Scheduling Hearing, And Requiring Customer Notice in which it declared the matter to be a general rate case, suspended the proposed rates, scheduled a public hearing and required customer notice. The notice which the Commission required Carolina Blythe to provide to customers specifically stated that "[persons desiring to intervene in this matter as formal parties of record" should file a motion to intervene in accordance with Commission Rules R1-6, R1-7, and R1-19 at least ten days prior to the November 17, 1998 hearing. As is evidenced by a Certificate of Service filed on August 25, 1998, Carolina Blythe provided customer notice in accordance with the Commission's order. The only party to formally intervene in this proceeding within the times specified in the Commission's rules was the Public Staff-North Carolina Utilities Commission (Public Staff).

On October 16, 1998, the Public Staff filed the Affidavit of Calvin C. Craig, III, and the prefiled testimony of David C. Furr and Windley E. Henry. In its affidavit and prefiled testimony, the Public Staff recommended that the Company be allowed to increase its water revenues from the existing level of $215,628 to $389,685, for an increase of 81%, and to increase annual sewer revenues from $184,355 to $298,603, for an increase of 62%. The information contained in the Public Staff's testimony indicates that a residential customer using 4,200 gallons per month would pay $8.82 per month (with a minimum quarterly payment of $18.00) for water service under the Company's existing rates and $18.59 per month under the Public Staff's proposed rates, for an increase of 111%; that a sewer customer in Carolina Shores using 4,200 gallons per month would pay a metered amount of $8.82 per month (with a minimum quarterly payment of $18.00) under Carolina Blythe's existing rates and a flat rate of $16.28 per month under the Public Staff's proposed rates, for an increase of 85%; and that a sewer customer in Brunswick Plantation would pay a flat rate of $18.00 per month under existing rates and a flat rate of $16.28 per month under the Public Staff's proposed rates, for a decrease of 10%. The principal reasons which led the Public Staff to support increases of this magnitude were that Carolina Blythe had decided to purchase its water supply from Brunswick County rather than using water from its own wells and that the cost of providing water and sewer service in Carolina Blythe's territory had increased significantly since the Company's last general rate case in 1982.

The matter came on for hearing on November 17, 1998. Due to the large number of consumer witnesses, the parties agreed that the November 17, 1998, hearing would be limited to taking testimony from public witnesses and that the hearing would be reconvened in Raleigh for the purpose of taking testimony from the Company and the Public Staff.

At the public hearing, a significant number of public witnesses presented testimony in opposition to the proposed increase in water and sewer rates for which Carolina Blythe had applied. More particularly, various Carolina Blythe customers objected to the size of the rate increase requested by the Company, argued that such a large increase should be phased in rather than implemented all at one time, and urged the Commission not to approve a metered sewer rate. A number of the public witnesses also complained about the quality of the service which they received from Carolina Blythe. For example, Ted Paliwoda, who resided in the Carolina Shores community, complained that the water which he received from the Company turned his cooking pots black, that using the Company's water to wash his car left hard-to-remove white spots on the windows, that ice cubes and coffee made with water purchased from Carolina Blythe had a peculiar taste, and that he was forced to drain and vacuum his water heater every five or six years. Ruth O'Hagon, who resided in Saltaire Village, testified that she never knew if she could brush her teeth, shower, or wash her clothes because she could not be sure that the water would not be brown and that this problem seemed to have increased in recent years. Harry Bourguignon, a resident of Saltaire Village, testified that he and his wife had experienced eleven days of brown and yellow water since May. Alexander Schaffer, who lived in Carolina Shores, testified that Carolina Blythe customers experienced recurring brown, rusty water which was undrinkable and ruined laundry, suffered from clogged sewer lines resulting in backups, and had to flush their water heaters. Rosemary Raleigh of Saltaire Village testified that she had had problems with water supplied by the Company, such as receiving dark brown water which was undrinkable, ruined clothes, and adversely affected her water heater. According to Ms. Raleigh, the problems which she was experiencing with her water service were getting worse rather than better.

On January 15, 1999, the Company filed a letter with the Commission requesting that a further evidentiary hearing not be scheduled until Carolina Blythe could obtain an expert witness to file testimony rebutting that submitted by the Public Staff. On September 29, 1999, the Company and the Public Staff filed a Joint Stipulation in which they stipulated to an annual revenue requirement, a rate design, and the resolution of other issues, effectively resolving all disputed issues in this case. In the proposed stipulation, the Company and the Public Staff agreed to the establishment of rates which increased Carolina Blythe's water revenues from $215,628 to $415,236, for an increase of 93%, and increased Carolina Blythe's sewer revenues from $184,355 to $308,053, for an increase of 67%. Under the proposed stipulation, a Carolina Blythe water customer using 4,200 gallons would have paid $8.82 per month (with a minimum quarterly charge of $18.00) prior to the stipulated rate increase and $19.80 per month after the stipulated rate increase, for an increase of approximately 124%; a sewer customer in the Carolina Shores area would have paid a metered amount of $8.82 per month (assuming water consumption of 4,200 gallons) (with a minimum quarterly charge of $18.00) prior to the proposed increase and a flat rate of $16.79 per month under the stipulated rate increase, for an increase of approximately 90%; and a sewer customer in the Brunswick Plantation area would have paid a flat rate of $18.00 per month prior to the proposed increase and a flat rate of $16.79 per month under the stipulated rates, for a 7% decrease. Although the Company and the Public Staff were unable to agree on the manner in which Carolina Blythe's revenue requirement should be calculated, the parties were able to agree upon the end-result of the ratemaking process in light of their investigation into the relevant facts and their perceptions of their respective interests. On October 1, 1999, the Hearing Examiner entered an Interlocutory Order Approving Interim Rates in which he approved the rates and charges set forth in the Joint Stipulation as interim rates pending the issuance of a further order. On October 7, 1999, the Hearing Examiner issued a Recommended Order Approving Rate Increase (the Recommended Order) in which he approved the result set out in the Joint Stipulation. In the absence of the filing of exceptions by one or more parties as provided in G.S. 62-78, the Recommended Order would become final on October 23, 1999.

On October 21, 1999, the Town of Carolina Shores, by and through its Mayor, Teddy C. Altreuter, filed a letter with the Commission taking exception to the rate increase allowed by the Recommended Order. According to Mayor Altreuter, citizens served by Carolina Blythe had not received notice of the increase allowed by the Recommend Order in time to file appropriate exceptions. As a result, Mayor Altreuter requested that the Commission extend the time for other citizens of Carolina Shores to file exceptions as well.

Many others have challenged the appropriateness of the result reached in the Recommended Order since that time. On October 20, 1999, Stanley P. Filipski filed a letter protesting the rate increase approved in the Recommended Order in which he complained about the impact of the rate increase on customers with multiple meters, one of which was intended to measure water usage for irrigation purposes. On October 21, 1999, Richard C. Morrisey filed a letter with the Commission, with copies to Senator R. C. Soles and Representative E. David Redwine, complaining about the rate change granted Carolina Blythe in the Recommended Order and protesting the fact that the irrigation meter which he had installed to save money would be of no benefit to him under the newly-approved rates. On October 21, 1999, Jane Lowry filed a letter protesting the increase in her water and sewer bill and expressing opposition to the Company's decision to begin purchasing water from Brunswick County. On October 22, 1999, John E. Finley, Ronald H. Meyer, and Joseph J. Kustron filed letters taking exception to the size of the increase allowed by the Recommended Order; in addition, Mr. Meyer and Mr. Kustron, who sent copies of their letters to Senator Soles and Representative Redwine, took exception to the economic impact of the newly-approved rate structure on customers who had procured the installation of irrigation meters. On October 26 and October 28, 1999, Kenneth F. Bowling, Charles H. Radcliffe, and Henry F. Mattutat filed letters with the Commission excepting to the size of the increase allowed in the Recommended Order, complaining about the adverse impact of the newly-approved rates upon customers who had procured the installation of irrigation meters, and requesting the Commission to reexamine the result reached in the Recommended Order.

On October 27, 1999, Charles and Claire Tetta filed a letter with the Commission protesting the rate increase approved in the Recommended Order, particularly given their decision to install an irrigation meter for the purpose of reducing the size of their monthly bill. On October 29, 1999, Emily DiStasio filed a letter with the Commission, with copies to Senator Soles, Representative Redwine, and Representative Dewey Hill, in which she protested the implementation of such a large rate increase on what she claimed was inadequate notice and requested the Commission to rescind the newly-approved rate increase. On November 1, 1999, the Chair received a letter from Congressman Mike McIntyre, which enclosed a letter he had received from James P. Jackson protesting the increase allowed in the Recommended Order. On November 5, 1999, Betty J. Sherry filed a letter with the Commission, which she copied to Senator Soles, Representative Redwine, and Representative Hill, in which she protested the rate increase approved in the Recommended Order. On November 8, 1999, Mrs. Donald A. Martin filed a letter with the Commission protesting the rate increase approved in the Recommended Order and complaining about the quality of the service which she received from the Company. On November 10, 1999, Joyce E. Davis, Fred and Helen Doepper, Paul and Doris Harcier, Jack S. Koontz, Mr. and Mrs. Nicholas Kovarco, David A. Mitchell, M. L. Schkeeper, Joyce B. Thomas, and Doris J. Whalley filed letters with the Commission, some of which were also sent to Senator Soles, Representative Redwine, and Representative Hill, protesting the rate increase approved in the Recommended Order and, in some instances, complaining about the quality of the service which they received from Carolina Blythe.

On November 15, 1999, Joseph Vulpis filed a letter with the Commission protesting the increase approved in the Recommended Order, particularly in light of the fact that he had installed an irrigation meter for cost control purposes. On November 15, 1999, Lorraine Brownell, Rene and Lorraine Girard, and Patricia J. Hostetler filed letters complaining about the newly-approved rate increase. On November 16, 1999, John and Judy Czifra, Raymond and Frances Taylor, and Armand and Margaret Vasco filed letters with the Commission, at least one of which was copied to Senator Soles, Representative Redwine, and Representative Hill, protesting the rate increase allowed in the Recommended Order, particularly in light of the fact that the Czifras had spent $300 for an irrigation meter and the fact that the Taylors had had service problems with Carolina Blythe. On November 18, 1999, Robert and Patricia Conley, Helen D. Doelman, Virginia Jacobs, and Patricia Lawlor filed letters with the Commission, some of which were also sent to Senator Soles, Representative Redwine, and Representative Hill, protesting the rate increase approved in the Recommended Order.

On November 22, 1999, Aldora Ashbaugh, Verdun and Karen Kerswell, Charles and Vivian Pfau, and Donald and Anna Schmidt, some of whom sent copies of their letters to Senator Soles, Representative Redwine, and Representative Hill, filed letters with the Commission complaining about the rate increase approved in the Recommended Order. On November 24, 1999, Millie Badolato, who sent a copy of her correspondence to Senator Soles, Representative Redwine, and Representative Hill, and James and Rita Smith filed letters with the Commission in which they complained about the size of the rate increase approved in the Recommended Order and, in the case of Ms Badolato, arguing the inequity of the allowed rate increase given the fact that she had purchased an irrigation meter for cost-control purposes. On November 29, 1999, E. M. and

Joan McMeekan, Lorraine and Walter Meierdierks, Albert and Peggy Raisag, and Gordon and Mary Ann Sestar filed letters with the Commission protesting the rate increase approved in the Recommended Order. The Commission is continuing to receive similar customer protest letters as of the date of this Order; however, all of the customer protest letters address similar issues and raised similar concerns.

On November 8, 1999, five of the Commissioners for the Town of Carolina Shores filed a copy of a letter which they had sent to Billy F. Burnett, President of Carolina Blythe, concerning this docket. The five signatories stated that the letter sent to the Commission by Mayor Altreuter "represented the views and positions of the Mayor--not the undersigned," indicated that Mayor Altreuter had corresponded with the Commission against their advice, and claimed that the positions espoused in Mayor Altreuter's letter represented a minority viewpoint. According to the five signatories, Carolina Blythe had every right to implement a Commission-approved rate increase and had saved its customers money by refraining from seeking a rate increase for the past seventeen years. In addition, the five Town Commissioners pointed out that Carolina Blythe's original rate request had been much larger than that approved in the Recommended Order, that Carolina Blythe had not received the rate structure which it originally proposed, and that the Company had some of the lowest rates charged by private water and sewer companies in North Carolina. On the other hand, the five signatories did express opposition to the decision to allow the Company to purchase water from Brunswick County rather than utilizing water from its existing wells given the superior quality of Carolina Blythe's water. With this exception, the five commissioners appeared to support the result reached in the Recommended Order.

On November 8, 1999, Carolina Blythe filed a Motion of Carolina Blythe Utility Company To Dismiss Exceptions And Protests. According to Carolina Blythe, the present case represented the Company's first request for a rate increase since 1982, a fact which meant that its customers had not endured any increases in the cost of basic water and sewer service for approximately eighteen years. After reciting the procedural history of this case and the events leading up to the issuance of the Recommended Order, the Company pointed out that the approved rates resulted from a stipulation between it and the Public Staff and only exceeded the revenue requirement proposed by the Public Staff by approximately 5%. After defending the adequacy of the notice given to Carolina Blythe's customers as fully consistent with prior Commission orders, the Company argued that it should not be penalized for failing to seek rate relief prior to 1998 or for keeping its rates lower than those charged by most other similarly-situated water and sewer utilities in North Carolina for the period from 1982 the past seventeen years. Moreover, Carolina Blythe argued that, given that a number of public witnesses had complained about the quality of the water which they received from the Company, it should not be punished for attempting to improve its service by purchasing water from Brunswick County. Finally, Carolina Blythe pointed out that G.S. 62-78 provides that exceptions to recommended decisions can only be filed by formal parties to a particular proceeding, argued that the only formal parties to this case were itself and the Public Staff, and urged the Commission to refuse to entertain any exceptions to the Recommended Order since none of those who had corresponded with the Commission for the purpose of complaining about the Recommended Order had formally intervened in this case.

On November 17, 1999, the Public Staff filed a Response To Exceptions addressing the issues raised in the various communications sent to the Commission concerning this case. The Public Staff pointed out that the water and sewer rates approved in the Recommended Order were significantly lower than those which Carolina Blythe had originally proposed. Although expressing sympathy with those customers complaining about the size of the approved increase, the Public Staff noted that "this is Carolina Blythe's first rate case since 1981;" that, "[w]hile Carolina Blythe could have come in for a rate case in the intervening years which would have reduced rate shock, there is nothing in the General Statutes requiring a company to file a general rate case except when such company desires to increase rates;" that "the rates agreed to in the Stipulation were based on the expenses the Company will incur once it starts purchasing all its water from Brunswick County;" that "such rates are higher than would be justified assuming the Company were to continue to use its own wells as its water source;" that, "[t]o prevent the Company from earning a windfall, the parties included language in the Stipulation, which was adopted in Ordering Paragraph 4, whereby the Company agreed to start purchasing its water from Brunswick County upon the issuance of the Commission's Order;" and that "[t]he Company also agreed that if any water is produced from its wells for long term sale to customers (e.g., golf course irrigation) approval of the Commission is required, at which time new rates will be established." The Public Staff also pointed out that several of the protesting customers had complained of having been charged $25.00 for the removal of irrigation meters, that such a charge did not appear in Carolina Blythe's tariffs, and that any such fees should be refunded to the affected customers with interest. The Public Staff acknowledged that certain protesting customers had complained about the fact that they had paid $300 for the installation of an irrigation meter to control the cost of the sewer service which they received from Carolina Blythe, recognized that the Company assessed two base charges against customers utilizing such meters, and that recommended that the affected customers request the removal of these irrigation meters to avoid the second base charge. Finally, the Public Staff noted that, in the event that any customer had paid a $300 fee for the installation of an irrigation meter in the past year, such payments should be refunded with interest given that the Public Staff had recommended that Carolina Blythe implement a flat rate for sewer service in October 1998, and that, in light of the Public Staff's recommendation, the Company should not have encouraged customers to install irrigation meters after that time.

On November 23, 1999, Mayor Altreuter filed a letter with the Commission in which she indicated that, although she was Mayor of Carolina Shores, she was only speaking for herself. After admitting that she had not read Carolina Blythe's request for a rate increase, she stated that she had read the testimony "of the PUC's own engineer and accountant which supports a more modest increase than that which [Carolina Blythe] was asking but will still increase the fees we pay for water and sewer service." Mayor Altreuter stated that, although it would not be "politically correct" to do so, she supported "the findings of the PUC's experts that [Carolina Blythe] deserves the increase which your experts recommend." Mayor Altreuter indicated that she had been a customer of Carolina Blythe for seven years, that she had been entirely satisfied with the service she received from the Company and that, while acting in various official capacities, she had always found Carolina Blythe employees to be courteous and responsive.

On November 29, 1999, Carolina Blythe filed a Reply To Public Staff's Response. Although it did not take exception to the Public Staff's comments concerning the appropriateness of the increase approved in the Recommended Order, the Company disputed the other proposals advanced by the Public Staff. After pointing out that the Company had historically charged a metered rate for both water and sewer service and that the present case was the first time in Carolina Blythe's history in which it had implemented flat rates for sewer service, the Company argued that it had, in the past, installed irrigation meters at customer request in order to prevent customers from paying for sewer service on the basis of water usage for the irrigation of lawns, shrubs, and other plants. Although Carolina Blythe admitted that the implementation of a flat rate for sewer service rendered such irrigation meters useless, it contended that the $25 fee which it had been charging for the removal of these irrigation meters should be approved nunc pro tunc to permit the recoupment of removal costs from those customers who remained on the Carolina Blythe system and requested the removal of a previously-installed irrigation meter. Furthermore, Carolina Blythe opposed the Public Staff's recommendation that the Company refund the cost of any irrigation meter installed within the past year on the grounds that it had originally opposed the implementation of flat sewer rates and had only agreed to such a change in its rate design in the negotiations leading up to the stipulation approved in the Recommended Order. As a result, the Company argued that such refunds should be limited to those customers who requested the installation of an irrigation meter after October 1, 1999.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Procedure before the Commission is governed by the provisions of the Public Utilities Act, which prescribes the steps which must be taken in order for a person to seek relief from the Commission. The numerous letters and other customer filings received by the Commission in recent weeks concerning this case all request the Commission to reverse the result reached in the Recommended Order. As a result, those filings can only be construed as either exceptions submitted pursuant to G.S. 62-78 or requests for reconsideration pursuant to G.S. 62-80. According to G.S. 62-78, the right to file exceptions to a recommended order is limited to formal parties. Similarly, the right to seek reconsideration of a Commission order pursuant to G.S. 62-80 is limited to formal parties. A careful review of the official record maintained by the Commission establishes that Carolina Blythe and the Public Staff are the only formal parties to this proceeding. An individual or entity such as the Town of Carolina Shores or the numerous individuals who sent letters to the Commission protesting the Recommended Order are not entitled to formal party status until such time as an intervention petition prepared in compliance with Commission Rule R1-19 has been filed with and allowed by the Commission. As a result of the fact that none of those who have sought to file exceptions to or otherwise contest the approved rate increase have sought or been allowed to intervene in this proceeding, all of them lack standing to except to or seek reconsideration of the Recommended Order.

Ordinarily, a party seeking to intervene in a proceeding pending before the Commission must file an appropriate intervention petition at least ten days prior to the time that a particular matter is set for hearing. Although the Commission has the authority under Commission Rule R1-19(b) to allow out-of-time interventions in appropriate cases, the requisite "good cause" has not been shown in this case. This matter has been pending before the Commission for over a year. The record establishes that public notice was given to Carolina Blythe's customers in accordance with previous Commission orders. The customer notice disseminated by Carolina Blythe pursuant to Commission order expressly referred to the right of interested parties to become formal parties by intervening pursuant to Commission Rules R1-6, R1-7, and R1-19. Members of the using and consuming public were given an opportunity to intervene in a timely manner in accordance with the Commission's procedures. In the event that one or more of Carolina Blythe's customers had petitioned to intervene in this case, that request would have been routinely allowed in accordance with Commission Rule R1-19(d). The failure of those who now seek to contest the result reached in the Recommended Order to obtain formal party status is not attributable to any deficiency in customer notice or any other action by the Commission or Carolina Blythe. The Public Staff intervened and actively participated in this proceeding on behalf of the using and consuming public, including those who have vigorously contested the appropriateness of the Recommended Order in the manner described above. As a result, the Commission does not find good cause to allow those who seek to except to or request reconsideration of the Recommended Order to intervene out-of-time.

Even so, the Commission does not want those who have so vigorously objected to the rate increase approved in the Recommended Order to think that the Commission failed to properly apply the provisions of the Public Utilities Act in evaluating the merits of Carolina Blythe's request for a rate increase or that they have been unfairly treated. As the Commission has already indicated, the procedures which the Commission must follow and the substantive law which the Commission must apply in evaluating requests for increased rates for utility service are prescribed in the Public Utilities Act, which was enacted by the General Assembly for the purpose of striking a balance between the necessity for allowing regulated utilities such as Carolina Blythe to earn a fair return and the desire of customers for high quality service at the lowest possible rates. As part of this process, the Public Utilities Act provides that a public utility such as Carolina Blythe must generally be allowed to charge rates which are sufficient to give it a reasonable opportunity to earn an profit over and above its reasonable operating expenses. The Commission does not have the statutory authority to deprive a utility of the right to charge a compensatory rate for adequate service; any Commission order which had that result would be subject to reversal in the appellate courts. In view of the fact that the Company had not sought a rate increase for many years, during which time inflation continued to occur, and the fact that the Company decided to purchase water from Brunswick County in an attempt to improve the quality of the service provided to its customers, it is not surprising that Carolina Blythe sought a substantial rate increase in this case. The fact that the Public Staff, after conducting a thorough investigation of the Company's proposal, recommended an increase almost as large as that approved in the Recommended Order indicates that Carolina Blythe had experienced substantial cost increases since 1981 and was entitled to a significant rate increase. Although a number of the protesting customers complained about Carolina Blythe's failure to seek a series of smaller rate increases over the years from 1982 to 1998, nothing in the Public Utilities Act authorizes the Commission to require a utility to act in that manner or allows the Commission to refuse to approve an otherwise justified rate increase on the basis of such logic. The fact that the size of the allowed rate increase hinges, at least in part, upon the fact that Carolina Blythe has decided to purchase the water which it sells to its water customers from Brunswick County instead of drawing that water from its existing wells, a proposal which the Public Staff found to be a prudent response to perceived service quality problems, militates against the adoption of a phase-in mechanism of the type advocated by certain protesting customers. The fact that the stipulated rate increase was approved without a further hearing and the related fact that affected customers did not receive further notice of the stipulation prior to the entry of the Recommended Order are consistent with the provisions of G.S. 62-69(a), which permits the Commission to approve a settlement between all of the formal parties to a particular proceeding utilizing informal proceedings. As a result, none of the arguments advanced by the protesting customers establish the existence of a valid basis for upsetting the rates approved in the Recommended Order.

Admittedly, the rate increase approved in the Recommended Order is a large one, albeit a much smaller one than that which the Company sought in its original application. Even so, Carolina Blythe customers still pay much less for water and sewer service than customers served by other large private water and sewer utilities in North Carolina. For example, while customers served by Carolina Blythe using 4,200 gallons of water per month would pay a water bill of $19.80 and a sewer bill of $16.79 under the provisions of the Recommended Order, similarly-situated customers served by Carolina Water Service would pay $22.83 for water service and $30.55 for sewer service, similarly-situated customers served by Heater Utilities would pay $24.49 for water service and $41.81 for sewer service, similarly-situated customers served by Hydraulics would pay $30.55 for water service (Hydraulics does not operate any sewer systems), and similarly-situated customers served by Bald Head Utilities would pay $36.63 for water service and $46.57 for sewer service. As a result, even after the increase approved in the Recommended Order, the charges for water and sewer service provided by Carolina Blythe are reasonable. At an absolute minimum, the rates approved in the Recommended Order are not out-of-line with those charges by other private water and sewer systems across North Carolina, a fact which should provide solace to those customers who have so vigorously objected to the water and sewer rates which they are now required to pay.

The Commission does not, for the reasons set forth above, believe that those who have protested the Recommended Order have standing to except to or request reconsideration of the rate increase approved in that decision. As a result, the exceptions and protests filed in this case should be, and hereby are, dismissed. In view of the fact that no party with standing to do so filed exceptions to the Recommended Order within the time limitations specified in that document, the Recommended Order became final on October 23, 1999. In order that the affected customers will have notice of the result which the Commission has reached with respect to the issues raised by the protesting customers, the Commission will serve a copy of this order on each person who has corresponded with us about this issue. In view of the fact that the Public Staff does have the legal standing to raise the various issues discussed in its November 17, 1999 filing and the fact that the Commission has not yet had an adequate opportunity to consider and decide those issues, the Commission will enter a further order resolving the existing dispute between the Company and the Public Staff concerning the installation and removal of irrigation meters at a later time.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of December, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mz120199.01

DOCKET NO. W-798, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Bald Head Island Utilities, Inc., Post Office Box 3069, Bald Head Island, North Carolina, for Authority to Increase Rates for Water and Sewer Service on Bald Head Island, Brunswick County, North Carolina	))))))	RECOMMENDED ORDER APPROVING RATE INCREASE

HEARD IN: Village of Bald Head Island Public Safety Building, Bald Head Island, North Carolina, on Monday, May 10, 1999, at 7:00 p.m.; and Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, June 10, 1999, at 10:00 a.m.

BEFORE: Commissioner William R. Pittman

APPEARANCES:

FOR BALD HEAD ISLAND UTILITIES, INC.:

Kenneth M. Kirkman
Post Office Box 3069
Bald Head Island, North Carolina 28461

FOR THE USING AND CONSUMING PUBLIC:

Antoinette R. Wike
Public Staff - North Carolina Utilities Commission
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BY THE HEARING COMMISSIONER: This matter arose upon the filing of an application on December 31, 1998, by Bald Head Island Utilities, Inc. (BHIU, Applicant, or Company) seeking an increase in rates and charges for water and sewer utility service on Bald Head Island in Brunswick County, North Carolina. By Order issued January 26, 1999, the Commission suspended the proposed rates, assigned the matter for hearing, and required customer notice.

A hearing for receiving testimony from public witnesses was held on May 10, 1999, on Bald Head Island. Testifying at that hearing were Nick Fountain, Kitty Henson, Ann Cary Hevener, and Elizabeth Cummins.

The case in chief was heard on June 10, 1999. BHIU presented the direct testimony of George E. Dennis, a Certified Public Accountant and Utility Consultant to BHIU. The Public Staff presented the testimony of David C. Furr, Utilities Engineer - Public Staff Water Division, and Katherine A. Fernald, a Certified Public Accountant and Supervisor, Water Section - Public Staff Accounting Division. The affidavit of Calvin C. Craig, III, Public Utilities Financial Analyst - Public Staff Economic Research Division was entered into the record without objection. BHIU presented the rebuttal testimony of George E. Dennis, James W. Fulton, Jr., Director of Operations for Bald Head Island Management, Inc., and James A. Janovetz, Chief Financial Officer for Bald Head Island Management, Inc.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Hearing Commissioner makes the following

FINDINGS OF FACT

General Matters

1. BHIU is a corporation duly organized under the laws of, and authorized to do business in, the State of North Carolina. It is a franchised public utility providing water and sewer service to customers on Bald Head Island in Brunswick County, North Carolina.

2. BHIU is properly before the Commission, pursuant to Chapter 62 of the General Statutes of North Carolina, for a determination of the justness and reasonableness of its proposed rates and charges.

3. The present and proposed rates are as follows:

	Present Rates	Proposed Rates
Water Utility Service		
Residential:		
Base charge, (zero usage)	$14.00	$17.00
Usage charge, (per 1,000 gallons)	$ 2.75	$ 4.15
Nonresidential:		
Base charge per REU, zero usage	$14.00 ($35 min.)	$17.00 ($42.50 min.)
Usage charge, (per 1,000 gallons)	$ 2.75	$ 4.15

	Present Rates	Proposed Rates
Sewer Utility Service		
Residential: (Flat rate)	$42.00	$ 71.50
Nonresidential	100% of water ($42.00 min.)	100% of water ($ 71.50 min.)

Plant Modification Charge (per residential equivalent unit)

Residential Utility Service		
Water	NA	$ 500.00
Sewer	NA	$4,000.00
Nonresidential Utility Service		
Water	NA	$ 500.00
Sewer	NA	$4,000.00

New Customer Charge

Water	NA	$ 15.00
Sewer	NA	$ 15.00

4. The test period for use in this proceeding is the twelve months ended June 30, 1998.

5. At the end of the test period, BHIU provided water utility service to 578 residential and 75 commercial customers and sewer utility service to 537 residential and 31 commercial customers.

6. At the end of the test period, BHIU had 442 water availability customers and 410 sewer availability customers.

7. The quality of water and sewer utility service provided by BHIU is good.

Rate Base

8. Water utility plant in service at the end of the test period included a new 120 gpm reverse osmosis (RO) water treatment system capable of serving approximately 850 customers and common facilities for future RO system expansion capable of serving a total of 1,719 customers.

9. Water utility plant in service at the end of the test period included excess capacity associated with the RO system of 26.8%.

10. Sewer utility plant in service at the end of the test period included a new Sequence Batch Reactor (SBR) facility capable of serving approximately 656 residential equivalent units (REUs) and common facilities for future SBR expansion capable of serving a total of 1,770 REUs.

11. Sewer utility plant in service at the end of the test period included excess capacity associated with the SBR facility of 49.9%.

12. Water utility plant in service at the end of the test period included water mains capable of serving an additional 770 customers.

13. Water utility plant in service at the end of the test period included excess capacity associated with water mains of 45%.

14. Sewer utility plant in service at the end of the test period included sewer mains capable of serving an additional 460 customers.

15. Sewer utility plant in service at the end of the test period included two main pump stations, which operated as treatment facilities until the SBR was completed and placed in operation, and thirty-two intermediate pump stations.

16. Sewer utility plant in service at the end of the test period included excess capacity associated with sewer mains and lift stations of 48%.

17. It is appropriate to adjust plant in service by removing the cost of excess capacity at the end of the test period in order to match revenues, expenses, and rate base.

18. It is appropriate to reduce accumulated depreciation to remove the portion related to excess capacity.

19. The appropriate depreciation life for other assets acquired in 1987 is 15 years.

20. It is appropriate to adjust accumulated depreciation to reflect a full year of amortization of contributions in aid of construction (CIAC) collected in 1998.

21. The appropriate level of unamortized rate case costs, net of taxes, is $10,797 for combined operations. This total should be allocated to water and sewer operations based on the number of customers.

22. The appropriate level of rate base for use in this proceeding is $1,756,266, of which $771,567 is applicable to water operations and $984,699 is applicable to sewer operations.

Revenues

23. It is appropriate to exclude revenue from water and sewer availability charges because of the adjustments to remove the cost of excess capacity from water and sewer utility plant in service.

24. Total revenue under present rates to be reflected in this proceeding is $668,455, which is determined as follows:

	Water operations	Sewer operations	Combined
Gross service revenue	$271,240	$347,700	$618,940
Other revenue	24,925	24,925	49,850
Bad debt expense	(168)	(167)	(335)
Total	$295,997	$372,458	$668,455

WATER AND SEWER - RATES

Operation and Maintenance Expenses

25. It is appropriate to include a portion of the salary of an employee who was hired after the end of the test period.

26. It is appropriate to recognize a decrease in time worked by other employees when including a portion of the salary of the new employee.

27. Salaries related to availability customers should be removed to be consistent with the treatment of excess capacity and availability revenues.

28. It is inappropriate to include estimated consulting fees of $6,000 in operating and maintenance expenses.

29. It is appropriate to include a portion of management fees paid to an affiliate of BHIU in operating and maintenance expenses.

30. Administrative and office costs related to availability customers should be removed to be consistent with the treatment of excess capacity and availability revenues.

31. It is appropriate to adjust administrative and office expense for customer growth.

32. It is inappropriate to include in rate case expense personnel costs that are being recovered elsewhere.

33. The allocation factors recommended by the Public Staff for operating and maintenance expenses are appropriate.

34. The appropriate level of total operating and maintenance expenses is $471,965, of which $241,153 is applicable to water operations and $230,812 is applicable to sewer operations.

Other Operating Revenue Deductions

35. It is appropriate to reduce depreciation expense to remove the portion related to excess capacity.

36. It is inappropriate to include depreciation expense on items that are fully depreciated as of the end of the test period.

37. It is appropriate to reduce property taxes to remove the portion related to excess capacity.

38. It is inappropriate to include in expenses gross receipts tax related to other revenues.

39. The federal income tax rate should be calculated based on the combined operations for water and sewer.

WATER AND SEWER - RATES

40. The appropriate level of other operating revenue deductions under present rates is $189,607, of which $88,192 is applicable to water operations and $101,415 is applicable to sewer operations.

Overall Cost of Capital

41. The appropriate capital structure for ratemaking purposes in this case consists of 50% debt and 50% equity.

42. The embedded cost of debt is 5.5% and the cost of common equity capital is 11.5%.

43. The overall rate of return which the Company should be allowed the opportunity to earn on its rate base is 8.5%.

Rates, Fees, and Other Matters

44. BHIU's water service rates should be adjusted and increased by amounts which will produce an increase of $124,915 in water operating revenues. This increase will allow BHIU the opportunity to earn an 8.5% overall rate of return on its rate base.

45. BHIU's sewer service rates should be adjusted and increased by amounts which will produce an increase of $70,928 in sewer operating revenues. This increase will allow BHIU the opportunity to earn an 8.5% overall rate of return on its rate base.

46. BHIU's proposed water plant modification fee is not justified and should not be approved.

47. The appropriate water utility service connection fees are $750 for the smallest size meter, $1,000 for a 1-inch meter, and $2,400 for a 2-inch meter.

48. The appropriate fire protection connection fee is $500.

49. The appropriate sewer plant modification fee is $2,750.

50. The appropriate sewer utility service connection fees are $4,300 per grinder pump station required and $500 when no grinder pump station is required.

51. The appropriate new account charges are $15 for water utility service and $15 for sewer utility service, provided that only one charge will be imposed if water and sewer service are established at the same time.

52. The attached Schedule of Rates is fair and reasonable and will allow the Company a reasonable opportunity to earn the authorized rate of return.

WATER AND SEWER - RATES

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 6

The evidence supporting these findings of fact is contained in the Commission's official records and the Company's application. These findings are essentially informational, procedural, and jurisdictional in nature, and involve matters that are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding is contained in the testimony of customer witnesses and of Public Staff witness Furr. None of the customers complained about the quality of utility service. Mr. Furr testified that the utility facilities are generally well maintained and are functioning properly. He stated that improvements in process and proposed in the near future are expected to add to reliability and quality of service. He further stated that, where problems exist, BHIU has corrected or is actively working to eliminate the problem.

Based on the foregoing, the Hearing Commissioner finds and concludes that the quality of water and sewer utility service provided by BHIU is good.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 & 9

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Furr and Company witnesses Fulton and Dennis.

Public Staff witness Furr testified that the Company's new reverse osmosis (RO) water treatment facility is capable of providing service to approximately 850 customers and that some of the structural facilities were built to accommodate additional RO units in the future. According to Mr. Furr, there were 719 water residential equivalent units (REUs) receiving water utility service at the end of the test year.[1] Mr. Furr stated that, based on data provided by the Company, the cost of the existing RO units was $370,982 while the cost of an RO system with double the existing capacity to accommodate 1,000 additional customers would total $649,232. He therefore determined that the cost of the RO units that should be assigned to the 719 REUs at the end of the test year would be [$649,232 / (1,000 + 719)] x 719 = $271,552 or 73.2% of the existing RO units, leaving 26.8% of the existing RO units as excess capacity.

Company witness Fulton testified that the RO system consists of two banks, each of which is capable of producing 60 gpm of filtered water. He further testified that the plant requires two RO banks in order to operate within recommended specifications and that in order to meet treatment guidelines it is expected that additional expansion will be required by 2001. He stated that RO banks, like wells, should not be constantly run. Since RO banks must be put down for periodic maintenance and may experience operation failure, the second RO bank is a backup.

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[1] Mr. Furr testified on cross-examination that he determined the number of residential and commercial customers and REUs from a revenue analysis of the Company's books. Although Company witness Fulton testified that the number of REUs was 718 at the end of the test period, the Public Staff's number will be accepted as the difference is very small.

According to Mr. Fulton, management sizes RO capacity based on meeting a demand for treated water of 400 gpd per REU and the ability to replenish during a 24 hour period water that is consumed from the 400,000 gallon storage tank. He also stated that the Company may need to add two more RO banks to meet peak demand in the year 2000.

In response to Mr. Furr's excess capacity calculation, Mr. Fulton testified that, at 719 REUs demand, the RO system is taxed at 83% based on gallons per day capacity, which would leave an excess capacity of 17%. In addition, Company witness Dennis contended that, based on the number of current customers as a percentage of customers at capacity, the factor would be 1 - 719/850 or 15.4%. Mr. Dennis agreed that there is room in the RO building for two more banks but stated his belief that the cost of two smaller buildings would be substantially greater than the cost of the larger building.

While it may be true that the RO facility is properly designed and may need to be expanded in the next one to two years, the Hearing Commissioner is not convinced that 100% of the two RO banks currently in service are necessary to serve end of period customers. The testimony of both Mr. Furr and Mr. Fulton indicates that the current system is not designed or intended to be completely redundant and that it can serve additional REUs. Furthermore, the testimony of Mr. Furr regarding the existence of common facilities was not seriously contested.

The Hearing Commissioner has carefully considered the evidence regarding the appropriate method for calculating excess capacity associated with the RO system. Mr. Furr presented the only calculations that took into account the cost of common facilities to accommodate plant additions to serve future customers. Based on the evidence presented, the Hearing Commissioner finds and concludes that 26.8% of the RO facility represents capacity in excess of that necessary to serve customers at the end of the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 & 11

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Furr and Company witnesses Fulton and Dennis.

Public Staff witness Furr testified that the new SBR sewer treatment facility operated well below its 200,000 design capacity during the test period. He stated that in August 1998, the peak one day flow was 144,000 gallons and the peak moving three day flow was 123,000 gallons per day, which is equivalent to 403 REUs. He further stated that the facility is capable of providing service to approximately 656 REUs and that some of the structural facilities built are to accommodate additional treatment facility expansions in the future. According to data provided by the Company, the cost of the existing 200,000 SBR facility was $1,775,040 and the cost of an expanded facility with triple that capacity to accommodate a total of 1,770 REUs would be $3,902,040 in current dollars. Mr. Furr therefore determined that the cost of the SBR treatment facility that should be assigned to the 403 peak flow during August 1998 would be $3,902,040 / 1,770 x 403 = $888,431 or 50.1% of the existing SBR facility, leaving 49.9% of the existing SBR facility as excess capacity.

Company witness Fulton testified that with the addition of 50 residences per year plus abandoning mound fields and adding commercial customers, the SBR facility will be at 91% of permitted daily capacity and an addition will be needed during the last quarter of 2000. Mr. Fulton explained that sewer capacity is designed based on a factor of 305 gpd per REU and that when the Company reaches 80% of capacity it needs to be engaged in the design stage and by the time it reaches 90% capacity it should be permitted and have a construction schedule. He also stated that it is more economical to expand in one 200,000 gallon increment than two 100,000 gallon increments.

In response to Mr. Furr's excess capacity calculation, Mr. Fulton testified that the peak load in August 1998 was 70.7% of the 200,000 gpd capacity of the SBR facility, which would leave an excess capacity of 29.3%. In addition, Company witness Dennis contended that, based on the number of current customers as a percentage of customers at capacity, the factor would be 1 - 403/656 or 38.6%.

The issue of excess capacity is essentially the same with respect to both the SBR facility and the RO facility. While it may be true that the SBR facility is properly designed and will need to be expanded by 2001, the Hearing Commissioner is not convinced that 100% of the facility currently in service is necessary to serve end of period customers. The testimony of both Mr. Furr and Mr. Fulton indicates that it can and will serve additional REUs. Furthermore, the testimony of Mr. Furr regarding the existence of common facilities was not seriously contested.

The Hearing Commissioner has carefully considered the evidence regarding the appropriate method for calculating excess capacity associated with the SBR facility. Mr. Furr presented the only calculations that took into account the cost of common facilities to accommodate plant additions to serve future customers. Therefore, based on the evidence presented, the Hearing Commissioner finds and concludes that 49.9% of the SBR facility represents capacity in excess of that necessary to serve customers at the end of the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 & 13

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Furr and Company witnesses Dennis and Fulton.

Public Staff witness Furr testified that there were 719 REUs receiving water utility service and 442 water availability customers at the end of the test period but that as many as 770 additional customers can be served by water mains already installed on Bald Head Island. Based on these figures, he determined that the excess capacity associated with water mains was between 51.7% [770/(719+770)] and 38.1% [442/(719+442)]. Mr. Furr stated that the actual percentage would be somewhere between these two amounts, since mains are available to serve numerous lots that are not charged availability rates for lack of a contract or because the lot has not been sold, and recommended that a reasonable excess capacity adjustment for water mains would be 45%.

Company witness Fulton testified that service could not be provided to all customers of the utility company if all existing water mains had not been constructed. Using a map of the Island on which the lots were color-coded, he identified the lots that were served at the end of the test period, lots by which mains pass, and lots that have no mains in front of them. Company witness Dennis contended that BHIU deserves to be compensated for the cost of serving a cul-de-sac, including a return on the investment in mains in front of empty lots by which those mains must pass in order to provide service on demand. He further testified that BHIU has reached "significant saturation" of water customers taken as a whole.

There is no real factual dispute over whether the mains installed on Bald Head Island are capable of serving many more lots than were served at the end of the test period. The issue is whether the entire cost of mains that were installed to serve both present and future customers should be included in rates charged to current customers. As discussed more fully below, the Hearing Commissioner is of the opinion that the cost of serving future customers should fall either on those customers through availability charges or on the developer himself. The Hearing Commissioner therefore finds and concludes that there is excess capacity associated with water mains and that Mr. Furr's recommendation, which takes availability customers into account, is reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 - 16

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Furr and Company witnesses Fulton and Dennis.

Public Staff witness Furr testified that there are excess sewer mains installed on Bald Head Island. He estimated that at least 460 additional customers can be served by sewer mains already installed. As of the end of the test year, approximately 468 sewer customers were receiving service through mains to the SBR sewer facility, and there were 410 sewer availability customers. Based on the estimate of mains to serve 460 new customers and 468 existing REUs, there would be an excess capacity of approximately 49.6%. Based on 410 availability customers and 468 existing REUs, there would be an excess capacity of approximately 46.7%. The actual percentage would be somewhere between these two amounts, since mains are available to serve numerous lots that are not charged availability rates for lack of a contract or because the lot has not been sold. Mr. Furr testified that a reasonable excess capacity adjustment for sewer mains would be 48%.

Witness Furr testified that there is also excess capacity in sewer lift stations installed on Bald Head Island, since many of the stations are oversized for their current flows. Mr. Furr recommended that the 48% excess capacity adjustment for sewer mains also be made for sewer lift stations. This adjustment would apply not only to capital items classified as lift stations, but also to the treatment facilities that have now been converted to lift stations.

Witness Fulton stated that service could not be provided to all customers of the utility company if all existing sewer mains had not been constructed. He also stated that there are no sewer lift stations in service that are not assisting in providing services to existing and current customers of the sewer company. He stated that to have downsized any of these facilities could not have been allowed from an engineering perspective and would have resulted in the strong likelihood that they would have had to be replaced with larger capacity plant at extensive additional expense. Company witness Dennis also criticized Mr. Furr's adjustment as suggesting that the utility ignore engineering designs and build lift stations that would always run at full capacity in order to get all of its investment in rate base.

As discussed above, the Public Staff has not questioned the prudence of the Company's management or engineering decisions or the reasonableness of its costs. Mr. Furr's adjustment was a ratemaking recommendation. The Hearing Commissioner agrees that a revenue requirement based on the cost of serving end of test period customers should not include capacity that exists to enable the Company to serve future customers. In the absence of any other evidence, the Hearing Commissioner finds and concludes that the same percentage of excess capacity that is assigned to sewer mains should be assigned to sewer lift stations, as recommended by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17 - 22

The evidence supporting these findings is contained in the testimony of Public Staff witnesses Furr and Fernald and of Company witnesses Dennis and Fulton. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding:

WATER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$2,602,924	$2,086,479	$(516,445)
Accumulated depreciation	(448,501)	(369,920)	78,581
Contributions in aid of construction	(995,250)	(995,250)	0
Materials & supply inventory	26,673	26,673	0
Cash working capital	32,873	26,757	(6,116)
Average tax accruals	(15,378)	(12,243)	3,135
Unamortized rate case costs, net of tax	8,035	5,684	(2,351)
Total rate base	$1,211,376	$ 768,180	$(443,196)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$5,529,661	$3,490,547	$(2,039,114)
Accumulated depreciation	(893,555)	(480,587)	412,968
Contributions in aid of construction	(2,081,000)	(2,081,000)	0
Materials & supply inventory	26,673	26,673	0
Cash working capital	31,354	25,464	(5,890)
Average tax accruals	(7,774)	(4,899)	2,875
Unamortized rate case costs, net of tax	8,035	5,113	(2,922)
Total rate base	$2,613,394	$ 981,311	$(1,632,083)

As shown on the preceding tables, the Public Staff and the Company agree on the levels of contributions in aid of construction and materials and supplies inventory for both water and sewer operations. Therefore, the Hearing Commissioner finds and concludes that the levels agreed to by the parties for these items are appropriate for use in this proceeding.

PLANT IN SERVICE

The only difference between the parties concerns the Public Staff's proposed excess capacity adjustment: whether a portion of the cost associated with existing facilities should be excluded from rate base on the grounds that it exceeds the capacity needed to serve customers at the end of the test period. The Company contended, through witness Dennis, that all of these facilities were installed to provide service to existing customers within its franchised area, that the investment in the facilities was necessary and reasonable, that management made prudent decisions in sizing the facilities, and that there is a significant saturation of customers on the water and sewer utility systems. For these reasons, the Company contends, the facilities meet the criteria of G.S. 62-133 for inclusion in rate base.

The Public Staff asserted through witness Furr that a portion of these facilities should be excluded from rate base in order to properly match rate base, revenues, and expenses at the end of the test period. The Public Staff has not challenged the prudence of the Company's decision to install the facilities or the reasonableness of the costs associated with them. Instead, the Public Staff has maintained that revenues and expenses associated with the facilities be taken into account in determining the Company's revenue requirement under the "matching concept".

Company witness Dennis cited G.S. 62-133(b), which states that utility rate base includes the original cost of property "used and useful, or to be used and useful within a reasonable time after the test period, in providing the service . . . ." He neglected, however, to address the "matching concept" until it was brought to his attention on cross-examination. That concept, as stated by the North Carolina Supreme Court in *State ex rel. Util. Comm. v. Carolina Water Service*, 328 N.C. 299, 304, 401 S.E.2d 353, 355 (1991), is as follows:

> Matching requires that future revenues and expenses be matched with the part of the cost of a plant put in the rate base which is to serve future customers. Its purpose is to prevent present customers from paying for that portion of a plant that will serve only future customers.

The matching concept was further elucidated in *State ex rel. Utili. Comm. v. Public Staff*, 333 N.C. 195, 424 S.E.2d 133 (1993). While the Court rejected the Public Staff's argument that a utility's plant investment should be exactly equal to current customer demand, it reversed and remanded the Commission's order, saying that it appeared "to match revenues from present customers with the cost of plant built to serve both present customers and additional future customers . . . ." *Id.* at 209, 424 S.E.2d at 141. The Court directed that revenues be adjusted "on a pro forma basis for whatever 'capacity allowance' is then determined appropriate under the 'used and useful' standard." *Id.*

The evidence in this case shows that the RO and SBR systems can serve more customers than they did at the end of the test period. The evidence also shows that the facilities housing these systems include common facilities that can accommodate expansion to serve additional customers in the future. Under the approach to matching upheld by Court in the cases cited, the full cost of these facilities may not be included in rate base unless pro forma adjustments to revenues and expenses are also included. Even a capacity allowance to reflect anticipated near-term demand requires an adjustment to reflect the revenues and expenses associated with that demand. The Company has not proposed such adjustments in this case. Thus, only the Public Staff's position, which excludes the plant associated with excess capacity, comports with the matching concept. The Hearing Commissioner is unable to determine from the evidence presented which approach would produce the greater revenue requirement, matching at the end of the test period or matching for future growth.

Company witness Dennis suggested that the Commission is prohibited from excluding certain plant from rate base on the grounds that it was included in prior cases without objection from the Public Staff. Mr. Dennis also suggested that applying an excess capacity adjustment to plant that was in service at the time of the last rate case could constitute retroactive ratemaking. Each of these arguments is fatally flawed, as pointed out in the Public Staff's cross-examination. First, according to the Public Staff's testimony in BHIU's prior rate case, with which Mr. Dennis was familiar, the Public Staff made calculations assuming excess capacity in water and sewer mains and determined that such an adjustment would have no impact on the rates requested. Second, the doctrine of res judicata, to which Mr. Dennis apparently was referring, does not apply to Commission decisions in the exercise of its ratemaking power since that is a legislative rather than a judicial function. *State ex rel. Util. Comm. V. Thornburg*, 325 N.C. 463, 468, 385 S.E.2d 451, 454 (1989). Third, under the well-established definition, with which Mr. Dennis was vaguely familiar, retroactive ratemaking "occurs when 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 such past use." *State ex rel. Util. Comm. v. Edmisten*, 291 N.C. 451, 468, 232 S.E.2d 184, 194 (1978).

The Hearing Commissioner recognizes that, as Mr. Dennis testified, all but 50 of the lots on Bald Head Island are in the hands of individual owners and that BHIU does not have availability contracts with all of those lot owners. This, however, does not justify allocating the utility's unrecovered costs entirely to utility customers. The developer, Bald Head Island Limited, also has a role. As demonstrated by a sampling of contracts filed with the Commission by various utilities and cited by the Public Staff, it is not uncommon for developers to contribute the entire cost of utility plant and to recover that cost elsewhere. Indeed, Mr. Dennis himself recognized this when he testified for the Public Staff in BHIU's initial franchise case in 1984. Asked whether the developer would fail to recover his investment for ratemaking purposes if tap on fees were inadequate to recover the entire cost of plant in service, Mr. Dennis stated that it was possible that the developer would "more than recover his entire investment on the island through a combination of tap-on fees and revenues from lot sales." There is no reason to believe that this statement is not still true, but, even if it is not, the law does not require current ratepayers to bear the burden of costs incurred to serve future customers unless those costs are matched to revenues from future customers as well. Any risk that future customers, and therefore future cost recovery, will not materialize properly belongs on the developer and not on current ratepayers. The Hearing Commissioner therefore find and concludes that the Public Staff's excess capacity adjustments are appropriate in this case.

ACCUMULATED DEPRECIATION

The difference in the levels of accumulated depreciation recommended by the Company and the Public Staff is composed of the following items:

Item	Water	Sewer
Accumulated depreciation related to excess capacity	$ 77,233	$409,782
Different life used on common plant item	(55)	(54)
Difference in amortization of CIAC	1,403	3,240
Total	$ 78,581	$412,968

Excess capacity

The first difference between the parties results from the adjustment made by the Public Staff to remove excess capacity from plant in service. Consistent with the finding that it is appropriate to remove excess capacity from plant in service, the Hearing Commissioner concludes that the corresponding adjustment should be made to accumulated depreciation.

Different life on common plant item

The next difference between the parties pertains to the appropriate life for other assets acquired in 1987. Although the Company did not contest this issue at the hearing, in its revised schedules filed on June 21, 1999, the Company depreciated this item over 20 years, versus the 15 years used by the Public Staff. The Public Staff indicated in its schedules that its 15 year life was based on the prior rate case, Docket No. W-798, Sub 5. Based on the foregoing, the Hearing Commissioner finds and concludes that the appropriate life for this item is 15 years.

Difference in amortization of CIAC

The remaining difference between the parties relates to the amortization of CIAC. Although the Company did not contest the Public Staff's methodology at the hearing, in its revised schedules, the Company did not reduce accumulated depreciation for the amortization of CIAC collected during 1998. The Hearing Commissioner finds and concludes that it is appropriate to reduce accumulated depreciation for the amortization of this CIAC. Since a proforma adjustment has been made to reflect a full year of the amortization expense related to this item in depreciation expense, it is necessary to make a matching adjustment to accumulated depreciation.

Summary conclusion

Based on the foregoing, the Hearing Commissioner finds and concludes that the appropriate level of accumulated depreciation for use in this proceeding is $850,507, of which $369,920 is applicable to water operations and $480,587 is applicable to sewer operations.

CASH WORKING CAPITAL AND AVERAGE TAX ACCRUALS

The Company and the Public Staff have recommended different amounts of cash working capital and average tax accruals as a result of having recommended different levels of expenses and certain taxes. Based upon conclusions regarding the appropriate levels of expenses, the Hearing Commissioner determines that the appropriate levels of cash working capital are $30,144 for water operations and $28,852 for sewer operations. Also, based upon conclusions regarding the appropriate levels of certain taxes, the Hearing Commissioner determines that the appropriate levels of average tax accruals are $12,243 for water operations and $4,899 for sewer operations.

UNAMORTIZED RATE CASE COSTS, NET OF TAXES

The final component of rate base on which the parties disagree is unamortized rate case costs, net of taxes. This difference results from (1) the different levels of rate case costs recommended by the parties; and (2) the difference in allocation factors used in allocating this item between water and sewer operations. First, based on the conclusions in this Order concerning the level of rate case costs, the Hearing Commissioner finds and concludes that the appropriate level of unamortized rate case costs, net of taxes, is $10,797 for combined operations.

The next question is how should this item be allocated between water and sewer operations. The Public Staff allocated this cost based on the number of customers. Although the Company did not contest the Public Staff's allocation methodology at the hearing, it allocated these costs 50% to water operations and 50% to sewer operations in its revised schedules. The Hearing Commissioner finds and concludes that it is appropriate to allocate these costs between water and sewer operations based on the number of customers. This is consistent with the treatment of these costs in other cases. Furthermore, the Company did not provide any evidence supporting its allocation factor.

Based on the foregoing, the appropriate level of unamortized rate case costs, net of taxes, is $10,797, of which $5,684 should be allocated to water operations and $5,113 should be allocated to sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Hearing Commissioner finds and concludes that the appropriate level of rate base for use in this proceeding is $1,756,266, of which $771,567 is applicable to water operations and $984,699 is applicable to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 & 24

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Furr and Company witness Dennis.

The only difference between the parties relates to availability revenues. Public Staff witness Furr testified that revenues associated with availability charges had been removed from the revenue requirement calculations as a result of his excess capacity adjustments to utility plant in service. He explained that availability charges cover part of the carrying cost of the facilities that have been installed but are not needed to serve current customers. Company witness Dennis agreed that the excess capacity adjustments necessitated removal of availability revenues, while disagreeing emphatically with the excess capacity adjustments themselves.

The Hearing Commissioner recognizes that the Company is able to collect availability charges only from lot owners with whom it has availability contracts and that the majority of the lots on Bald

Head Island were subdivided by a party or parties unrelated to the current developer and its utility affiliate. The Hearing Commissioner also recognizes that BHIU is obligated to provide water and sewer utility service to all who apply within its franchise area, even if they are widely scattered. As discussed more fully in connection with Finding of Fact No. 17, however, the cost and risk of development must be allocated appropriately among current customers, availability customers, and the developer. There is no justification, in either law or policy, for placing that cost and risk on current customers rather than the developer in the absence of sufficient availability contracts. The Public Staff's excess capacity adjustment ensures that the proper allocation is made in this case. The removal of availability revenues from the revenue requirement calculation is therefore necessary and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 25 - 34

The evidence supporting these findings of fact is contained in the testimony of Public Staff witnesses Furr and Fernald and of Company witnesses Dennis, Janovetz and Fulton.

The difference in the levels of operating and maintenance (O&M) expenses recommended by the parties relates to the following items:

Item	Water	Sewer
Salary for new employee	$ (7,488)	$ (7,488)
Salaries related to availability customers	(1,223)	(1,222)
Difference in salaries due to number of hours	1,894	1,893
Consulting fees	(3,158)	(2,842)
Management fees	(36,000)	(36,000)
Admin. & office costs related to availability customers	(339)	(338)
Customer growth on admin. & office expense	56	44
Rate case expense - Company personnel costs	(2,017)	(1,815)
Differences in allocations of:		
Handling fees	655	(655)
Telephone	66	(66)
Electric power	(1,745)	1,745
Professional fees	(50)	50
Administrative and office expense	114	(114)
Rate case expense	308	(308)
Miscellaneous expense	(1)	1
Total difference in O&M expenses	$(48,928)	$(47,115)

Salary for new employee

The first area of difference between the parties pertains to the salary for a new employee who was hired in March 1999.

Public Staff witness Fernald testified that the employee was not necessary to provide service to the customers during the test year and therefore his salary should be excluded from test year expenses. Furthermore, she stated that if the employee was included, corresponding adjustments would need to be made to capitalize part of the employee's time and reflect any decrease in the time worked by other employees.

Company witness Fulton testified that the employee was hired because of a new requirement effective July 1, 1999, requiring new daily inspections of sewer system pump stations. On cross-examination, Mr. Fulton agreed that the source of the inspection requirement was from a policy letter, dated May 13, 1998, from Preston Howard to permit holders and that this policy includes a point system that is used in the event of a spill to determine if a fine is warranted. Mr. Fulton also agreed that the daily inspections of pump stations after July 1, 1999, represents four of a possible 100 points in the evaluation and that bonus points are awarded for a well operated utility.

While it appears that the daily inspecton of pump stations may only be a part of an overall policy and scoring system and not a stand-alone requirement, the Hearing Commissioner recognizes that utilities must comply with the requirements of other agencies and is not persuaded by the evidence presented that the new employee was not needed. The Hearing Commissioner does, however, agree with the Public Staff that the inclusion of this employee's salary would necessitate other adjustments to arrive at a reasonable and representative level. However, neither party has proposed such adjustments nor is there any evidence of record to accurately calculate such adjustments. Therefore, the Hearing Commissioner will allow 2/3 of the salary of the new employee as a part of operating and maintenance expense in this proceeding in order to arrive at a reasonable and representative level. The Hearing Commissioner further concludes that the parties may litigate such percentage allocation in future general rate cases.

Salaries related to availability customers

The next area of disagreement concerns the salaries related to availability customers. The Hearing Commissioner has found it appropriate to remove excess capacity from plant in service and availability revenues from service revenues. Therefore, in order to properly match expenses with investment and revenues, it is necessary to remove the salaries related to availability customers from O&M expenses.

Difference in salaries related to number of hours

The remaining difference in salaries and wages relates to the different level of hours worked used by the parties in their calculations. The Public Staff used the hours worked during the test year, while the Company used a reduced level of hours on the assumption that each employee worked 2,080 per year (or 40 hours per week). In her prefiled testimony, Public Staff witness Fernald stated that if the new employee's salary is included, a portion of his time should be capitalized and any decrease in time worked by other employees should be recognized. The Hearing Commissioner agrees.

Consulting fees

The parties disagree on the inclusion of consulting fees in professional fees. Public Staff witness Fernald testified that the Company made a proforma adjustment in its application to include $6,000 that it anticipated will be paid to an outside accountant for future consulting services. Ms. Fernald further testified that she removed these estimated consulting fees since they relate to services that are only speculative at this time. She stated that it would be inappropriate to include an amount for outside accounting services that were not being provided during the test year without making corresponding adjustments to remove salaries or other professional fees for individuals doing similar work during the test year. Finally, Ms. Fernald testified that some of these fees are for services such as making recommendations concerning future changes in rates, which would not be an annual expense but would be included in rate case expense whenever the future rate change is requested.

Company witness Dennis testified in rebuttal that the fees were not speculative and that the contractual amount is for $500 per month. According to Mr. Dennis, it is anticipated that the average number of hours will be between 6 and 8 hours per month and the $500 is anticipated to approximate those 6 to 8 hours using his current hourly rate of $75. Mr. Dennis further clarified that he will not begin providing the services until after the current rate case proceeding is completed. Mr. Dennis also contended that his work will not be duplicating work done by any other individuals at this time and that it is exclusive of any work on future rate case proceedings.

The Hearing Commissioner finds and concludes that the consulting fees should not be included in the cost of providing utility service. Although witness Dennis disagreed with the Public Staff's characterization of these costs, it is clear from his testimony that they will not be incurred until after this proceeding is closed, at the earliest, and are speculative at best. Furthermore, the record indicates that many of the services covered in the consulting agreement are already being performed by Company personnel. These include reviewing monthly financial statements for BHIU, entering monthly financial information into the format necessary to monitor profitability of the Company from a ratemaking standpoint, and reviewing tax returns, annual reports, budgets, and other filings as necessary. Company witness Janovetz testified that he reviews and analyzes the utility's financial statements, is involved in the preparation of its budgets and tax returns, and evaluates its operations and profitability. Company witness Fulton also testified that he is involved in most of these activities. Finally, it is impossible to determine at this time whether any adjustments are necessary, for example, to capitalize or amortize some of these costs, to reclassify items to regulatory expense, or to remove salaries for employees already doing similar work. Since there is no evidence as to when BHIU will start incurring these costs, if at all, what the actual level of the costs will be, and what portion of the costs should be included in operating expenses, the Hearing Commissioner finds and concludes that they are indeed speculative and should be excluded from this proceeding.

Management fees

The parties disagree on the level of management fees to be included in utility expenses. Public Staff witness Fernald testified that she had removed the $72,000 of management fees from operating expenses. Ms. Fernald testified that, during her investigation, she found that the amount of management fees being charged to Bald Head Island Limited alone was greater than the management company costs, leaving no remaining balance to be recovered from the utility. In her opinion, if Bald

Head Island Management has made the decision to assign to the development company management fees that exceed 100% of the management costs, it should not also recover a portion of those management costs from water and sewer customers through utility rates. Ms. Fernald also testified that she had several other concerns relating to management fees, among them being that a portion of any management fees that are allowed should be capitalized and an adjustment should be made to remove the portion related to availability rates.

Witness Janovetz testified that Bald Head Island Management, Inc., is the company that manages Bald Head Island Utilities. It has an accounting staff of approximately 15 people, a human resources department, a legal department, a planning department, and a management team. He further testified that, based on a survey of Bald Head Island Management employees, he determined that 2.77% of their time was devoted to the utility company, which equated to an annual payroll cost of $72,351. The management fee was then established as $72,000.

Witness Dennis testified that Bald Head Island Management, Inc., began charging Bald Head Island Utilities a management fee in 1988 in order to recover a reasonable level of general and administrative costs incurred on behalf of Bald Head Island Utilities. He disagreed with the Public Staff's adjustments, stating that the profits earned by Bald Head Island Management had nothing to do with the utility company and that those profits were based upon services provided to nonregulated private entities. Mr. Dennis also testified that other utility companies, such as Carolina Water and Heater, allocate a portion of their general and administrative costs to various companies. Witness Dennis further testified that there are no employees of Bald Head Island Utilities who perform similar duties. The only employees on the payroll for Bald Head Island Utilities are operational salaries for water and sewer maintenance personnel.

The Hearing Commissioner notes that no party questioned the fact that actual general and administrative services were provided to Bald Head Island Utilities. Furthermore, the evidence presented does not establish that these costs were unreasonable or imprudent or unrepresentative of the fair value of service being provided by Bald Head Island Management to Bald Head Island Utilities. Accordingly, the Hearing Commissioner concludes that Bald Head Island Utilities should be allowed to recover a reasonable and representative amount for services provided by Bald Head Island Management. However, the Hearing Commissioner also notes the Public Staff's testimony that a portion of management fees, if allowed, should be capitalized since some of the services listed under the management contract relate to capital projects. Further, if an amount was allowed for management fees, an adjustment should also be made to remove the portion related to availability customers in order to be consistent with the treatment of excess capacity and availability revenues. Based thereon, the Hearing Commissioner will make an adjustment to management fees so as to allow 2/3 thereof in the Company's cost of service in this proceeding as a portion of operating and maintenance expenses. The Hearing Commissioner concludes that this adjustment is necessary to exclude a portion of management fees associated with capital items and availability customers in the absence of any evidence in the record to more accurately identify such associated amounts. The Hearing Commissioner further concludes that the parties may litigate such percentage allocation in future general rate cases.

Accordingly, the Hearing Commissioner finds and concludes that the appropriate level of management fees for use in this proceeding is $48,000, of which $24,000 is applicable to water operations and $24,000 is applicable to sewer operations.

Admin. & office costs related to availability customers

The next area of disagreement concerns the administrative and office costs related to availability customers. The difference between the parties relates to their differing positions on excess capacity and availability revenues. Elsewhere in this Order, the Hearing Commissioner has found that it is appropriate to remove excess capacity from plant in service and availability revenues from service revenues. Therefore, in order to properly match expenses with investment and revenues, it is necessary to remove the administrative and office expense related to availability customers from O&M expenses.

Customer growth on admin. & office expense

Although the Company did not contest the Public Staff's adjustment to administrative and office expense for customer growth at the hearing, it omitted this adjustment in its amount of administrative and office expense in its schedules filed on June 21, 1999. The Hearing Commissioner finds and concludes that it is appropriate to adjust administrative and office expense for customer growth. As shown on the Company's schedule, this expense item primarily consists of postage, which is directly related to customer growth.

Rate case expense - Company personnel costs

The parties disagree on the level of rate case expense to be included in this proceeding. Public Staff witness Fernald testified that the Company included $9,375 of Company personnel costs in total rate case costs. Ms. Fernald further testified that she removed this item since the salaries for Company personnel are already being recovered elsewhere. In his rebuttal testimony, Company witness Janovetz presented Janovetz Rebuttal Exhibit I which updated the Company personnel costs to $11,494.

The Hearing Commissioner agrees with the Public Staff that it is inappropriate to include Company personnel costs in rate case expense since these costs are already being recovered elsewhere. As shown on Janovetz Rebuttal Exhibit I, some of these costs are for Ken Bowling and Cathy Briggs. These individuals are employees of the utility company and their salaries are included in salaries and wages in this case. The remaining employees are Bald Head Island Management employees. The salaries for these employees are included in the management costs. As previously discussed in this Order, the Hearing Commissioner has determined that a reasonable and respresentative level of management costs should be included in this proceeding. Since these salaries are being recovered elsewhere, it is inappropriate to also include these salaries in rate case expense. Therefore, the Hearing Commissioner finds and concludes that the appropriate level of total rate case costs is $23,533. The parties agree that these costs should be amortized over three years. Based on this three year amortization period, the appropriate level of rate case expense for use in this proceeding is $7,844 for combined operations.

Differences in allocations

The last difference between the parties pertains to the allocation of certain O&M expenses between water and sewer operations. At the hearing, the Company did not contest the allocation factors used by the Public Staff. However, in its revised exhibits filed on June 21, 1999, the Company used different allocation factors for handling fees, telephone, electric power, professional fees, administrative and office expense, and rate case expense. There was also an immaterial rounding difference between the parties in the allocation of miscellaneous expense.

The Hearing Commissioner finds and concludes that the allocation factors recommended by the Public Staff are the appropriate factors for use in this proceeding. The Company did not provide any evidence supporting the use of its allocation factors for these items, while the Public Staff's allocation of these costs is based on the best information available. For example, electric power was based on a review of the actual invoices.

Other O & M expenses

The Public Staff and the Company agree on the levels of cost of sales, benefits, uniforms, transportation, purchased water and sewer, repairs and maintenance, supplies, chemicals, testing fees, insurance, equipment rental, and taxes, licenses. Accordingly, the Hearing Commissioner finds and concludes that the levels agreed to by the parties for these items are appropriate for use in this proceeding.

Summary conclusion

Based on the foregoing, the Hearing Commissioner finds and concludes that the appropriate level of operations and maintenance expenses is $471,965, as follows:

Item	Water	Sewer	Total
Cost of sales	$ 13	$ 12	$ 25
Salaries and wages	89,317	89,317	178,634
Benefits	8,566	8,565	17,131
Uniforms	2,114	2,113	4,227
Transportation	12,059	12,058	24,117
Handling fees	1,647	337	1,984
Telephone	2,458	2,324	4,782
Purchased water and sewer	941	941	1,882
Electric power	28,386	31,875	60,261
Repairs and maintenance	17,199	17,030	34,229
Supplies	7,838	4,147	11,985
Chemicals	16,539	584	17,123
Professional fees	1,194	1,074	2,268
Testing fees	1,090	5,412	6,502
Management fees	24,000	24,000	48,000
Insurance	15,291	16,725	32,016

Administrative and office	2,333	2,093	4,426
Equipment rental	2,186	2,185	4,371
Taxes, licenses & permits	1,468	3,920	5,388
Rate case expense	4,129	3,715	7,844
Miscellaneous	2,385	2,385	4,770
Total O&M expenses	$241,153	$230,812	$471,965

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 35 - 40

The evidence supporting these findings of fact is contained in the testimony of Public Staff witnesses Furr and Fernald as well as Company witnesses Dennis and Fulton. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of other operating revenue deductions under present rates:

WATER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation	$ 66,935	$ 50,519	$(16,416)
Property tax	22,220	18,025	(4,195)
Payroll taxes	8,532	8,532	0
Regulatory fee	0	266	266
Gross receipts tax	12,934	10,850	(2,084)
State income tax	0	0	0
Federal income tax	0	0	0
Total other operating deductions	$110,621	$ 88,192	$(22,429)

SEWER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation	$147,116	$ 68,200	$(78,916)
Property tax	0	0	0
Payroll taxes	8,532	8,532	0
Regulatory fee	0	335	335
Gross receipts tax	24,675	20,862	(3,813)
State income tax	0	3,068	3,068
Federal income tax	0	6,114	6,114
Total other operating deductions	$180,323	$107,111	$(73,212)

As shown on the preceding tables, the Public Staff and the Company agree on the level of payroll taxes for both water and sewer operations. Therefore, the Hearing Commissioner finds and concludes that the level of payroll taxes agreed to by the parties is the appropriate level for use in this proceeding.

DEPRECIATION EXPENSE

The difference in the levels of depreciation expense recommended by the Company and the Public Staff is composed of the following items:

Item	Water	Sewer
Depreciation expense related to excess capacity	$(14,404)	$(76,829)
Depreciation expense on fully depreciated items	(2,017)	(2,092)
Different life used on common plant item	5	5
Total	$(16,416)	$(78,916)

Excess capacity

The first difference between the parties relates to the adjustment made by the Public Staff to remove excess capacity from plant in service. Consistent with the finding elsewhere in this Order that it is appropriate to remove excess capacity from plant in service, the Hearing Commissioner finds and concludes that the corresponding adjustment should be made to depreciation expense.

Depreciation expense on fully depreciated items

The next difference between the parties relates to depreciation expense on fully depreciated items. Although the Company did not contest this issue at the hearing, in its revised schedules filed on June 21, 1999, it included depreciation expense on plant items that were fully depreciated at the end of the test period. The Hearing Commissioner finds and concludes that it is inappropriate to include depreciation expense on these items in expenses since this depreciation expense is a nonrecurring item. To do otherwise would result in the Company's recovering through rates depreciation expense that it is no longer incurring.

Different life on common plant item

The final difference between the parties pertains to the appropriate life for other assets acquired in 1987. As discussed elsewhere in this Order, the Hearing Commissioner finds and concludes that the appropriate life for this item is 15 years based on the prior rate case.

Summary conclusion

Based on the foregoing, the appropriate level of depreciation expense for use in this proceeding is $118,719, of which $50,519 relates to water operations and $68,200 relates to sewer operations.

PROPERTY TAX

The only difference in the parties' levels of property tax relates to the adjustment made by the Public Staff to remove property taxes related to excess capacity. The Hearing Commissioner has found and concluded that it is appropriate to remove excess capacity from plant in service and availability revenues from service revenues. Therefore, in order to properly match expenses with investment and revenues, it is necessary to remove property taxes related to excess capacity. To do otherwise would result in current customers paying for costs related to plant necessary to serve future customers.

REGULATORY FEE

The Company and the Public Staff are recommending different amounts of regulatory fees due to the differing levels of operating revenues and the fact that the Company did not calculate regulatory fees under present rates on its schedules. Based upon the conclusions in this Order regarding the appropriate level of operating revenues, the Hearing Commissioner finds and concludes that the appropriate level of regulatory fee for use in this proceeding is $601, of which $266 is applicable to water operations and $335 is applicable to sewer operations.

GROSS RECEIPTS TAX

The next area of difference between the parties relates to gross receipts tax. First, although the Company did not contest the Public Staff's methodology in calculating gross receipts tax at the hearing, in its revised schedules filed on June 21, 1999, the Company included gross receipts tax on other revenues and bad debt expense. In its prefiled testimony, the Public Staff only included gross receipts tax on service revenues. The Hearing Commissioner agrees with the Public Staff that gross receipts tax should only be calculated on service revenues. As shown on Fernald Exhibit I, other revenues contain revenues from services such as equipment rental and port-o-john rental. The prices charged for these services are not regulated by this Commission and, therefore, the Company is not paying gross receipts tax on these items.

The remaining difference between the parties relates to the differing levels of service revenues recommended by the parties. Based upon the conclusions reached in this Order regarding the appropriate level of service revenues, the Hearing Commissioner finds and concludes that the appropriate level of gross receipts tax is $31,712, of which $10,850 is applicable to water operations and $20,862 is applicable to sewer operations.

STATE INCOME TAX

The Company and the Public Staff are recommending different levels of state income tax due to the differing levels of revenues and expenses recommended by each party. Based upon the conclusions in this Order regarding the levels of revenues and expenses, the Hearing Commissioner finds and concludes that the appropriate level of state income tax for use in this proceeding is $1,165, all of which is related to sewer operations.

FEDERAL INCOME TAX

The first area of disagreement between the parties is the method to use in calculating federal income taxes. The Public Staff calculated federal income taxes using the federal income tax rate for the combined operations. Although the Company did not contest the Public Staff's method at the hearing, in its revised schedules filed on June 21, 1999, it calculated federal income taxes based on water and sewer operations separately. The Hearing Commissioner finds and concludes that the federal income tax rate should be based on combined operations due to the graduated tax rates. The remaining difference between the parties is due to the differing levels of revenues and expenses recommended by each party. Based upon the conclusions in this Order regarding the levels of revenues and expenses, the Hearing Commissioner finds and concludes that the appropriate level of federal income tax for use in this proceeding is $2,321, all of which is related to sewer operations.

SUMMARY CONCLUSION

Based on the foregoing, the Hearing Commissioner finds and concludes that the appropriate level of other operating revenue deductions under present rates is $189,607, of which $88,192 is applicable to water operations and $101,415 is applicable to sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 41 - 43

The evidence supporting these findings of fact is contained in the affidavit of Public Staff witness Craig and the testimony and exhibits of Company witness Dennis. The parties agree on the appropriate capital structure and cost rates to be used in this proceeding. Therefore, the Hearing Commissioner finds and concludes that the capital structure and cost rates agreed upon by the parties are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 44 & 45

The following schedules summarize the gross revenues and rate of return that the Company should have a reasonable opportunity to achieve based upon the increase approved in this Order. These schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions in this Order.

SCHEDULE I

BALD HEAD ISLAND UTILITIES, INC.
DOCKET NO. W-798, SUB 8
STATEMENT OF OPERATING INCOME FOR RETURN
WATER OPERATIONS
For the Twelve Months Ended June 30, 1998

Item	Present Rates	Increase Approved	After Approved Increase
Operating revenues:			
Service revenues	$271,240	$124,915	$396,155
Other revenues	24,925	0	24,925
Bad debt expense	(168)	0	(168)
Total operating revenues	295,997	124,915	420,912
Operating revenue deductions:			
Operating and maintenance expenses	241,153	0	241,153
Depreciation	50,519	0	50,519
Property tax	18,025	0	18,025
Payroll taxes	8,532	0	8,532
Regulatory fee	266	113	379
Gross receipts tax	10,850	4,996	15,846
State income tax	0	4,567	4,567
Federal income tax	0	16,303	16,303
Total operating revenue deductions	329,345	25,979	355,324
Net operating income for return	$ (33,348)	$ 98,936	$ 65,588

SCHEDULE II

BALD HEAD ISLAND UTILITIES, INC.
DOCKET NO. W-798, SUB 8
STATEMENT OF ORIGINAL COST RATE BASE
WATER OPERATIONS
For the Twelve Months Ended June 30, 1998

Item	Amount
Plant in service	$2,086,479
Accumulated depreciation	(369,920)
Contributions in aid of construction	(995,250)
Materials & supply inventory	26,673
Cash working capital	30,144
Average tax accruals	(12,243)
Unamortized rate case expense	5,684
Original cost rate base	$ 771,567
Rates of return:	
Present	-4.32%
Approved	8.50%

WATER AND SEWER - RATES

SCHEDULE III

BALD HEAD ISLAND UTILITIES, INC.
DOCKET NO. W-798, SUB 8
STATEMENT OF CAPITALIZATION AND RELATED COSTS
WATER OPERATIONS
For the Twelve Months Ended June 30, 1998

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long term debt	50.00%	$385,783	5.50%	$ 21,218
Common equity	50.00%	385,784	-14.14%	(54,566)
Total	100.00%	$771,567		$ (33,348)
		PROPOSED RATES		
Long term debt	50.00%	$385,783	5.50%	$ 21,218
Common equity	50.00%	385,784	11.50%	44,365
Total	100.00%	$771,567		$ 65,583

SCHEDULE IV

BALD HEAD ISLAND UTILITIES, INC.
DOCKET NO. W-798, SUB 8
STATEMENT OF OPERATING INCOME FOR RETURN
SEWER OPERATIONS
For the Twelve Months Ended June 30, 1998

Item	Present Rates	Increase Approved	After Approved Increase
Operating revenues:			
Service revenues	$347,700	$70,928	$418,628
Other revenues	24,925	0	24,925
Bad debt expense	(167)	0	(167)
Total operating revenues	372,458	70,928	443,386
Operating revenue deductions:			
Operating and maintenance expenses	230,812	0	230,812
Depreciation	68,200	0	68,200
Property tax	0	0	0
Payroll taxes	8,532	0	8,532
Regulatory fee	335	64	399
Gross receipts tax	20,862	4,256	25,118
State income tax	1,165	4,662	5,827
Federal income tax	2,321	18,481	20,802
Total operating revenue deductions	332,227	27,463	359,690
Net operating income for return	$ 40,231	$ 43,465	$ 83,696

WATER AND SEWER - RATES

SCHEDULE V

BALD HEAD ISLAND UTILITIES, INC.
DOCKET NO. W-798, SUB 8
STATEMENT OF ORIGINAL COST RATE BASE
SEWER OPERATIONS
For the Twelve Months Ended June 30, 1998

Item	Amount
Plant in service	$3,490,547
Accumulated depreciation	(480,587)
Contributions in aid of construction	(2,081,000)
Materials & supply inventory	26,673
Cash working capital	28,852
Average tax accruals	(4,899)
Unamortized rate case expense	5,113
Original cost rate base	$ 984,699
Rates of return:	
Present	4.09%
Approved	8.50%

SCHEDULE VI

BALD HEAD ISLAND UTILITIES, INC.
DOCKET NO. W-798, SUB 8
STATEMENT OF CAPITALIZATION AND RELATED COSTS
SEWER OPERATIONS
For the Twelve Months Ended June 30, 1998

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long term debt	50.00%	$492,349	5.50%	$27,079
Common equity	50.00%	492,350	2.67%	13,152
Total	100.00%	$984,699		$40,231
		PROPOSED RATES		
Long term debt	50.00%	$492,349	5.50%	$27,079
Common equity	50.00%	492,350	11.50%	56,620
Total	100.00%	$984,699		$83,699

WATER AND SEWER - RATES

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 46 - 50

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Furr and Company witness Dennis.

The Company requested a new water plant modification fee of $500 to offset the capital cost of water production and treatment facilities. Public Staff witness Furr testified, however, that no plant modification fee is justified because of the large amount of plant cost being recovered through rates, even after adjustment for excess capacity. He emphasized that plant investment should be recovered either through on-going rates or through CIAC but not both, stating that in this case the requested plant modification fees would result in over-recovery of plant investment.

The Company did not request changes in its current water service connection fees, which include a connection charge of $1,750 for the smallest size meter. Mr. Furr stated that, since the cost of actually proving a water connection using the smallest meter is $750, the remainder of the connection charge would have been used to offset some of the cost of mains and production facilities, which is the purpose of the proposed plant modification fee. Therefore, he recommended that the water connection fee for the smallest size meter be reduced to $750 and that fees for larger size meters be set at $1,000 for a 1-inch meter and $2,400 for a 2-inch meter.

Company witness Dennis provided an exhibit showing calculations in support of the proposed water plant modification fee using what he referred to as an alternate method.
Upon review of this exhibit, the Hearing Commissioner is of the opinion that the calculation significantly overstates the amount of the current RO facility to be recovered through the plant modification fee, noting that the amounts used for RO facility expansion assume a 5% inflation rate and that there is no adjustment to remove plant being recovered through on-going rates. Mr. Furr's calculation, on the other hand, which was updated and filed as Revised Furr Exhibit No. 9 utilizes the correct amounts to be recovered and makes adjustments for plant that is being recovered through on-going rates. The calculation shows, and the Hearing Commissioner agrees, that the water plant modification fee is not justified.

Mr. Dennis also provided a schedule to support the existing water utility connection charge of $1,750. This calculation, however, included the cost for mains which Mr. Furr included in his evaluation of the plant modification fees. Since Mr. Furr's evaluation for plant modification fees, including the mains, showed that the fee was not justified, and removing the cost of the mains from Mr. Dennis's calculation results in a connection charge of only $272, the Hearing Commissioner finds and concludes that the fee recommended by Mr. Furr is reasonable and should be approved.

Mr. Furr testified that the typical cost for making a separate connection to provide for fire protection is $500 and recommended that a new charge for a fire protection service connection be established at $500. The Hearing Commissioner finds and concludes that this recommendation, which was not contested, should also be approved.

The Company requested a new sewer plant modification fee of $4,000 to offset the capital cost of sewage treatment facilities. This fee would apply only to new customers and not to current customers on existing septic systems or mound fields when they are changed over to the new SBR facility. Public Staff witness Furr presented a calculation for a reasonable plant modification fee and stated that a fee of $2,750 was justified. He added that there is an existing connection charge of $4,000, which the Company did not propose to change, and that the cost of a connection depends on the location and characteristics of the lot. Thus, the average cost of an installation requiring a grinder pump station to pump sewage to a force main or lift station would be $4,300, while the cost of a connection to a gravity sewer main would be only $500. Mr. Furr stated that, until now, the difference between the actual cost and the connection charge would have been either passed through to other customers in rate base or used to offset the cost of treatment facilities, lift stations, and mains, which is the purpose of the plant modification fee. Therefore, he recommended that the sewer connection fee be increased to $4,300 when a grinder pump station is required and decreased to $500 for other connections.

Company witness Dennis also provided an exhibit showing calculations in support of the proposed sewer plant modification fee using what he referred to as an alternate method. Upon review of the calculations, the Hearing Commissioner is of the opinion that they significantly overstate the amount of the current sewer treatment plant to be recovered through the plant modification fee, using amounts for facility expansion that assume 5% rate of inflation, and fail to remove plant being recovered through on-going rates. Mr. Furr's calculation, on the other hand, utilizes the correct amounts to be recovered and makes adjustments for plant being recovered through on-going rates. The calculation shows, and the Hearing Commissioner agrees, that a sewer plant modification fee of $2,750 as shown on Mr. Furr's revised exhibit is justified and should be approved.

Mr. Dennis testified that the Company disagrees with charging anything but a uniform connection fee for sewer service. He stated that, if the $1,500 estimated cost of the main is added to the fees recommended by Mr. Furr, as the Company believes it should be, the connection fee would increase to $5,800 for a grinder pump and $2,000 for a gravity main. According to Mr. Dennis, since approximately 90% of BHIU's customers may require a grinder pump, the $4,000 per customer fee would produce slightly higher revenue than the $4,300/$500 split. He further stated that if the original installation fails, whether grinder pump or gravity main, or system design changes, the customer is not charged an additional connection fee. Finally, he contended that it is not in the best interest of the customers to put a premium on certain lot locations because the initial sewer installation plans call for a grinder pump rather than a gravity main. Mr. Dennis also provided a schedule to support the Company's existing sewer utility connection charge of $4,000. This schedule included the cost for mains, which Mr. Furr included in his evaluation for the plant modification fees, and assumed that all connections required a grinder pump.

The Hearing Commissioner recognizes the desirability, particularly from a developer standpoint, of charging uniform connection fees at a sufficiently high level to recover a substantial portion of plant cost. However, when, as in this case, the evidence shows that there is a significant cost difference between types of installation, it is preferable to place the cost on the cost causer by charging different fees. Since Mr. Furr's evaluation for plant modification fees included the sewer mains, removing the cost of the mains from Mr. Dennis's calculation results in the same charges that Mr. Furr recommended when a grinder pump is installed. The Hearing Commissioner therefore finds and concludes that a fee of $4,300 is reasonable when a grinder pump installation is required. When a grinder pump is not required, the fee of $500 as recommended by Mr. Furr is reasonable and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 51

The evidence supporting this finding of fact is contained in the testimony of Public Staff witness Furr and Company witness Dennis.

In its application, the Company requested new customer account fees of $15 for water utility service and $15 for sewer utility service. Public Staff witness Furr agreed that $15 was a reasonable charge. However, since accounts for both water and sewer service typically are established at the same time, he recommended that only a single $15 fee be allowed when this is the case. The Company did not contest Mr. Furr's recommendation. Therefore, the Hearing Commissioner finds and concludes that the new customer account fees of $15 for water utility service and $15 for sewer utility service are reasonable and should be approved as recommended.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 52

Based on the foregoing findings and conclusions, the Hearing Commissioner finds that the service 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 Bald Head Island Utilities, Inc., is authorized to increase its rates to produce additional gross service revenues of $124,915 for water utility service and $70,928 for sewer utility service based on test period operations.

2. That the Schedule of Rates attached as Appendix A is approved for water and sewer utility service rendered by Bald Head Island Utilities, Inc., on and after the date on which this Order becomes final. This schedule is deemed filed pursuant to G.S. 62-138.

3. That Bald Head Island Utilities, Inc., deliver a copy of the Notice attached as Appendix B to all of its customers with their next billing statements after this Order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mb090999.01

APPENDIX A

SCHEDULE OF RATES
for
BALD HEAD ISLAND UTILITIES, INC.
for providing water and sewer utility service in
BALD HEAD ISLAND
Brunswick County, North Carolina

Residential Utility Service:	
Monthly Water Rates -	
Base charge, zero usage	$16.26, minimum
Usage charge, per 1,000 gallons	$ 4.85
Monthly Sewer Rate -	$46.57, flat rate
Non-residential Utility Service:	
Monthly Water Rates -	
Base Charge, zero usage	$16.26 per REU (based on sewer design requirements - $40.65 min.)
Usage charge, per 1,000 gallons	$ 4.85
Monthly Sewer Rate -	100% of water charge ($46.57 minimum)
Availability Rates: 1/	
Monthly Water Rate -	$ 6.00
Monthly Sewer Rate -	$ 9.00

1/ Any customer paying the availability charges on an annual basis in advance will receive a $15.00 discount.

Connection Charge:		
Residential Service -		
Water	3/4" meter	$ 750
	1" meter	$1,000
	2" meter	$2,400
Sewer		
	When grinder pump required	$4,300 per grinder pump
	When no grinder pump required	$ 500
Non-residential Service -		
Water		$ 750 per equivalent unit (Minimum, as stated for residential service)
Fire Protection Service -		$500

New Customer Account Fee: 2/

Water Utility Service	$ 15.00
Sewer Utility Service	$ 15.00

2/ If water and sewer utility service are established at the same time, only a single $15.00 charge will apply.

WATER AND SEWER - RATES

Plant Modification Fee:
Sewer Utility Service — $2,750 per equivalent unit

Reconnection Charge: [3/]

If water service cut off by utility for good cause:	$ 18.00
If water service cut discontinued at customers request:	$ 18.00
If sewer service cut off by utility for good cause:	$ 18.00

[3/] If water service is cut off and reconnected within nine months, the base charge for all months disconnected will be due and payable.

NSF Check:	$20.00
Bills Due:	On billing date
Bills Past Due:	15 days after billing date
Billing Frequency:	Shall be monthly for service in arrears
Finance Charges for Late Payment:	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-798, Sub 8, on this the 9th day of September, 1999.

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-798, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Bald Head Island Utilities, Inc., Post Office Box 3069, Bald Head Island, North Carolina, for Authority to Increase Rates for Water and Sewer Service on Bald Head Island, Brunswick County, North Carolina	))))))	NOTICE TO CUSTOMERS

WATER AND SEWER - RATES

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order authorizing Bald Head Island Utilities, Inc., to charge increased rates for water and sewer service. The rates are shown in Appendix A attached.

The Commission issued its decision following a public hearing on Bald Head Island on May 10, 1999, and a hearing in Raleigh on June 10, 1999, at which both the Company and the Public Staff offered testimony.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-798, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Bald Head Island Utilities,	)	
Inc., Post Office Box 3069, Bald Head	)	
Island, North Carolina, for Authority to	)	ERRATA ORDER
Increase Rates for Water and Sewer	)	
Service on Bald Head Island, Brunswick	)	
County, North Carolina	)	

BY THE HEARING COMMISSIONER: On September 9, 1999, a Recommended Order was entered in this docket approving a rate increase for Bald Head Island Utilities, Inc. The Commission is in receipt of a letter from the Applicant advising that the amounts for connection charges on the Schedule of Rates were omitted for non-residential sewer service.

Accordingly, the Hearing Commissioner concludes that Appendix A to the Order of September 9, 1999 should be amended to reflect connection charges for non-residential sewer service.

IT IS, THEREFORE, ORDERED that Appendix A to the Order of September 9, 1999 in this docket is hereby amended to reflect connection charges for non-residential sewer service as set forth in the attached Appendix A.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of October, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

mh101999.01

WATER AND SEWER - RATES

APPENDIX A

SCHEDULE OF RATES
for
BALD HEAD ISLAND UTILITIES, INC.
for providing water and sewer utility service in
BALD HEAD ISLAND
Brunswick County, North Carolina

Residential Utility Service:	
Monthly Water Rates -	
Base charge, zero usage	$16.26, minimum
Usage charge, per 1,000 gallons	$ 4.85
Monthly Sewer Rate -	$46.57, flat rate
Non-residential Utility Service:	
Monthly Water Rates -	
Base Charge, zero usage	$16.26 per REU (based on sewer design requirements - $40.65 min.)
Usage charge, per 1,000 gallons	$ 4.85
Monthly Sewer Rate -	100% of water charge ($46.57 minimum)
Availability Rates: [1]	
Monthly Water Rate -	$ 6.00
Monthly Sewer Rate -	$ 9.00

[1] Any customer paying the availability charges on an annual basis in advance will receive a $15.00 discount.

Connection Charge:	
Residential Service -	
Water 3/4" meter	$ 750
1" meter	$1,000
2" meter	$2,400
Sewer	
When grinder pump required	$4,300 per grinder pump
When no grinder pump required	$ 500
Non-residential Service -	
Water	$ 750 per equivalent unit (Minimum, as stated for residential service)
Sewer	
When grinder pump required	$4,300 per grinder pump
When no grinder pump required	$ 500
Fire Protection Service -	$ 500

WATER AND SEWER - RATES

New Customer Account Fee: [2/]

Water Utility Service	$ 15.00
Sewer Utility Service	$ 15.00

[2/] If water and sewer utility service are established at the same time, only a single $15.00 charge will apply.

Plant Modification Fee:

Sewer Utility Service — $2,750 per equivalent unit

Reconnection Charge: [3/]

If water service cut off by utility for good cause:	$ 18.00
If water service cut discontinued at customers request:	$ 18.00
If sewer service cut off by utility for good cause:	$ 18.00

[3/] If water service is cut off and reconnected within nine months, the base charge for all months disconnected will be due and payable.

NSF Check:	$20.00
Bills Due:	On billing date
Bills Past Due:	15 days after billing date
Billing Frequency:	Shall be monthly for service in arrears
Finance Charges for Late Payment:	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-798, Sub 8, on this the 19th day of October, 1999.

DOCKET NO. W-274, SUB 233
DOCKET NO. W-274, SUB 234
DOCKET NO. W-274, SUB 235
DOCKET NO. W-274, SUB 236
DOCKET NO. W-274, SUB 237

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Heater Utilities, Inc., Post Office Drawer 4998, Cary, North Carolina 27519, and Mid South Water Systems, Inc., H.C. Huffman Water Systems, Inc., Lincoln Water Works, Inc., Old South Lane Water System, Inc., and Surry Water Company, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673, for Authority to Transfer the Assets and Franchises to Heater Utilities, Inc., and for Approval of Rates	)	ORDER APPROVING TRANSFER, ACQUISITION ADJUSTMENT, MAINTAINING CURRENT RATES, AND REQUIRING CUSTOMER NOTICE

BY THE COMMISSION: On April 7, 1999, Heater Utilities, Inc. (Heater), and Mid South Water Systems, Inc. (MSWS), H.C. Huffman Water Systems, Inc. (Huffman), Lincoln Water Works, Inc. (Lincoln), Old South Lane Water System, Inc. (Old South), and Surry Water Company, Inc. (Surry), collectively hereinafter referred to as "Mid South," filed an application to transfer to Heater the franchises and assets of all the water and sewer utility systems served by Mid South in North Carolina.

By filing dated May 3, 1999, Carolina Water Service, Inc. of North Carolina (CWS), filed a Petition to Intervene. On May 10, 1999, Heater filed a Response to CWS's Petition to Intervene. On May 10, 1999, the Public Staff filed a Response to CWS's Petition to Intervene. On May 14, 1999, the Commission issued an Order Denying Petition to Intervene.

On May 13, 1999, the Public Staff and Heater filed a stipulation that included Heater's plan for operating the Mid South systems and outlined Heater's planned operational improvements for all Mid South systems in paragraphs 2.a. through 2.r. This stipulation settled the issues between Heater and the Public Staff in this proceeding and requested that the transfer be approved immediately, subject to the conditions contained in the stipulation. The stipulation contained the following provisions and conditions (in paragraphs 3.a. through 3.m.) with regard to ratemaking issues:

a. Of the $9.0 million purchase price, $7.0 million, consisting of the net plant in service acquired (including general plant) and a portion of the acquisition adjustment, shall be included in Heater's rate base at closing. The breakdown of rate base allocation of the $7.0 million rate base shall be $6,440,000 to water operations and $560,000 to sewer operations. Heater will be allowed to include a portion of the remaining $2.0 million purchase price for each new customer added after closing to the existing Mid South systems and Heater new developer systems in Mid South's existing 19 county service area, including those in contiguous extensions. However, neither transfers to Heater of existing water or wastewater systems within the Mid South 19 county service area nor any customers added to any Heater systems outside the Mid South 19 county service area shall be considered new customer additions for the purpose of this acquisition adjustment. The portion of the purchase price to be brought into rate base for each new customer shall be $450 for the first 4,089 water customers and $450 for the first 355 sewer customers. This portion will be included in rate base only as system growth occurs, so that if Heater does not add any new customers in Mid South's 19 county service area, the remaining $2.0 million of the purchase price will never be included in rate base or included in any future rates.

b. The Mid South 19 county service area consists of the following counties:

Burke	Mecklenburg
Cabarrus	Mitchell
Catawba	Polk
Davie	Rowan
Forsyth	Rutherford
Gaston	Stokes
Henderson	Surry
Iredell	Union
Lincoln	Yadkin
McDowell	

c. There will be no interest, return or AFUDC allowed or accumulated on any portion of the acquisition adjustment not included in rate base.

d. Heater shall continue to depreciate the assets acquired from Mid South at the depreciation rates approved by the Commission for Mid South in Mid South's last rate proceeding.

e. Heater shall depreciate any capital additions, improvements, and replacements made by Heater after the closing of the transfer, based upon the depreciation rates previously approved by the Commission for Heater.

f. Each portion of the acquisition adjustment, as it is included in rate base, shall be amortized over 33.3 years using a half-year convention resulting in a 3% amortization rate.

g. The acquisition adjustment will be reduced on a pro-rata basis for any disposals of whole water and/or wastewater systems as a result of transfers approved by the Commission including sales, transfers and abandonments (where the abandonment of the system was approved by the Commission after the water and/or wastewater systems had been paralleled by a municipality or county system).

h. All costs incurred by Heater prior to October 1, 1998, in its efforts to acquire Mid South, shall not be allowed in rate base or included in any future rates.

i. Any costs incurred by Heater on or after October 1, 1998, to acquire Mid South, will be subject to audit by the Public Staff and reviewed in the next Heater general rate case for reasonableness, and an appropriate level will be determined by the Commission at that time.

j. Whether or not the Mid South systems will be rolled into Heater's uniform rates will be evaluated and determined in a future rate case proceeding.

k. The Commission shall approve a bond to be posted by Heater for the transferred Mid South water and wastewater utility systems totaling $430,000.

l. The Commission approved rates for Mid South shall be the rates for these Mid South systems after the transfer to Heater.

m. Heater shall pay as Heater's cost without any future rate base treatment or inclusion in any future rates, the refunds plus accrued interest ordered by the Commission for Mid South to pay in: (a) the EPA surcharge refund proceedings in Docket Nos. W-720, Sub 134, W-314, Sub 30 and W-95, Sub 17; and (b) the refund plus accrued interest that the Commission in the future orders Mid South (now Heater through this stipulation), to pay as refunds for the 1995 and 1996 overcollection of gross up for CIAC in the pending proceedings, Docket Nos. W-720, Sub 186, W-314, Sub 41, W-95, Sub 22, and W-335, Sub 8.

Heater shall be fully responsible to make these refunds plus accrued interest, although Heater will not be precluded from obtaining a contribution from Mid South for a portion of these refunds, plus interest should Heater and Mid South so negotiate. However, failure to so negotiate such a contribution, shall not relieve Heater of its responsibility to promptly make these Commission ordered refunds.

On the basis of the verified application, the stipulation, and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. Heater presently holds franchises serving approximately 15,600 water and 1,800 sewer customers. Heater's record of service is satisfactory.

2. Mid South presently holds franchises in North Carolina in a total of 19 counties serving approximately 10,335 water and 1,837 sewer customers.

3. It is appropriate for all the Mid South water and sewer systems to become part of Heater with the assets transferred to Heater.

4. It is appropriate for the rates previously approved by the Commission for these transferred Mid South systems to remain effective.

5. Mid South has previously posted $430,000 in Commission required bonds. Heater currently has $2,200,000 of bonds posted with the Commission. Of this amount, $1,691,000 of bond surety is assigned to specific subdivisions and $509,000 of bond surety is unassigned.

6. Heater is financially fit to take on the responsibility of providing water and sewer utility service to the Mid South water and sewer systems.

7. The transfer of the Mid South water and sewer systems to Heater is justified by the public convenience and necessity.

CONCLUSIONS

Based upon the foregoing, the Commission is of the opinion that $430,000 of Heater's unassigned bond surety should be assigned to the Mid South systems; that Mid South's bond and surety should be released: that the transfer of the water and sewer utility assets and franchises of Mid South to Heater is in the public interest and should be granted, and; that the stipulation of the Public Staff and Heater, including the acquisition adjustment and requested rates, should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That $430,000 of the $509,000 unassigned bond surety shall be assigned to the Mid South systems being transferred. The remaining unassigned bond surety shall be $79,000.

2. That the application for transfer of the Certificates of Public Convenience and Necessity and the water and sewer utility assets to provide water and sewer utility service to all the service areas of Mid South in North Carolina consisting of Mid South Water Systems, Inc., H.C. Huffman Water Systems, Inc., Lincoln Water Works, Inc., Old South Lane Water System, Inc., and Surry Water Company, Inc., to Heater Utilities, Inc., is approved.

3. That the franchises granted to Mid South for water and sewer utility service in all Mid South's franchised service areas are canceled effective on the date that Heater files with the Commission written notification that the closing of the transfer of all the water and sewer systems from Mid South to Heater has been completed.

4. That Heater shall provide written notification to the Commission within 10 days after the transfer has been completed.

5. That the Joint Stipulation of the Public Staff and Heater Utilities, Inc., signed and filed with the Commission on May 13, 1999, is hereby approved (including the acquisition adjustment noted in paragraphs 3.a. through 3.m.).

6. That neither the stipulation among the parties to this proceeding nor this Order shall be treated or cited as a precedent or have any precedential value for Heater or any other water or sewer utility in North Carolina.

7. That the Notice to Customers, attached as Appendix A, shall be mailed with sufficient postage to all customers of Mid South within 15 days of the date of this Order, and that Heater shall submit to the Commission the attached Certificate of Service properly signed and notarized not later than five days after completing the notification.

8. That the Schedule of Rates attached as Appendix B is approved for Heater in the former Mid South service areas and is deemed properly filed with the Commission pursuant to G.S. 62-138. These are the same rates approved by the Commission for Mid South in all of the Mid South service areas.

9. That the bonds previously filed by Mid South shall be released upon the filing with the Commission by Heater of the written notification that the transfer has closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-274, SUB 233
DOCKET NO. W-274, SUB 234
DOCKET NO. W-274, SUB 235
DOCKET NO. W-274, SUB 236
DOCKET NO. W-274, SUB 237

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Heater Utilities, Inc., Post Office Drawer 4998, Cary, North Carolina 27519, and Mid South Water Systems, Inc., H.C. Huffman Water Systems, Inc., Lincoln Water Works, Inc., Old South Lane Water System, Inc., and Surry Water Company, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673, for Authority to Transfer the Assets and Franchises to Heater Utilities, Inc., and for Approval of Rates	)	NOTICE TO CUSTOMERS OF TRANSFER

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has granted a transfer of the water and sewer franchises of Mid South Water Systems, Inc., H.C. Huffman Water Systems, Inc., Lincoln Water Works, Inc., Old South Lane Water System, Inc., and Surry Water Company, Inc., to Heater Utilities, Inc. (Heater).

There is no change in the current rates associated with this transfer. There is no immediate change in the mailing address or telephone numbers of. the utility company as Heater will, for a transition period, use the current Mid South facilities. The customers will be notified separately by Heater of any future changes in telephone numbers or mailing address.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

SCHEDULE OF RATES
for
HEATER UTILITIES, INC.
for providing water and sewer utility service in
The former MID SOUTH, HUFFMAN, LINCOLN, OLD SOUTH LANE,
and SURRY Service Areas in North Carolina

WATER RATES AND CHARGES

RESIDENTIAL METERED SERVICE: 1/ 2/

Base Charge, zero usage (3/4 X 5/8" Meter)	$ 10.30, minimum
Usage Charge, per 1,000 gallons	$ 2.74

NONRESIDENTIAL/COMMERCIAL METERED SERVICE: 1/ 2/

Base Charge, zero usage (based on meter size)

Meter Size	
3/4 x 5/8"	$ 10.30
3/4"	$ 15.45
1"	$ 25.75
1 1/2"	$ 51.50
2"	$ 82.40
3"	$154.50
4"	$257.50
6"	$515.00

Usage Charge, per 1,000 gallons $ 2.74

RESIDENTIAL FLAT WATER RATES (Monthly):

Skyland Drive	$ 18.59
All other service areas 1/ 2/ 3/	$ 26.04

WATER AND SEWER - SALES/TRANSFERS

NONRESIDENTIAL/COMMERCIAL FLAT WATER RATES (Monthly): [1/] [2/] [3/]

Commercial @ Residential Rate	$ 26.04
Commercial @ Business Rate	$ 39.06
Commercial @ Motel Rate	$117.18

CONNECTION FEES:

Skyland Drive	$ 25
All other service areas [1/]	$ 500 (except where excluded by contract)

RECONNECTION CHARGES:

Skyland Drive:

For First Occurrence: Actual Cost

The charge for disconnection/reconnection shall be the *Actual Cost* of labor and materials for installing a cutoff for the first occurrence. Prior to actually cutting off water service, the water system owner must provide to the customer, with the initial cutoff notice, the estimated cost of installing a cutoff. To resume service, the customer must pay the Actual Cost mentioned above plus any delinquent water bill(s).

For Subsequent Occurrences:

If water service cut off by utility for good cause	$15.00
If water service discontinued at customer's request	$15.00

All Other Service Areas: [1/] [4/]

If water service cut off by utility for good cause	$15.00
If water service discontinued at customer's request	$15.00
If water service cut off by utility for good cause when there is no cutoff valve (to cover installation cost of cutoff valve)	$50.00

CUTOFF VALVE REPLACEMENT FEE:

Skyland Drive:	None
All Other Service Areas: (Applicable when cutoff valve damaged by customer)	$40.00

SEWER RATES AND CHARGES

COMMERCIAL METERED RATES: [1/], [2/]

Base Charge, zero usage	$ 58.01, minimum
Usage Charge, per 1,000 gallons	$ 4.34

FLAT RATES (Monthly): [1/] [2/]

Residential	$ 43.03
Nonresidential/commercial:	
Condo residents, @ residential rate	$ 43.03
Commercial, @ residential rate	$ 43.03
Commercial, @ commercial rate	$ 129.08

WATER AND SEWER - SALES/TRANSFERS

CONNECTION FEE: $500 (except where excluded by contract)

RECONNECTION CHARGES: 4/

If sewer service cut off at customer's request or by utility for good cause and the sewer customer is also a water customer:	$15.00
If water service is not provided by sewer utility:	Actual Cost

(An itemized billing of estimated actual charges shall be submitted to the customer and to the North Carolina Utilities Commission prior to disconnection of the customer's sewer service.)

OTHER MATTERS

DEPOSITS: May be requested in accordance with NCUC Rules R12-1 and R12-6.

RETURNED CHECK CHARGE:

Skyland Drive	$15.00
All other service areas 1/	$20.00

BILLS DUE:	On billing date
BILLS PAST DUE:	15 days after billing date
BILLING FREQUENCY:	Shall be monthly for service in arrears
FINANCE CHARGE FOR LATE PAYMENT:	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

1/ This includes all service areas except for the former Skyland Drive Water Association Systems (Docket No. W-720, Sub 154).

2/ Monthly base charges or monthly flat rates will be charged whether or not a unit is occupied, unless disconnection is requested (see reconnection charges). Units that are sold or rental units that change occupants (where service is not in name of landlord) will not be charged these charges for the period that they were disconnected from the system.

3/ The Utility, at its expense, may install a meter and charge the metered rate.

4/ When service is disconnected by the same unit owner within a period of less than nine months, the entire flat rate and/or base charge rate will be due and payable before the service will be reconnected.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Subs 233 through 237, on this the 20th day of May, 1999.

WATER AND SEWER - SALES/TRANSFERS

DOCKET NO. W-899, SUB 25
DOCKET NO. W-981, SUB 4
DOCKET NO. W-989, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Rayco Utilities, Inc., Mountain Point Utilities, Inc., Willowbrook Utility Company, Inc. (collectively known as Rayco), and AquaSource Utility Inc., for Authority to Transfer the Stock from Rayco to AquaSource Utility, Inc.	)	ORDER APPROVING TRANSFER, REQUIRING BOND AND CUSTOMER NOTICE

BY THE COMMISSION: On April 12, 1999, Rayco Utilities, Inc., Mountain Point Utilities, Inc., and Willowbrook Utility Company, Inc. (collectively referred to as "Rayco"), and AquaSource Utility, Inc. (AquaSource), filed a joint application with the Commission seeking authority to transfer the stock of the Rayco companies to AquaSource. Rayco serves approximately 722 water customers and 643 sewer customers in 13 separate service areas.

On October 28, 1999, the Public Staff and AquaSource filed a stipulation settling the issues between AquaSource and the Public Staff in this proceeding and requested that the transfer be approved immediately, subject to the conditions contained in the stipulation. The stipulation contained the following terms:

1. AquaSource agreed to:

    (a) Operate the water and wastewater facilities in compliance with regulations of the North Carolina Utilities Commission and the North Carolina Department of Environment and Natural Resources (DEH and DWQ);

    (b) Return all systems to compliance with DEH and DWQ regulations. A detailed list of improvements to be made, along with dates to be completed, will be prepared by the parties within two weeks and shall become part of the stipulation.

    (c) Implement customer service procedures that address the customers' needs in a respectful, efficient, and responsive manner, including 24 hour emergency service;

    (d) Perform Year 2000 readiness investigations, testing, and contingency plans to ensure facilities are ready to deal with Y2K problems;

    (e) Prepare the required Consumer Confidence Reports.

2. The Public Staff and AquaSource agreed that:

    (a) The $952,005 purchase price, net of the working capital adjustment detailed in Section 2.3 of the stock purchase agreement dated January 25, 1999 and any reductions in purchase price for plant additions paid for by AquaSource, shall be included in rate base at closing.

(b) Except as provided in item 2(c) below, AquaSource will cap the current authorized rates for two years from the date of transfer. The cap on rates will be extended for an additional three years provided there is no significant increase in cost due to changes in environmental law, tax law, regulatory law, acts of God, sabotage, exercise of eminent domain or other uncontrollable event.

(c) Upon the transfer of the stock, the rates for the Quarry Hills system shall be the following rates that were in effect prior to the Commission's Order dated July 20, 1999:

Residential service	
Flat rate	$ 22.90 per month
Commercial service	
Piedmont Crescent Professional Village	$ 68.70 per month
Quarry Hills Country Club	$229.00 per month
Aridyne Corporation	$251.00 per month

(d) The acquisition adjustment shall be amortized over 25 years.

(e) The acquisition adjustment shall be reduced on a pro-rata basis for any disposals of whole water and/or wastewater systems as a result of transfers approved by the Commission including sales, transfers and abandonments.

(f) AquaSource shall post a bond of $200,000 for the Rayco, Mountain Point, and Willowbrook systems. This bond includes the bond for the pending franchise and contiguous extension filed in Docket No. W-899, Subs 18 and 23, respectively.

On the basis of the verified application, the stipulation, and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. AquaSource presently holds one other water utility franchise in North Carolina serving approximately 106 customers. AquaSource's record of service in this area is satisfactory.

2. Rayco has approximately 722 water customers and 643 sewer customers in 13 separate service areas.

3. AquaSource has agreed to post a $200,000 bond for the Rayco systems.

4. AquaSource has the financial, managerial, and technical capacity to take on the responsibility of providing water and sewer service in the Rayco service areas and of making the necessary improvements to these systems.

5. The transfer of Rayco's stock to AquaSource is justified by the public convenience and necessity.

6. There are numerous utility plant deficiencies needing correction in the Rayco systems, including replacing the sewer treatment plants in the Melbille Heights, Penman Heights, and Greystone subdivisions, installing flow meters, replacing blowers, installing proper chlorination equipment, installing meters, improving security, repairing access roads, painting tanks, installing automatic pressure regulating equipment, and repairing well houses. Rayco under its current ownership does not have the financial, managerial, or technical capacity to remedy these problems. AquaSource does have the financial, managerial, and technical capacity to make the necessary improvements to these systems and has agreed to do so.

CONCLUSIONS

Based upon the foregoing, the Commission is of the opinion that the transfer of Rayco's stock to AquaSource, including the acquisition adjustment, is in the public interest and should be granted, and that the stipulation of the Public Staff and AquaSource should be approved.

IT IS THEREFORE, ORDERED as follows:

1. That the transfer of the stock of Rayco Utilities, Inc., Mountain Point Utilities, Inc., and Willowbrook Utility Company, Inc., to AquaSource Utility, Inc. is approved.

2. That the Applicant shall give written notification to the Commission within 14 days after the transfer has taken place.

3. That the Joint Stipulation of the Public Staff and AquaSource Utility, Inc., signed and filed with the Commission on October 28, 1999, is hereby approved (including the acquisition adjustment noted in paragraph 3).

4. That neither the stipulation among the parties to this proceeding nor this Order shall be treated or cited as precedent or have any precedental value for AquaSource or any other water or sewer utility in North Carolina.

5. That the Schedule of Rates, attached as Appendix A, is approved and deemed to be filed with the Commission pursuant to G.S. 62-138. Said Schedule of Rates is hereby authorized to become effective for service rendered on and after the date of this order. The parties are to notify the Commission of the transfer of the stock at which time an Order will be issued reducing the rates for Quarry Hills Subdivision.

6. That the Notice to Customers, attached as Appendix B, shall be mailed with sufficient postage to all customers of Rayco within 15 days of the date of this Order, and that AquaSource shall

submit to the Commission the attached Certificate of Service properly signed and notarized not later than 30 days after completing the notification.

7. That the bonds previously filed by Rayco shall be released upon the filing of a $200,000 bond with the Commission by AquaSource.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of November, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rb110199.08

APPENDIX A

SCHEDULE OF RATES
for
RAYCO UTILITIES, INC., et al
(Rayco Utilities, Inc., Willowbrook Utility Company, Inc.,
and Mountain Point Utilities, Inc.)
for providing water and sewer utility service in

ALL THEIR SERVICE AREAS
in North Carolina

Water Utility Service:	
Metered Service	
Base charge, zero usage	$ 10.55, minimum
Usage charge, per 1,000 gallons	$ 2.66
Unmetered Service	$ 26.35
Sewer Utility Service:	
Residential Service (Flat rate)	$ 35.65
Commercial Service	
Piedmont Crescent Professional Village	$107.00
Quarry Hills Country Club	$357.00
Aridyne Corporation	$393.00
Bermuda Place Rest Home	$678.00
Connection Charges:	
All systems except Mountain Point	None
Mountain Point	$350.00

WATER AND SEWER - SALES/TRANSFERS

Reconnection Charges - Water: Metered Customers

If water service cut off by utility for good cause: $15.00

If water service disconnected at customer's request: $15.00

(Customers who ask to be reconnected within nine months of disconnect will be charged the base charge for the service period they were disconnected.)

Reconnection Charges - Water (continued): Unmetered Customers

If water service cut off by utility for good cause:

All subdivisions except Crestwood Subdivision	$ 45.00*
Crestwood Subdivision only	$250.00**

* On time charge for installing cut off valve. Thereafter, reconnection charge shall be the same as for metered customers.

** One time charge for installing new lines in order to disconnect and reconnect service. Thereafter, reconnection charge shall be the same as for metered customers.

NOTE: Utility must notify customer of reconnection charge prior to disconnection.

Reconnection Charge - Sewer:

If sewer service cut off by utility for good cause: Actual Cost***

*** Utility must notify customer of estimated reconnection charge prior to disconnection. This charge will be waived if customer also receives water utility service from Rayco Utilities, Inc.

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Charge For Processing NSF Check: $20.00

Deposits: Two months estimated bill (in accordance with NCUC Rule R12-4)

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-899, Sub 25, W-981, Sub 4, and W-989, Sub 3, on this the 8th day of November, 1999.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX B

DOCKET NO. W-899, SUB 25
DOCKET NO. W-981, SUB 4
DOCKET NO. W-989, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Rayco Utilities, Inc., Mountain Point Utilities, Inc., Willowbrook Utility Company, Inc. (collectively known as Rayco), and AquaSource Utility Inc., for Authority to Transfer the Stock from Rayco to AquaSource Utility, Inc.	NOTICE TO CUSTOMERS OF TRANSFER

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has approved a transfer of the stock of Rayco Utilities, Inc., Mountain Point Utilities, Inc., Willowbrook Utility Company, Inc. (collectively known as Rayco), to AquaSource Utility, Inc.

Except for the Quarry Hills Subdivision, there is no change in the current rates associated with this transfer. AquaSource has agreed to cap the current authorized rates for two years from the date of transfer. The cap on rates will be extended for an additional three years provided there is no significant increase in cost due to changes in environmental law, tax law, regulatory law, acts of god, sabotage, exercise of eminent domain or other uncontrollable event.

An Order will be issued following the transfer of the stock reducing the rates for the Quarry Hills system to the following rates, which were in effect prior to the Commission's order dated July 20, 1999:

Residential service	
Flat rate	$ 22.90 per month
Commercial service	
Piedmont Crescent Professional Village	$ 68.70 per month
Quarry Hills Country Club	$229.00 per month
Aridyne Corporation	$251.00 per month

AquaSource has agreed to make the improvements necessary to return the Rayco systems to compliance with the Division of Environmental (DEH) and Division of Water Quality (DWQ) regulations.

There is no immediate change in the mailing address or telephone numbers of the utility company. The customers will be notified separately by AquaSource of any future changes in telephone numbers or mailing addresses.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of November , 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-354, SUB 118
DOCKET NO. W-354, SUB 128
DOCKET NO. W-354, SUB 161
DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-354, SUB 118 In the Matter of Carolina Water Service, Inc., of North Carolina - Investigation of Tap and Plant Modification Fees DOCKET NO. W-354, SUB 128 In the Matter of Application by Carolina Water Service, Inc., of North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in all Its Service Areas in North Carolina DOCKET NO. W-354, SUB 161 In the Matter of Application by Carolina Water Service, Inc., of North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in Matthews Commons Subdivision in Mecklenburg County, North Carolina, and for Approval of Rates DOCKET NO. M-100, SUB 113 In the Matter of The Tax Reform Act of 1986	)	FURTHER ORDER OF CLARIFICATION

BY THE COMMISSION: On March 17 1998, the Public Staff filed a Motion for Clarification in the above-captioned dockets requesting that the Commission clarify a portion of its Order of Clarification, issued on March 2, 1998 (actually February 27, 1998), relating to the collection of gross-up for taxes on contributions-in-aid of construction (CIAC) in Docket No. W-354, Sub 161.

DISCUSSION OF ISSUES RAISED BY THE PUBLIC STAFF

The Commission misstated the Public Staff's position regarding CIAC in Docket No. W-354, Sub 147

The Public Staff questioned the following quote from the Order,

> ". . . a liability to pay taxes on CIAC is incurred upon the execution of the contract if entered on or before June 12, 1996." - page 8, paragraph 4

Unfortunately, the quote was taken out of context when the quote did not include the entire sentence nor the preceding sentences, which read,

> "However, the Commission did determine in Docket No. W-354, Sub 118, that contracts with deferred payments do create taxable CIAC. In said docket, the Public Staff correctly stated that the liability to pay taxes on CIAC is incurred at the time CIAC is received. Once again, in Docket No. W-354, Sub 147, the Public Staff correctly asserted that the deferred or contingent payment contract in that case created taxable CIAC. Accordingly, the Commission issued an Order, in Docket No. W-354, Sub 147, denying the granting of a Certificate of Public Convenience and Necessity until the Company collected the gross-up for taxes on CIAC where the liability for such taxes was incurred prior to June 12, 1996. Similarly, when a utility contracts with a developer to collect the connection charges and/or plant modification fees from the developer in several payments, a liability to pay taxes on CIAC is incurred upon the execution of the contract if entered on or before June 12, 1996." (emphasis added)

Further, in its Motion for Clarification, the Public Staff finds fault in the Commission's statement found on page 10, paragraph 2, that ". . . the Public Staff contended that CWS should collect gross-up for CIAC because, even though payments were made after June 12, 1996, CWS was liable for taxes on CIAC as of the date of the contract."

The Public Staff argued, "(i)n Sub 147, it was the Public Staff's position that the CIAC was taxable, not because of the date of the contract, but because the CIAC was received prior to June 12, 1996." The entire paragraph (page 10, paragraph 2) reads as follows:

> "In Docket No. W-354, Sub 147, the Public Staff contended that CWS should collect gross-up for CIAC because, even though payments were made after June 12, 1996, CWS was liable for taxes on CIAC as of the date of the contract. The Public Staff cites the Order issued by the Commission in Docket No. W-354, Sub 118, in which the Commission, in Finding of Fact No. 57, determined that "(t)he contracts with deferred payments [the construction agreements] do create taxable CIAC." Now, in the matter of Docket No. W-354, Sub 161, the Public Staff insists that CWS not collect gross-up for CIAC for payments made after June 12, 1996, on a contract dated March 27, 1996. The Public Staff would have CWS collect gross-up on the first installment payment, but not on the other two payments." (emphasis added)

A reading of this paragraph from the February 27, 1998, Order of Clarification and the discussion in the Order in Docket No. W-354, Sub 147, reveals the following:

1. The original contract in the Riverwood application (Docket No. W-354, Sub 147) was executed before June 12, 1996.

2. The Commission found in Docket No. W-354, Sub 118, that this type of contract (contract with deferred payments - construction agreements) does create taxable CIAC.

3. The Order of Clarification makes the statement, ". . . the Public Staff contended that CWS should collect gross-up for CIAC because, even though payments were made after June 12, 1996, CWS was liable for taxes on CIAC as of the date of the contract."

Thus, it follows that:

1. Deferred payment contracts create taxable CIAC.

2. The deferred payment contract in Docket No. W-354, Sub 147, was executed prior to June 12, 1996 (effective date of the repeal of CIAC tax).

3. The liability to pay taxes on this transaction was created on the date that contributed property changed hands, i.e, - the date of the original contract.

4. The date of the original contract and the date CWS received contributed property are the same.

5. Therefore, the statement that, ". . . the Public Staff contended that CWS should collect gross-up for CIAC because, even though payments were made after June 12, 1996, CWS was liable for taxes on CIAC as of the date of the contract," is not in error.

Furthermore, there should be no need for additional clarification. The Commission and the Public Staff are not in disagreement regarding this matter. But, as noted hereinabove, a complete reading of the passages would provide the necessary clarification.

<u>The Utility should gross-up for taxes on CIAC on the first of three payments but should not gross-up for taxes on CIAC on the second and third payments.</u>

In the last paragraph of the Motion for Clarification, the portion of the Order of Clarification in question is that portion regarding the contract between the developer and the utility in Docket No. W-354, Sub 161. The pertinent portion of the contract reads as follows:

> "Developer agrees to pay the tap fees for the entire 61 lots in three payments of $17,805.29 each. The first payment shall be due concurrent with the execution to this

Agreement; the second payment shall be due on or before August 31, 1996; and the last payment due on or before September 30, 1996."

It is clear that this transaction is a purchase and installment payment schedule just as if a person went to the appliance store, purchased a new refrigerator, and agreed to pay the merchant in three monthly installment payments. Just as the merchant is liable to pass on to the Department of Revenue the sales tax collected in the transaction (without regard to when and if he collects the balance of the payments), the utility is liable to pay taxes on CIAC as of the date of the creation of the liability ("contracts with deferred payments do create taxable CIAC"), without regard for when or if all the installment payments are completed. The issue of when or if all the installment payments are made is a collection matter between the merchant and customer (or utility and developer).

The Commission has already stated in its Order of Clarification that gross-up for taxes on CIAC should be collected for all the payments in Docket No. W-354, Sub 161, because CWS was liable for taxes as of the date of the contract, March 27, 1996. This date was the date of the creation of the liability ("contracts with deferred payments do create taxable CIAC"), and it preceded June 12, 1966, therefore taxes are due and gross-up should be collected. No further clarification of this point should be necessary.

Based upon the foregoing, the Commission is of the opinion that, except as clarified hereinabove, no further clarification is required.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the _5th_ day of _January_, 1999.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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E-2, SUBS 715, 739, 743, 744 and E-7, Sub 640 (11/12/1999)

Carolina Power & Light Company - Final Order Overruling Exceptions and Affirming Recommended Order in the Complaint of Clarence Gene Leggett
E-2, SUB 727 (03/10/1999) Order Denying Appeal (07/29/1999) Superseding Order Dismissing Appeal (08/10/1999)

Carolina Power & Light Company - Order Closing Docket in the Complaint of Stephen W. Grady
E-2, SUB 728 (01/15/1999)

Carolina Power & Light Company - Order Closing Docket in the Complaint of Glenda Van Dyke
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Carolina Power & Light Company - Recommended Order Denying Complaint
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Carolina Power & Light Company - Order Accepting Notice of Dismissal and Closing Docket in the Complaint of Mid-Atlantic Fabrication & Finishing
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Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in the Complaint of Zuline Johnson
E-7, SUB 615 (12/08/1999)

Duke Power, a Division of Duke Energy Corporation - Recommended Order Denying Complaint of Joel V. Goad
E-7, SUB 622 (04/22/1999) Final Order Overruling Exceptions and Affirming Recommended Order (07/06/1999)

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Duke Power, a Division of Duke Energy Corporation - Recommended Order Denying Complaint of Teresa and Tony Mosley
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Duke Power, a Division of Duke Energy Corporation - Order Dismissing Complaint of John Lee Morris
E-7, SUB 627 (04/28/1999)

Duke Power, a Division of Duke Energy Corporation - Recommended Order in the Complaints of Franklin Homes Construction and Nolan Barnhardt, dba Nolan Barnhardt Electric
E-7, SUB 629 and 630 (05/26/1999)

Duke Power, a Division of Duke Energy Corporation - Order Dismissing Complaint of Brian S. Pace
E-7, SUB 634 (11/09/1999)

Duke Power, a Division of Duke Energy Corporation - Recommended Order Denying Complaint of Ginny and Ed Dudek
E-7, SUB 635 (08/09/1999)

Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in the Complaint of Robert D. Higgins
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Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in the Complaint of The Town of Lake Lure
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Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in the Complaint of Yvonne Harris
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Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in the Complaint of Yvonne Harris
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Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in the Complaint of Daniel R. Boone
E-7, SUB 650 (11/24/1999)

Duke Power, a Division of Duke Energy Corporation - Interim Order Pending Final Resolution of Complaint of Joshua E. Foster
E-7, SUB 651 (09/20/1999) Errata Order (09/24/1999)

Duke Power, a Division of Duke Energy Corporation - Recommended Order Denying Complaint of Joshua E. Foster
E-7, SUB 651 (12/23/1999)

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Virginia Electric & Power Co. - Order Closing Docket in the Complaint of David Stover and Ronald DeAngelo
E-22, SUB 381 (10/27/1999)

Western Carolina University - Order Dismissing Complaint of O. Earl Black, Jr. and Jo Ann H. Black
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ELECTRIC - Contracts/Agreements

Carolina Power & Light Company - Order Closing Docket
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Duke Power, a Division of Duke Energy Corporation - Order Accepting Agreement
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Duke Power, a Division of Duke Energy Corporation - Order Accepting Agreement for Filing
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Virginia Electric & Power Co. - Order Allowing Schedule NS
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Duke Power, a Division of Duke Energy Corporation - Order Approving Request
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Duke Power, a Division of Duke Energy Corporation - Order Approving Revised Schedule "FL*
E-7, SUB 644 (04/27/1999)

ELECTRIC - Securities

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Securities
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Duke Power, a Division of Duke Energy Corporation - Order Granting Authority to Issue Securities and Guarantee Certain Obligations
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Duke Power, a Division of Duke Energy Corporation - Order Approving Application for Authorization to Issue Securities Under a Shareholder Rights Plan and Granting Request for Partial Rule Waiver
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Duke Power, a Division of Duke Energy Corporation - Order Granting Authority to Issue and Sell Securities
E-7, SUB 643 (03/24/1999)

Duke Power, a Division of Duke Energy Corporation - Order Granting Authority to Issue Securities
E-7, SUB 649 (07/07/1999)

Duke Power, a Division of Duke Energy Corporation - Order Granting Authority to Enter Loan Agreements
E-7, SUB 656 (09/29/1999)

ELECTRIC - Tariff

Virginia Electric & Power Co. - Order Approving Rider RTP and Schedule 6P*
E-22, SUB 383 (10/26/1999)

ELECTRIC - Sale/Transfer

Duke Power, a Division of Duke Energy Corporation - Order on Reconsideration
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ELECTRIC SUPPLIER

ELECTRIC SUPPLIER - Complaint

Electric-Supplier - Order Closing Docket in Complaint of Jesse and Stephanie Ambrose
ES-108, SUB 0 (05/24/1999)

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NATURAL GAS - Adjustments of Rates/Charges

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective April 1, 1999
G-21, SUB 379 (03/30/1999)

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective August 1, 1999
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North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective October 1, 1999
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North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective November 1, 1999
G-21, SUB 386 (11/02/1999)

NUI North Carolina Gas - Order Allowing Rate Changes Effective February 1, 1999
G-3, SUB 216 (01/27/1999) Order Continuing Temporary Decrement (04/27/1999)

NUI North Carolina Gas - Order Allowing Rate Changes Effective October 1, 1999
G-3, SUB 221 (09/29/1999)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Changes Effective January 1, 1999
G-9, SUB 413 (01/05/1999)

Piedmont Natural Gas Company, Inc. - Order Approving Rate Changes Effective May 1, 1999
G-9, SUB 416 (04/27/1999)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increase Effective July 1, 1999
G-9, SUB 418 (06/29/1999)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increases Effective September 1, 1999
G-9, SUB 420 (09/01/1999)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Changes Effective November 1, 1999
G-9, SUB 425 (11/02/1999)

Public Service Company of N.C., Inc. - Order Allowing Rate Changes Effective January 1, 1999
G-5, SUB 395 (01/05/1999)

Public Service Company of N.C., Inc. - Order Allowing Rate Changes Effective March 1, 1999
G-5, SUB 396 (03/02/1999)

Public Service Company of N.C., Inc. - Order Allowing Rate Changes Effective August 1, 1999
G-5, SUB 404 (07/29/1999)

Public Service Company of N.C., Inc. - Order Allowing Rate Changes Effective October 1, 1999
G-5, SUB 406 (09/29/1999)

Public Service Company of N.C., Inc. - Order Allowing Rate Changes Effective December 1, 1999
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NUI North Carolina Gas - Order Closing Docket
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NATURAL GAS - Complaint

Cardinal Extension Company, LLC - Order Closing Docket in Complain of Joseph and Ida Lynch
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Piedmont Natural Gas Company, Inc. - Order Dismissing Complaint of Samuel R. Shirey
G-9, SUB 414 (05/27/1999)

Public Service Company of N.C., Inc. - Order Closing Docket in Complaint of Deborah L. Reid
G-5, SUB 382 (12/08/1999)

Public Service Company of N.C., Inc. - Order Closing Docket in Complaint of Ollie Young
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Frontier Energy, LLC - Order Accepting Affiliated Contracts for Filing and Permitting Operation Thereunder Pursuant to G.S 62-153
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North Carolina Natural Gas Corporation - Order Authorizing Service Pursuant to Contracts
G-21, SUB 380 (09/17/1999)

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North Carolina Natural Gas Corporation - Order on Affiliated Contract
G-21, SUB 389 (12/21/1999)

Piedmont Natural Gas Company, Inc. - Order on Affiliated Contract
G-9, SUB 427 (12/21/1999)

Public Service Company of N.C., Inc. - Order Allowing Contract to Become Effective and Approving Accounting Treatment
G-5, SUB 398 (05/19/1999)

Public Service Company of N.C., Inc. - Order on Affiliated Contracts
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NATURAL GAS - Expansion

North Carolina Natural Gas Corporation - Order Approving Updated Rate Schedule 12 and Rate Schedule T-12 Effective October 1, 1999
G-21, SUB 330 (10/14/1999)

North Carolina Natural Gas Corporation - Order Approving Additional Funding
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North Carolina Natural Gas Corporation - Order Allowing Deposit into Expansion Fund
G-21, SUB 383 (11/24/1999)

Piedmont Natural Gas Company, Inc. - Order Allowing Changes
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NATURAL GAS - Merger

Cardinal Pipeline Company, LLC - Order Closing Docket
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NUI North Carolina Gas and International Telephone Group, Inc. - Order Approving Transfer of Control
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NATURAL GAS - Miscellaneous

Frontier Energy, LLC - Order Dismissing Proceeding
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ORDERS AND DECISIONS LISTED

NUI North Carolina Gas - Order Approving Program
G-3, SUB 214 (01/12/1999)

Public Service Company of N.C., Inc. - Order Closing Docket
G-5, SUB 360 (12/23/1999)

Public Service Company of N.C., Inc. - Order Approving Contract
G-5, SUB 401 (06/29/1999)

Public Service Company of N.C., Inc. - Order Approving Deposit of Supplier Refunds
G-5, SUB 403 (09/27/1999)

<u>NATURAL GAS - Rate Increase</u>

Public Service Company of N.C., Inc. - Order Settling Record on Appeal
G-5, SUB 386 (03/23/1999)

<u>NATURAL GAS - Reassignment of Service Area/Exchange</u>

Piedmont Natural Gas Company, Inc. - Order Allowing Cross-Over of Franchised Territory
G-9, SUB 417 (06/08/1999)

Piedmont Natural Gas Company, Inc. - Order Allowing Cross-Over of Franchised Territory
G-9, SUB 424 (10/14/1999)

<u>NATURAL GAS - Rate Schedules/Riders/Service Rules and Regulations</u>

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective January 1, 1999
G-21, SUB 376 (01/05/1999)

<u>NATURAL GAS - Securities</u>

Piedmont Natural Gas Company, Inc. - Order Approving Sale of Stock
G-9, SUB 421 (10/14/1999)

Public Service Company of N.C., Inc. - Order Granting Authority to Issue and Sell Debt Securities
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ORDERS AND DECISIONS LISTED

NON REGULATED AUTHORITY

NON REGULATED AUTHORITY - Certificate

Housing Authority - Guilford County - Order Granting Certificate and Canceling Hearing
H-66, SUB 0 (03/17/1999)

TELEPHONE

TELEPHONE - Cancellation of Certificate

Adelphia Telecommunications, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-648, Sub 1 (03/18/1999) Order Vacating Orders of January 26, 1999, and March 18, 1999, and Reinstating Operating Authority (05/24/1999)

Advanced Telecommunication Network, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-489, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (06/10/1999)

Affinity Network, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-281, SUB 3 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/04/1999)

Alliance Network, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-862, Sub 2 (12/13/1999)

American Teletronics Long Distance, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-315, Sub 2 (04/30/1999)

Athena International, L.L.C. - Order Canceling Certificate
P-525, SUB 1 (01/15/1999)

BFI Communication, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-624, Sub 1 (04/30/1999)

C-PHONE CORPORATION - Order Canceling Certificate
P-641, SUB 1 (02/03/1999)

CTN Telephone Network, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-552, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/10/1999)

ORDERS AND DECISIONS LISTED

Conquest Long Distance Corp. - Order Affirming Previous Commission Order Canceling Certificate
P-324, Sub 4 (12/13/1999)

Cyberlight International, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-709, Sub 1 (12/13/1999)

DeltaTel, Inc. - Order Canceling Certificate
P-497, SUB 1 (08/23/1999)

Dolphin USA, Inc., d/b/a Advance Communication Group (ACG) - Order Affirming Previous Commission Order Canceling Certificate
P-626, Sub 1 (12/13/1999)

Erbia Network, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-840, Sub 1 (12/13/1999)

Florida Network, USA, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-460, SUB 1 (04/16/1999)

G-A Technologies, Inc. - Order Canceling Certificate
P-651, SUB 1 (05/24/1999)

Great Lakes Telecommunications Corp. - Order Affirming Previous Commission Order Canceling Certificate
P-377, Sub 2 (03/18/1999)

Group Advantage Providers, LLC - Order Affirming Previous Commission Order Canceling Certificate
P-610, Sub 2 (03/18/1999)

HCC Telemanagement; Hospitality Communications, d/b/a - Order Canceling Certificate
P-403, SUB 3 (05/19/1999)

International Telecommunications Corporation - Order Affirming Previous Commission Order Canceling Certificate
P-551, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/10/1999)

LDC Telecommunications, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-470, Sub 3 (12/13/1999)

LEC Link; Jerry La Quiere, d/b/a - Order Closing Docket
P-679, SUB 1 (04/29/1999)

LightCom International, Inc. - Order Affirming Previous Commission Order Canceling Certificate
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MTC Telemanagement Corporation - Order Affirming Previous Commission Order Canceling Certificate
P-488, SUB 1 (10/06/1999)

Matrix Telecom, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-224, SUB 6 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/10/1999)

Maxxis Communications, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-815, Sub 2 (12/13/1999)

Meridian Telecom Corporation - Order Affirming Previous Commission Order Canceling Certificate
P-601, Sub 1 (12/13/1999)

Minimum Rate Pricing, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-518, Sub 4 (12/13/1999)

Money $avers; Alternative Long Distance, Inc., d/b/a - Order Canceling Certificate
P-533, SUB 1 (03/10/1999)

Netel, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-464, Sub 2 (12/13/1999)

Network Services Long Distance; The Phonco, Inc., d/b/a - Order Affirming Previous Commission Order Canceling Certificate
P-549, SUB 1 (04/30/1999)

Network Utilization Services; Americom Technologies, Inc., d/b/a - Order Affirming Previous Commission Order Canceling Certificate
P-526, SUB 2 (04/30/1999) Order Vacating Orders of February 25, 1999, and April 30, 1999, and Reinstating Certificate and Operating Authority (05/14/1999)

North American Telecommunications Corporation - Order Canceling Certificate
P-701, SUB 1 (03/18/1999)

North American Telephone Network, LLC - Order Affirming Previous Commission Order Canceling Certificate
P-539, Sub 3 (12/13/1999)

NOSVA Limited Partnership - Order Affirming Previous Commission Order Canceling Certificate
P-379, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/04/1999)

Overlook Communications International Corp. - Order Affirming Previous Commission Order Canceling Certificate
P-479, SUB 2 (04/30/1999)

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Prime Telecom of North Carolina, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-573, Sub 1 (03/18/1999)

SETEL, LLC - Order Affirming Previous Commission Order Canceling Certificate
P-564, SUB 2 (04/16/1999)

Smartalk Teleservices, Inc. - Order Canceling Certificate
P-487, SUB 4 (05/14/1999)

Starlink Communications, LLC - Order Affirming Previous Commission Order Canceling Certificate
P-503, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (10/05/1999)

TWC - Order Affirming Previous Commission Order Canceling Certificate
P-455, SUB 1 (05/10/1999)

Teledata Services, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-359, Sub 1 (04/30/1999)

Teltrust Communications Services, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-616, Sub 3 (12/13/1999)

Time Warner Connect - Order Closing Docket
P-481, SUB 3 (12/10/1999)

Trans National Communications, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-291, SUB 4 (04/16/1999)

Trans National Communications International, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-566, SUB 1 (04/16/1999)

USN Communications Atlantic, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-689, Sub 1 (12/13/1999)

USX Consultants, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-387, SUB 2 (04/16/1999)

Universal Network Services of North Carolina, Inc. - Order Canceling Certificate
P-448, SUB 2 (01/06/1999)

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V.I.P. Telephone Network - Order Affirming Previous Commission Order Canceling Certificate
P-461, Sub 1 (04/30/1999)

Value Tel, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-466, SUB 1 (04/16/1999)

WinStar Gateway Network, Inc. - Order Canceling Certificate
P-317, SUB 8 (10/07/1999)

World Wide Communications, Inc.- Order Affirming Previous Commission Order Canceling Certificate
P-402, Sub 1 (12/13/1999)

Worldtel Services, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-328, SUB 4 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/10/1999)

TELEPHONE - Cease and Desist

Key Communication Management, Inc. - Recommended Order Concerning Show Cause Proceeding
P-467, SUB 1 (04/06/1999) Order Closing Docket (05/20/1999)

TELEPHONE - Certificate

@ Communications, Inc. - Errata Order
P-742, SUB 0 (06/09/1999)

ACI Corp. - Recommended Order Granting Certificates of Public Convenience and Necessity
P-808, SUB 0 and Sub 1 (05/12/1999) Order Allowing Recommended Order to Become Final (05/17/1999)

ALLTEL Communications, Inc. - Order Amending Certificate
P-514, SUB 5 (05/04/1999)

AmeriMex Communications Corp. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-834, SUB 0 (08/20/1999)

BlueStar Networks, Inc. - Recommended Order Granting A Certificate of Public Convenience and Necessity
P-847, SUB 0 (06/28/1999)

Budget Phone, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-794, SUB 0 (03/25/1999)

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CCCNC, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-819, SUB 0 (08/05/1999)

Carotel, LLC - Recommended Order Granting Certificate of Public Convenience and Necessity
P-758, SUB 1 (03/02/1999)

Choctaw Communications, L.C. - Recommended Order Granting a Certificate of Public Convenience and Necessity
P-763, SUB 0 (04/28/1999)

ComScape Communications, Inc. - Recommended Order Granting Certificates of Public Convenience and Necessity
P-767, SUB 0 and Sub 1 (01/11/1999)

Concert Communications Sales LLC - Recommended Order Granting Certificate of Public Convenience and Necessity
P-837, SUB 1 (06/22/1999)

Consumers' Telephone and Telecom, LLC - Recommended Order Granting Certificate of Public Convenience and Necessity
P-832, SUB 0 (06/25/1999)

Crystal Clear Connections, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-861, SUB 0 (11/29/1999)

dPi Teleconnect, L.L.C. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-836, SUB 0 (06/11/1999) Order Allowing Recommended Order to Become Final (06/14/1999)

DIECA Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-775, SUB 0 (01/27/1999)

DSLnet Communications, LLC - Recommended Order Granting Certificate of Public Convenience and Necessity
P-818, SUB 0 (04/26/1999)

EZ Talk Communications, LLC - Recommended Order Granting Certificate
P-754, SUB 0 (01/08/1999)

Frontier Local Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-843, SUB 0 (07/08/1999)

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Gibralter Data Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-777, SUB 0 (02/09/1999)

GIETEL, Inc. - Errata Order
P-726, SUB 0 (04/21/1999)

Golden Harbor of North Carolina, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-802, SUB 0 (07/12/1999)

Group Long Distance, Inc. - Order Granting Permanent Certificate
P-350, SUB 2 (10/22/1999)

Hyperion Communications of North Carolina, L.P. - Order Issuing Certificate of Public Convenience and Necessity
P-798, SUB 1 (02/08/1999)

Hyperion Communications of North Carolina, L.P. - Recommended Order Granting a Certificate of Public Convenience and Necessity
P-798, SUB 1 (03/24/1999) Order Allowing Recommended Order to Become Final (03/29/1999)

Intellicall Operator Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-390, SUB 4 (03/11/1999)

Intrex Telecom, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-800, SUB 0 (04/01/1999)

JATO Operating Two Corp. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-858, SUB 0 (09/10/1999)

KMC Telecom III, Inc. - Order Granting Interim Construction Authority
P-824, SUB 1 (03/16/1999)

KMC Telecom III, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-824, SUB 1 (05/11/1999)

Local Telecom Service, L.L.C. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-792, SUB 0 (07/23/1999)

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Max-Tel Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-769, SUB 0 (10/01/1999)

Navigator Telecommunications, LLC - Recommended Order Granting Certificate of Public Convenience and Necessity
P-850, SUB 0 (08/02/1999)

Network Telephone, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity
P-748, SUB 0 (04/12/1999)

Net2000 Communication Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-719, SUB 1 (01/29/1999)

NET-TEL Corporation - Recommended Order Granting Certificate of Public Convenience and Necessity
P-627, SUB 2 (08/18/1999)

NewSouth Communications Corp. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-772; SUB 1 (08/25/1999) Errata Order (08/30/1999) Order Allowing Recommended Order to Become Final (08/31/1999)

North American Telephone Network, LLC - Recommended Order Granting Certificate of Public Convenience and Necessity
P-539, SUB 2 (04/16/1999)

NorthPoint Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-765, SUB 0 (01/11/1999)

Omni Prism Communications, Inc. - Order Allowing Withdrawal of Application
P-855, SUB 0 (10/18/1999)

PaeTec Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-785, SUB 1 (07/15/1999)

Resort Hospitality Services, Ltd. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-856, SUB 0 (09/08/1999)

Sterling International Funding, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-665, SUB 0 (01/22/1999)

TDPC, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-872, SUB 0 (11/02/1999)

TeleConex, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-745, SUB 0 (06/02/1999)

Total-Tel Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-417, SUB 3 (04/20/1999)

Unidial Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-389, SUB 4 (03/02/1999)

United States Telecommunications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-795, SUB 1 (04/07/1999)

TELEPHONE - Contracts/Agreements

AT&T Communications of the Southern States, Inc. - Order Requiring Filing of Amendment to Interconnection Agreement with BellSouth Regarding Resale of Contract Service Arrangements
P-140, SUB 50 (Commissioner Judy Hunt dissents. Commissioner Robert K. Koger did not participate.) (04/27/1999)

AT&T Communications of the Southern States, Inc. - Order Approving Amendment to Interconnection Agreement with BellSouth
P-140, SUB 50 (Commissioners Judy Hunt and Sam J. Ervin, IV, did not participate.) (09/29/1999)

AT&T Communications of the Southern States, Inc. - Order on Negotiated Interconnection Agreement with BellSouth
P-140, SUB 50 (10/20/1999)

ALLTEL Carolina, Inc. - Order on Negotiated Interconnection Agreement with United States Cellular Corporation
P-118, SUB 90 (02/02/1999)

ALLTEL Carolina, Inc. - Order on Negotiated Interconnection Agreement with Time Warner Telecom of North Carolina, L.P.
P-118, SUB 94 (08/25/1999)

ORDERS AND DECISIONS LISTED

ALLTEL Carolina, Inc. - Order Approving Interconnection Agreement with ALLTEL Communications, Inc.
P-118, SUB 95 (12/22/1999)

ALLTEL Communications, Inc. - Order Allowing Withdrawal of Application
P-514, SUB 8 (12/06/1999)

ALLTEL Communications, Inc. - Order Approving Interconnection Agreement with BellSouth
P-514, SUB 9 (12/22/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with WinStar Telecommunications, Inc.
P-55, SUB 1024 (01/21/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with WinStar Telecommunications, Inc.
P-55, SUB 1024 (04/27/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with WinStar Telecommunications, Inc.
P-55, SUB 1024 (07/09/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with WinStar Telecommunications, Inc.
P-55, SUB 1024 (12/14/1999)

BellSouth Telecommunications, Inc. - Order Approving Agreement with US LEC of North Carolina, Inc.
P-55, SUB 1027 (Commissioner William R. Pittman dissents. Commissioner Robert V. Owens, Jr. did not participate.) (09/10/1999)

BellSouth Telecommunications, Inc. - Order Correcting Docket Number
P-55, SUB 1038 and Sub 1048 (04/08/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with KMC Telecom II, Inc.
P-55, SUB 1038 (04/21/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with KMC Telecom II, Inc.
P-55, SUB 1038 (07/29/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with KMC Telecom II, Inc.
P-55, SUB 1038 (12/14/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with ALLTEL Communications, Inc.
P-55, SUB 1049 (04/21/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with ALLTEL Communications, Inc.
P-55, SUB 1049 (07/29/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with ALLTEL Communications, Inc.
P-55, SUB 1049 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Interconnection Agreement with Bell Atlantic - Virginia, Inc.
P-55, SUB 1052 (12/16/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with Carolina Telephone & Telegraph Company
P-55, SUB 1053 (02/02/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with Central Telephone Company
P-55, SUB 1054 (02/02/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Resale Agreement with E-Z Tel, Inc.
P-55, SUB 1067 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Resale Agreement with E-Z Tel, Inc.
P-55, SUB 1067 (04/27/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with Telephone Company of Central Florida
P-55, SUB 1068 (10/20/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with CTC Exchange Services, Inc.
P-55, SUB 1069 (01/21/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with CTC Exchange Services, Inc.
P-55, SUB 1069 (07/09/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with CTC Exchange Services, Inc.
P-55, SUB 1069 (12/14/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Resale Agreement with Annox, Inc.
P-55, SUB 1075 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with Business Telecom, Inc.
P-55, SUB 1077 (11/17/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with Business Telecom, Inc.
P-55, SUB 1077 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Resale Agreement with Omnicall, Inc.
P-55, SUB 1079 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with U.S. West Interprise America, Inc.
P-55, SUB 1086 (03/30/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with U.S. West Interprise America, Inc.
P-55, SUB 1086 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with Interpath Communications, Inc.
P-55, SUB 1100 (10/20/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with NEXTLINK North Carolina, L.L.C.
P-55, SUB 1102 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with North American Telecommunications, Corp.
P-55, SUB 1104 (07/29/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Resale Agreement with Teleconex, Inc.
P-55, SUB 1109 (12/16/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with Max-Tel Communications, Inc.
P-55, SUB 1112 (01/21/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Resale Agreement with Max-Tel Communications, Inc.
P-55, SUB 1112 (02/02/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with Max-Tel Communications, Inc.
P-55, SUB 1112 (07/29/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Resale Agreement with NOW Communications, Inc.
P-55, SUB 1114 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with NuStar Communications Corp.
P-55, SUB 1115 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Infrastructure Sharing Agreement with MEBTEL, Inc.
P-55, SUB 1116 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with United States Telecommunications, Inc.
P-55, SUB 1118 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with United States Telecommunications, Inc.
P-55, SUB 1118 (07/09/1999)

BellSouth Telecommunications, Inc. - Order on Infrastructure Sharing Agreement with Citizens Telephone Company
P-55, SUB 1119 (01/28/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Transwire Operations, L.L.C.
P-55, SUB 1120 (03/02/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with Transwire Operations, L.L.C.
P-55, SUB 1120 (07/15/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with Prism Operations, L.L.C.
P-55, SUB 1120 (10/26/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with Prism Operations, L.L.C.
P-55, SUB 1120 (12/14/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Eagle Communications, Inc.
P-55, SUB 1121 (04/07/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Omnicall International
P-55, SUB 1122 (03/11/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with OmniCall International, Inc.
P-55, SUB 1122 (12/16/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with DIECA Communications, Inc., d/b/a Covad Communications Company
P-55, SUB 1123 (03/17/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with DIECA Communications, Inc., d/b/a Covad Communications Company
P-55, SUB 1123 (04/27/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with DIECA Communications, Inc., d/b/a Covad Communications Company
P-55, SUB 1123 (07/09/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with DIECA Communications, Inc., d/b/a Covad Communications Company
P-55, SUB 1123 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Mebtel Integrated Communications Solutions, L.L.C.
P-55, SUB 1125 (03/11/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with MEBTEL Integrated Communications Solutions, L.L.C.
P-55, SUB 1125 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with GTE Wireless, Inc.
P-55, SUB 1127 (02/10/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with SprintCom, Inc.
P-55, SUB 1128 (04/07/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with SprintCom, Inc.
P-55, SUB 1128 (09/10/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Local Telecom Service, L.L.C.
P-55, SUB 1129 (03/17/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Choctaw Communications, L.L.C.
P-55, SUB 1130 (03/11/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with Choctaw Communications, L.L.C.
P-55, SUB 1130 (07/09/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with NewSouth Communications, L.L.C.
P-55, SUB 1131 (03/17/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Unidial Communications, Inc.
P-55, SUB 1132 (04/07/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Resale Agreement with Unidial Communications, Inc.
P-55, SUB 1132 (04/27/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with ACI Corporation
P-55, SUB 1136 (04/21/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with State Communications, Inc.
P-55, SUB 1138 (04/21/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with Quintelco, Inc.
P-55, SUB 1139 (04/21/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Resale Agreement with Quintelco, Inc.
P-55, SUB 1139 (11/17/1999)

BellSouth Telecommunications, Inc. - Order Allowing Withdrawal of Agreement with UNICOM Communications, LLC and Closing Docket
P-55, SUB 1140 (08/24/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with NET-tel Corporation
P-55, SUB 1141 (04/27/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with Access Point, Inc.
P-55, SUB 1142 (04/27/1999)

BellSouth Telecommunications, Inc. - Order on Resale Agreement with dPi-Teleconnect, L.L.C.
P-55, SUB 1143 (05/19/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Resale Agreement with dPi-Teleconnect, Inc.
P-55, SUB 1143 (09/10/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with The Other Phone Company, d/b/a Access One
P-55, SUB 1144 (Commissioner Owens did not participate.) (06/23/1999)

BellSouth Telecommunications, Inc. - Order Allowing Withdrawal of Interconnection Agreement with The Other Phone Company, d/b/a Access One, Inc.
P-55, SUB 1144 (07/07/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with KMC Telecom III, Inc.
P-55, SUB 1145 (06/03/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with North American Telephone Network, L.L.C.
P-55, SUB 1146 (06/03/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with AmeriMex Communications Corp.
P-55, SUB 1147 (06/03/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with AmeriMex Communications Company
P-55, SUB 1147 (07/15/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with Budget Phone, Inc.
P-55, SUB 1148 (06/03/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with DSLnet Communications, L.L.C.
P-55, SUB 1149 (06/03/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement with DSLnet Communications, Inc.
P-55, SUB 1149 (10/26/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Intrex Telecom, Inc.
P-55, SUB 1151 (07/09/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement with Intrex Telecom, Inc.
P-55, SUB 1151 (11/17/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Hyperion Communications of North Carolina, L.P.
P-55, SUB 1152 (07/09/1999)

BellSouth Telecommunications, Inc. - Order on Interconnection Agreement with State Communications, Inc.
P-55, SUB 1154 (07/29/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement State Communications, Inc.
P-55, SUB 1154 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Transtar Communications, L.C.
P-55, SUB 1155 (08/19/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Resale Agreement with Transtar Communications, L.L.C.
P-55, SUB 1155 (10/20/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with ComScape Telecommunications, Inc.
P-55, SUB 1156 (08/25/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Nextel South Corporation
P-55, SUB 1157 (09/10/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement with P.V. Tel of North Carolina, L.L.C.
P-55, SUB 1158 (09/10/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Navigator Telecommunications, L.L.C.
P-55, SUB 1159 (09/17/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Concord Telephone Company
P-55, SUB 1160 (10/26/1999)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement with Computer Business Sciences, Inc.
P-55, SUB 1162 (11/02/1999)

BellSouth Telecommunications, Inc. - Order on Resale Agreement with CI^2, Inc.
P-55, SUB 1164 (11/17/1999)

BellSouth Telecommunications, Inc. - Order Approving Resale Agreement as Amended with Universal Telecom, Inc.
P-55, SUB 1165 (12/22/1999)

BellSouth Telecommunications, Inc. - Order on Collocation Agreement with BlueStar Networks, Inc.
P-55, SUB 1166 (11/17/1999)

BellSouth Telecommunications, Inc. - Order on Amendment to Collocation Agreement with BlueStar Networks, Inc.
P-55, SUB 1166 (12/14/1999)

BellSouth Telecommunications, Inc. - Order on Resale Agreement with ALLTEL Communications, Inc.
P-55, SUB 1169 (11/30/1999)

Carolina Telephone and Telegraph Company - Order on Negotiated Interconnection Agreement with BellSouth Carolinas PCS, L.P.
P-7, SUB 866 (06/03/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with GIETEL, Inc
P-7, SUB 872; P-10, Sub 518 (02/02/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with Unicom Communications, L.L.C.
P-7, SUB 873; P-10, Sub 519 (03/30/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with Interpath Communications, Inc.
P-7, SUB 878; P-10, Sub 523 (04/21/1999)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with @ Communications, Inc.
P-7, SUB 879; P-10, Sub 524 (04/21/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Amendment to an Interconnection Agreement with @ Communications, Inc.
P-7, SUB 879; P-10, Sub 524 (05/04/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company- Order on Negotiated Interconnection Agreement with AT&T Communications of the Southern States, Inc.
P-7, SUB 880; P-10, Sub 525 (03/11/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with TCG of the Carolinas, Inc.
P-7, SUB 881; P-10, Sub 526 (03/11/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with Time Warner Communications Company of North Carolina, L.P.
P-7, SUB 882; P-10, Sub 527 (06/03/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Resale Agreement with dPi-Teleconnect, L.L.C.
P-7, SUB 883; P-10, Sub 528 (04/27/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with Hyperion Communications of North Carolina, L.P.
P-7, SUB 884; P-10, Sub 529 (05/04/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with PageNet, Inc.
P-7, SUB 886; P-10, Sub 531 (05/13/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with Teligent, Inc.
P-7, SUB 887; P-10, Sub 532 (05/13/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with NewEast Telephony, Inc.
P-7, SUB 888; P-10, Sub 533 (05/19/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with Triton PCS Operating Company, L.L.C.
P-7, SUB 889; P-10, Sub 534 (07/29/1999)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with KMC Telecom III, Inc.
P-7, SUB 890; P-10, Sub 535 (08/18/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement with Local Telecom Services, L.L.C.
P-7, SUB 891; P-10, Sub 536 (08/25/1999)

Carolina Telephone and Telegraph Company - Order on Negotiated Interconnection Agreement with Nextel South Corporation
P-7, SUB 892 (08/25/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Resale Agreement with United States Telecommunications, Inc.
P-7, SUB 893; P-10, Sub 538 (12/15/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement and Resale Agreement with NorthPoint Communications, Inc.
P-7, SUB 895; P-10, Sub 539 (10/20/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Resale Agreement with Teleconex, Inc.
P-7, SUB 896; P-10, Sub 540 (10/20/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Interconnection Agreement with GIETEL, Inc.
P-7, SUB 897; P-10, Sub 541 (11/17/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Resale Agreement with Max-Tel Communications, Inc.
P-7, SUB 898; P-10, Sub 542 (11/17/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Resale Agreement State Communications, Inc.
P-7, SUB 899; P-10, Sub 543 (11/17/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Resale Agreement with Phone-Link, Inc.
P-7, SUB 900; P-10, Sub 545 (12/15/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Interconnection and Resale Agreement with New South Communications Corporation
P-7, SUB 901; P-10, Sub 546 (12/15/1999)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Interconnection and Resale Agreement with P.V. of North Carolina, L.L.C.
P-7, SUB 902; P-10, Sub 547 (12/15/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Resale Agreement with NOW Communications, Inc.
P-7, SUB 903; P-10, Sub 548 (12/15/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Resale Agreement with Universal Telecom, Inc.
P-7, SUB 904; P-10, Sub 549 (12/15/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Interconnection and Resale Agreement with DIECA Communications, Inc., d/b/a Covad Communications Company
P-7, SUB 905; P-10, Sub 550 (12/15/1999)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Resale Agreement with Consumers Telephone and Telecom, L.L.C.
P-7, SUB 908; P-10, Sub 552 (12/15/1999)

Central Telephone Company - Order on Negotiated Interconnection Agreement with Nextel South Corporation
P-10, SUB 537 (08/25/1999)

Concord Telephone Company - Order on Negotiated Interconnection Agreement with CTC Exchange Services, Inc.
P-16, SUB 186 (06/03/1999)

Concord Telephone Company - Order on Negotiated Interconnection Agreement with BellSouth Personal Communications, Inc.
P-16, SUB 189 (08/18/1999)

GTE South Incorporated - Order on Amendment to Interconnection Agreement with Business Telecom, Inc.
P-19, SUB 297 (11/17/1999)

GTE South Incorporated - Order on Amendment to Interconnection Agreement with Business Telecom, Inc.
P-19, SUB 297 (12/14/1999)

GTE South Incorporated - Order on Negotiated Resale Agreement with E-Z Tel, Inc.
P-19, SUB 308 (06/03/1999)

ORDERS AND DECISIONS LISTED

GTE South Incorporated - Order on Negotiated Interconnection Agreement with CTC Exchange Services, Inc.
P-19, SUB 310 (06/03/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with NEXTEL South Corp.
P-19, SUB 312 (06/03/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with Interpath Communications, Inc.
P-19, SUB 313 (03/17/1999)

GTE South Incorporated - Order on Interconnection Agreement with AT&T Wireless Services, Inc.
P-19, SUB 314 (01/28/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with Triton PCS Operating Company, L.L.C.
P-19, SUB 315 (04/07/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with Preferred Carrier Services, Inc.
P-19, SUB 316 (03/11/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with United States Telecommunications, Inc.
P-19, SUB 317 (04/07/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with ACI Corporation
P-19, SUB 320 (05/13/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with dPi-Teleconnect, L.L.C.
P-19, SUB 321 (05/13/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with SprintCom, Inc., d/b/a Sprint PCS
P-19, SUB 322 (05/13/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with ALLTEL Communications, Inc.
P-19, SUB 323 (05/19/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with Resort Hospitality Services, Inc.
P-19, SUB 324 (06/23/1999)

ORDERS AND DECISIONS LISTED

GTE South Incorporated - Order on Amendment to Interconnection Agreement with Resort Hospitality Services, Ltd.
P-19, SUB 324 (11/17/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with DIECA, d/b/a Covad Communications Company
P-19, SUB 326 (07/29/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with NorthPoint Communications Company
P-19, SUB 327 (07/29/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with Hyperion Communications of North Carolina, L.P.
P-19, SUB 328 (08/18/1999)

GTE South Incorporated - Order on Negotiated Resale Agreement with Choctaw Communications, d/b/a Smoke Signal Communications, Inc.
P-19, SUB 332 (08/25/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with Teligent, Inc.
P-19, SUB 333 (09/10/1999)

GTE South Incorporated - Order on Negotiated Resale Agreement with Topp Comm, Inc.
P-19, SUB 334 (09/27/1999)

GTE South Incorporated - Order Canceling Approval of Agreement with Topp Comm, Inc.
P-19, SUB 334 (11/10/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with DSLnet Communications, L.L.C.
P-19, SUB 335 (09/17/1999)

GTE South Incorporated - Order on Amendment to Interconnection Agreement with DSLnet Communications, L.L.C.
P-19, SUB 335 (12/14/1999)

GTE South Incorporated - Order on Negotiated Resale Agreement with Phone Reconnect of America, L.L.C.
P-19, SUB 337 (10/20/1999)

GTE South Incorporated - Order on Negotiated Interconnection Agreement with P.V. Tel of North Carolina, L.L.C.
P-19, SUB 338 (10/20/1999)

ORDERS AND DECISIONS LISTED

GTE South Incorporated - Order on Interconnection Agreement with Network Access Solutions Corporation
P-19, SUB 339 (11/17/1999)

GTE South Incorporated - Order on Interconnection Agreement with BlueStar Networks, Inc.
P-19, SUB 340 (11/17/1999)

GTE South Incorporated - Order on Amendment to Interconnection Agreement with BlueStar Networks, Inc.
P-19, SUB 340 (12/14/1999)

GTE South Incorporated - Order on Interconnection Agreement with Medcom, Inc.
P-19, SUB 341 (11/17/1999)

GTE South Incorporated - Order on Interconnection Agreement with US LEC of North Carolina, L.L.C.
P-19, SUB 342 (11/17/1999)

GTE South Incorporated - Order on Resale Agreement with Annox, Inc.
P-19, SUB 343 (11/30/1999)

GTE South Incorporated - Order on Amendment to Resale Agreement with Annox, Inc.
P-19, SUB 343 (12/14/1999)

GTE South Incorporated - Order on Interconnection Agreement with Sprint Communications Company, L.P.
P-19, SUB 344 (11/17/1999)

GTE South Incorporated - Order on Resale Agreement with NOW Communications, Inc.
P-19, SUB 345 (11/17/1999)

GTE South Incorporated - Order Approving Agreement with MEBTEL Integrated Communications Solutions, Inc.
P-19, SUB 346 (12/22/1999)

GTE South Incorporated - Order Approving Resale Agreement with AT&T Wireless Services, Inc.
P-19, SUB 347 (12/22/1999)

MEBTEL Communications - Order Accepting Affiliated Contract for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153
P-35, SUB 95 (03/02/1999)

North State Telephone Company - Order on Negotiated Interconnection Agreement with BellSouth Personal Communications, Inc., d/b/a BellSouth Mobility DCS
P-42, SUB 124 (04/27/1999)

North State Telephone Company - Order on Negotiated Interconnection Agreement with 360° Communications Company d/b/a ALLTEL
P-42, SUB 127 (09/10/1999)

__TELEPHONE - Complaint__

AT&T Communications of the Southern States, Inc. - Order Closing Docket in Complaint of Robert E. and Linda L. Streble
P-140, SUB 67 (01/06/1999)

AT&T Communications of the Southern States, Inc. - Order Canceling Hearing and Closing Docket in Complaint of LaNia Coleman
P-140, SUB 68 (04/08/1999)

ALLTEL Carolina, Inc. - Order Canceling Hearing and Closing Docket in Complaint of Larry Thompson
P-118, SUB 91 (12/10/1999)

ALLTEL Carolina, Inc. - Order Dismissing Complaint for Failure to Appear in Complaint of John Henry Hunter, d/b/a New Beginnings
P-118, SUB 92 (04/07/1999)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of W. Douglas Young
P-55, SUB 1070 (04/16/1999)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Elizabeth A. Jenkins
P-55, SUB 1087 (04/07/1999)

BellSouth Telecommunications, Inc. - Order on Reconsideration in Complaint of MCImetro Access Transmission Services, LLC
P-55, SUB 1094 (04/06/1999)

BellSouth Telecommunications, Inc. - Order Denying Motion for Stay
P-55, SUB 1094 (Commissioners Robert V. Owens, Jr. and Robert K. Koger did not participate.) (06/22/1999)

BellSouth Telecommunications, Inc. - Order Denying Motion for Stay
P-55, SUB 1096 (Commissioners J. Richard Conder and William R. Pittman dissented. Commissioner Robert K. Koger did not participate.) (03/01/1999)

BellSouth Telecommunications, Inc. - Order Denying Motion for Stay
P-55, SUB 1096 (Commissioners Robert V. Owens, Jr. and Robert K. Koger did not participate.) (06/22/1999)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Cecelia Walton
P-55, SUB 1101 (04/07/1999)

BellSouth Telecommunications, Inc. - Order Finding No Reasonable Grounds to Investigate Complaint and Closing Docket in Complaint of David N. Williams
P-55, SUB 1111 (04/21/1999)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint of Phillip Keith Price
P-55, SUB 1124 (05/12/1999)

BellSouth Telecommunications, Inc. - Order of Clarification in Complaint of Phillip Keith Price
P-55, SUB 1124 (05/19/1999)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Juan D. Whipple
P-55, SUB 1135 (09/02/1999)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of John Murphy, d/b/a JTM Investments
P-55, SUB 1137 (10/08/1999)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Felicia Robinson
P-7, SUB 865 (02/09/1999)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Carol J. Raymond
P-7, SUB 871 (12/06/1999)

Complaint - Telephone - Order Continuing Hearing and Granting Motion to Dismiss Complaint as to AT&T in Complaint of Chris Telesca
P-89, SUB 53 (03/26/1999)

Complaint - Telephone - Order Dismissing Complaint Against AT&T in Complaint of Chris Telesca
P-89, SUB 53 (10/06/1999)

Complaint - Telephone - Order Closing Docket in Complaint of Margaret Spiers against Carolina Telephone and Telegraph Company and Sprint Communications Company, LP
P-89, SUB 58 (02/01/1999)

Complaint - Telephone - Order Finding No Reasonable Ground to Proceed with Complaint of North Carolina State Board of Certified Public Accountant Examiners against Central Telephone Company, Carolina Telephone and Telegraph Company, The Reuben H. Donnelly Corporation, Centel Directory Company, and Sprint Publishing & Advertising, Inc.
P-89, SUB 64 (01/05/1999)

ORDERS AND DECISIONS LISTED

Complaint - Telephone - Order Closing Docket in Complaint of North Carolina State Board of Certified Public Accountant Examiners
P-89, SUB 64 (03/31/1999)

Complaint - Telephone - Order Closing Docket in Complaint of Kelly and Alex Bentley against World Com Network, BellSouth Telecommunications, Inc. and Excel Telecommunications, Inc.
P-89, SUB 65 (01/21/1999)

Complaint - Telephone - Order Closing Docket in Complaint of Tena L. Farmer against BellSouth Telephone and Telegraph Company and AT&T Communications of the Southern States
P-89, SUB 66 (01/06/1999)

Complaint - Telephone - Order Closing Docket in Complaint of Cynthia Davis against BellSouth Telecommunications, Inc., Sprint Communications Corporation, and MCI Telecommunications
P-89, SUB 67 (06/30/1999)

Complaint - Telephone - Order Canceling Hearing and Closing Docket in Complaint of James Holloway against AT&T Communications of the Southern States, Inc.
P-89, SUB 68 (03/23/1999)

Complaint - Telephone - Order Dismissing Complaint of Albert Coombs against Sprint Communications Company, LP and AT&T Communications of the Southern States, Inc.
P-89, SUB 69 (09/02/1999)

Complaint - Telephone - Order Dismissing Complaints of Customer Complaints Concerning Chapel Hill Border Plan against GTE South Incorporated and BellSouth Telecommunications, Inc.
P-89, SUB 70 (03/23/1999)

Dial & Save; Dial & Save of N.C., Inc., d/b/a - Order Closing Docket in Complaint of Paul H. Hulth
P-414, SUB 6 (12/10/1999)

GTE South Incorporated - Order Closing Docket in Complaint of Ms. Bonnie Green Turner
P-19, SUB 293 (08/13/1999)

GTE South Incorporated - Order Closing Docket in Complaint of Pamela Crisp
P-19, SUB 294 (05/19/1999)

GTE South Incorporated - Recommended Order Denying Complaint of Michael G. Halick
P-19, SUB 311 (05/11/1999)

GTE South Incorporated - Order Accepting Voluntary Dismissal Without Prejudice and Closing Docket in Complaint of Sprint Communications Company, L.P.
P-19, SUB 330 (08/10/1999)

Intermedia Communications Inc. - Order Closing Docket in Complaint of Stephen Hill Motor Company, Inc.
P-504, SUB 5 (01/27/1999)

Matrix Telecom, Inc. - Order Closing Docket in Complaint of Mr. and Mrs. William R. Peeler
P-224, SUB 5 (01/06/1999)

MCI WorldCom Network Services, Inc. - Order Accepting Notice of Settlement and Closing Docket in Complaint of Perry Wriston
P-141, SUB 38 (01/15/1999)

MCI WorldCom Network Services, Inc. - Order Dismissing Complaint of Peter Kay Stern
P-141, SUB 40 (06/02/1999)

MCI WorldCom Network Services, Inc. - Order Closing Docket in Complaint of Justus Harris, Utilities Reduction Specialists, Inc.
P-141, SUB 41 (08/24/1999)

Sprint Communications Company L.P. - Order Closing Docket in Complaint of Andrew Silver
P-294, SUB 15 (01/29/1999)

TELEPHONE - Long Distance Certificate

ACSI Local Switched Services, Inc. - Order Dismissing Application
P-695, SUB 0 (04/13/1999)

Cable & Wireless Global Card Services, Inc. - Order Dismissing Application
P-725, SUB 0 (04/13/1999)

Combined Billing Communications, Inc. - Order Dismissing Application and Closing Docket
P-741, SUB 0 (12/14/1999)

ComPlus, L.L.C. - Order Allowing Withdrawal of Application
P-842, SUB 0 (06/25/1999)

Eclipse Telecommunications, Inc. - Order Granting Motion to Withdraw Application
P-416, SUB 6 (09/30/1999)

GIETEL, Inc. - Order Dismissing Application and Closing Docket
P-726, SUB 1 (12/14/1999)

Nor Communications, Inc. - Order Dismissing Application and Closing Docket
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ONLINE Telecommunications, Inc. - Order Dismissing Application and Closing Docket
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@ Communications, Inc.	P-742, SUB 1	(01/28/1999)
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Access Integrated Networks, Inc.	P-886, SUB 0	(08/27/1999)
Access One, Inc.	P-812, SUB 0	(04/07/1999)
Advantage Telecommunications, Corp.	P-822, SUB 0	(03/09/1999)
Airnex Communications, Inc.	P-820, SUB 0	(03/03/1999)
Alliance Group Services, Inc.	P-801, SUB 0	(04/16/1999)
Alliance Network, Inc.	P-862, SUB 0	(06/25/1999)
AmeriCom Communications, Inc.	P-894, SUB 0	(11/10/1999)
Annox, Inc.	P-696, SUB 1	(03/03/1999)
Atlantic Telephone Company, Inc.	P-830, SUB 0	(03/25/1999)
Avana Communications Corporation	P-887, SUB 0	(11/03/1999)
ACG Telecom Services Incorporated	P-831, SUB 0	(09/08/1999)
ASC Telecom, Inc.	P-806, SUB 0	(02/12/1999)
Big Planet, Inc.	P-786, SUB 0	(01/22/1999)
Blackstone Communications Company	P-845, SUB 0	(04/23/1999)
BroadSpan Communications, Inc.	P-892, SUB 0	(12/30/1999)
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Buyers United International, Inc.	P-733, SUB 0	(07/30/1999)
Cable & Wireless Global Card Services, Inc.	P-725, SUB 1	(04/29/1999)
Cable & Wireless Global Markets, Inc.	P-844, SUB 0	(07/08/1999)
CallManage, Inc.	P-868, SUB 0	(06/30/1999)
CenturyTel Long Distance, Inc.	P-826, SUB 0	(05/26/1999)
Cleartel Communications, Inc.	P-814, SUB 0	(07/12/1999)
Columbia Telecommunications, Inc.	P-871, SUB 0	(12/30/1999)
Computer Business Sciences, Inc.	P-866, SUB 1	(11/17/1999)
Concert Communications Sales LLC	P-837, SUB 0	(04/20/1999)
ConnectAmerica, Inc.	P-711, SUB 0	(02/12/1999)
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Cooperative Communications, Inc.	P-787, SUB 0	(02/08/1999)
CoreComm North Carolina, Inc.	P-911, SUB 0	(12/13/1999)
Corporate Calling Services, Inc.	P-702, SUB 0	(04/06/1999)
Discounted Long Distance, Inc.	P-680, SUB 0	(01/22/1999)
DSLnet Communications, LLC	P-818, SUB 1	(03/24/1999)
Empire Communications, Inc.	P-804, SUB 0	(02/12/1999)
Empire Telecom Services, Inc.	P-914, SUB 1	(11/17/1999)
Enhanced Communications Network, Inc.	P-807, SUB 0	(03/03/1999)
EBS, Inc.	P-912, SUB 0	(12/08/1999)
First Regional TeleCom, LLC	P-854, SUB 0	(08/18/1999)

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Freedom Communications Corp.	P-753, SUB 0	(01/19/1999)
FON Digital Network, Inc.	P-841, SUB 0	(04/07/1999)
Glyphics Communications, Inc.	P-839, SUB 0	(04/06/1999)
Golden Harbor of North Carolina, Inc.	P-802, SUB 1	(06/02/1999)
GTC Telecom	P-821, SUB 0	(03/03/1999)
HJN Telecom, Inc.	P-760, SUB 0	(04/27/1999)
Hyperion Communications of North Carolina, L.P.	P-798	(02/10/1999)
Intelcom, Inc.	P-853, SUB 0	(05/19/1999)
Intercontinental Communications Group, Inc.	P-588, SUB 1	(09/30/1999)
INET Interactive Network System, Inc.	P-852, SUB 0	(06/03/1999)
KDD America, Inc.	P-898, SUB 0	(11/09/1999)
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Legends Communications, Inc.	P-809, SUB 0	(10/28/1999)
LightNetworks, Inc.	P-917, SUB 1	(12/02/1999)
Logix Communications Corporation	P-761, SUB 0	(01/28/1999)
Long Distance America, Inc.	P-846, SUB 0	(06/22/1999)
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Megsinet-CLEC, Inc.	P-778, SUB 0	(03/15/1999)
MVX.COM Communications, Inc.	P-717, SUB 1	(11/02/1999)
Navigator Telecommunications, LLC	P-850, SUB 1	(08/27/1999)
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OLS, Inc.	P-743, SUB 0	(02/08/1999)
P.V. Tel of North Carolina, LLC	P-851, SUB 0	(06/02/1999)
PaeTec Communications, Inc.	P-785, SUB 0	(01/22/1999)
PremierCom, Inc.	P-791, SUB 0	(02/23/1999)
Prism Operations, LLC	P-781, SUB 0	(02/16/1999)
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Randolph Telephone Telecommunications, Inc.	P-810, SUB 0	(02/01/1999)
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Satellink Paging, LLC	P-715, SUB 0	(05/19/1999)
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State Communications, Inc.	P-744, SUB 0	(01/26/1999)
Stealth Communications, Inc.	P-833, SUB 0	(03/24/1999)
SBR, Inc.	P-690, SUB 0	(07/12/1999)
Telemanagement Services, Inc.	P-907, SUB 0	(12/30/1999)

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Telescan, Inc.	P-878, SUB 0	(09/08/1999)
The Free Network, LLC	P-811, SUB 0	(02/25/1999)
Trans National Communications International, Inc.	P-566, SUB 2	(10/15/1999)
TransNet Connect, Inc.	P-874, SUB 0	(07/12/1999)
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U. S. Network Services, Inc.	P-759, SUB 0	(04/01/1999)
United Services Telephone, LLC	P-686, SUB 0	(07/19/1999)
United States Advanced Network, Inc.	P-823, SUB 0	(03/17/1999)
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Value-Added Communications, Inc.	P-747, SUB 1	(12/08/1999)
Voice Vision International, Inc.	P-864, SUB 0	(06/18/1999)
WorldCall Communications International, Inc.	P-805, SUB 1	(12/13/1999)
Z-Tel Communications, Inc.	P-817, SUB 0	(03/24/1999)
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Accutel Communications, Inc. - Recommended Order Granting Probationary Certificate of Public Convenience and Necessity
P-678, SUB 0 (04/15/1999) Order Revoking Probationary Certificate (10/05/1999)

Level 3 Communications, LLC - Recommended Order Granting Certificates of Public Convenience and Necessity
P-779, SUB 0; P-779, Sub 1 (02/16/1999)

Network Access Solutions Corporation - Recommended Order Granting Certificate of Public Convenience and Necessity
P-860, SUB 1 (12/14/1999)

South Carolina Net, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-766, SUB 0 (06/25/1999)

Williams Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-673, SUB 0 (02/01/1999) Errata Order (02/17/1999)

Williams Communications, Inc. - Order Amending Certificate
P-673, SUB 1 (06/28/1999)

ORDERS AND DECISIONS LISTED

TELEPHONE - Merger

Eclipse Telecommunications, Inc. - Order Approving Merger with Telecom One, Inc.
P-416, SUB 8; P-523, Sub 2 (08/12/1999)

MCI WorldCom Network Services, Inc. - Order Approving Corporate Reorganization and Related Transactions
P-141, SUB 44; P-286, Sub 11; P-659, Sub 4 (07/28/1999)

North American Telephone Network, LLC - Order Rescinding Authority and Closing Docket
P-539, SUB 1 (01/26/1999)

TELEPHONE - Miscellaneous

AT&T Communications of the Southern States, Inc. - Order on Interconnection Agreement
P-140, SUB 51 (01/28/1999)

Advanced Telecommunication Network, Inc. - Order Approving transfer of Control
P-489, SUB 2 (08/12/1999)

BellSouth Telecommunications, Inc. - Order Allowing Revision to TS-1 Report
P-55, SUB 1013 (02/22/1999)

BellSouth Telecommunications, Inc. - Order Allowing Withdrawal of Petition
P-55, SUB 1174 (12/03/1999)

CTC Communications Corp. - Order Approving Transfer of Control
P-509, SUB 1 (02/23/1999)

DIECA Communications, Inc. - Order Closing Docket
P-775, SUB 1 (12/10/1999)

ICG Telecom Group, Inc. - Order Concerning Interim Proposals for Compensation
P-582, SUB 6 (06/16/1999)

ICG Telecom Group, Inc. - Order Denying Motion for Reconsideration and Providing for Further Consideration in UNE Docket
P-582, SUB 6 (09/01/1999)

ICG Telecom Group, Inc. - Order Granting Price List Waiver
P-582, SUB 7; P-798, Sub 3; P-824, Sub 2 (08/03/1999)

ITC Deltacom Communications, Inc. - Order Concerning Continuation of Service
P-500, SUB 10 (11/02/1999) Order Denying Motion for Reconsideration (12/16/1999)

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MCI WorldCom Network Services, Inc. - Order on Amendment to Interconnection Agreement
P-141, SUB 29 (05/13/1999)

Pilgrim Telephone, Inc. - Order Dismissing Petition Without Prejudice
P-895, SUB 0 (09/22/1999)

Preferred Carrier Services, Inc. - Order Amending Certificate
P-544, SUB 5 (08/27/1999)

Sprint Communications Company L.P. - Order on Negotiated Interconnection Agreement
P-294, SUB 8 (04/07/1999)

US LEC of North Carolina, Inc. - Order Allowing Withdrawal for Petition of Arbitration
P-561, SUB 14 (07/13/1999)

TELEPHONE - Reinstating Certificate

Metracom Corporation - Order Affirming Previous Commission Order Canceling Certificate
P-384, SUB 2 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Reinstating Operating Authority (04/20/1999)

Network International, LLC- Order Affirming Previous Commission Order Canceling Certificate
P-797, Sub 1 (12/13/1999) Order Vacating Orders of October 28, 1999, and December 13, 1999, and Reinstating Operating Authority (12/30/1999)

NOS Communications, Inc. - Order Affirming Previous Commission Order Canceling Certificate
P-265, SUB 2 (04/16/1999) Order Vacating Orders February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/03/1999)

TELEPHONE - Securities

Central Telephone Company - Order Granting Authority to Borrow
P-10, SUB 554 (12/16/1999)

Concord Telephone Company - Order Granting Authority to Borrow Under Credit Agreement
P-16, SUB 190 (07/27/1999)

Ellerbe Telephone Company - Order Granting Authority to Issue Note and Pledge Assets
P-21, SUB 63 (06/24/1999)

North State Telephone Company - Order Granting Authority to Issue Shares of Stock
P-42, SUB 125 (06/02/1999)

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TELEPHONE - Show Cause

Business Discount Plan, Inc. - Order Approving Joint Stipulation
P-344, SUB 6 (04/13/1999) Errata Order (04/15/1999) Order Closing Docket (12/10/1999)

TELEPHONE - Tariff

Sprint Communications Company L.P. - Order Approving Joint Stipulation
P-294, SUB 19 (11/17/1999)

WinStar Wireless of North Carolina - Order Granting Waiver
P-507, SUB 5; P-783, Sub 1 (06/08/1999)

WorldCom, Inc. - Order Approving Joint Stipulation
P-283, SUB 21 (03/23/1999)

TELEPHONE - Sale/Transfer

Allnet Communication Services, Inc. - Order Approving Transfer of Control
P-244, SUB 19; P-483, Sub 1; P-337, Sub 4; P-400, Sub 7; P-698, Sub 2; P-843, Sub 1 (07/28/1999)

American International Telephone, Inc. - Order Approving Transfer of Control
P-540, SUB 1 (03/29/1999)

American Network Exchange, Inc. - Order Approving Motion to Withdraw Application and Closing Dockets
P-554, SUB 1; P-385, Sub 3 (03/15/1999)

Ameritech Communications International, Inc. - Order Approving Transfer of Control
P-556, SUB 2 (04/15/1999)

ATCALL, Inc. - Order Approving Corporate Reorganization
P-495, SUB 1 (09/17/1999)

Big Planet, Inc. - Order Approving Corporate Reorganization and Transfer of Certificate
P-786, SUB 1 (05/18/1999)

Cash Back Rebates LD.com, Inc. - Order Approving Transfer of Control
P-545, SUB 1 (08/19/1999)

Cincinnati Bell Long Distance, Inc. - Order Approving Transfer of Control
P-558, SUB 1; P-454, Sub 6; P-416, Sub 9; P-523, Sub 3 (09/29/1999)

ORDERS AND DECISIONS LISTED

Citizens Telecommunications Company - Order Approving Transfer of Control
P-531, SUB 1; P-675, Sub 1 (02/03/1999) Order Rescinding Authority and Closing Docket (08/09/1999)

Claricom Networks, Inc. - Order Approving Transfer of Control
P-611, SUB 2 (02/03/1999)

Colorado River Communications Corp. - Order Approving Asset Acquisition
P-441, SUB 1; P-815, Sub 1 (06/11/1999)

Destia Communications Services, Inc. - Order Approving Transfer of Control
P-565, SUB 2 (11/18/1999)

Eclipse Telecommunications, Inc. - Order Approving Merger
P-416, SUB 7; P-538, Sub 1 (03/29/1999)

E-Z Tel, Inc. - Order Approving Transfer of Control
P-656, SUB 2 (08/19/1999)

Excel Operations, Inc. - Order Approving Reorganization and Transfer of Certificates
P-816, SUB 0; P-639, Sub 3; P-528, Sub 3 (03/31/1999)

Gulf Long Distance, Inc. - Order Approving Transfer of Control
P-499, SUB 3 (09/17/1999)

GIETEL, Inc. - Order Approving Corporate Acquisition and Related Transactions
P-726, SUB 2 (06/29/1999)

Intelicom International Corp. - Order Approving Transfer of Control
P-405, SUB 2 (09/29/1999)

International Telemanagement Group, Inc. - Order Approving Transfer of Assets
P-393, SUB 2; P-630, Sub 1 (03/02/1999)

IXC Communications Services, Inc. - Order Approving Merger
P-454, SUB 4; P-457, Sub 3 (02/23/1999)

Keystone Telecommunications, Inc. - Order Approving Transfer of Assets and Certificate
P-352, SUB 2; P-732, Sub 2 (01/07/1999)

Logix Communications Corporation - Order Approving Transfer of Assets and Customers
P-761, SUB 1; P-560, Sub 3 (07/27/1999)

Matrix Telecom, Inc. - Order Approving Transfer of Control
P-224, SUB 7 (11/18/1999)

ORDERS AND DECISIONS LISTED

NorthPoint Communications, Inc. - Order Approving Transfer of Control
P-765, SUB 1 (06/11/1999)

Omnicall, Inc. - Order Approving Transfer of Control
P-668, SUB 3 (11/18/1999)

OneStar Long Distance, Inc. - Order Approving Transfer of Assets
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OneStar Long Distance, Inc. - Order Approving Transfer of Assets
P-355, SUB 5; P-464, Sub 1 (09/29/1999)

Primus Telecommunications, Inc. - Order Approving Corporate Reorganization
P-451, SUB 2; P-542, Sub 3 (06/11/1999)

Primus Telecommunications, Inc. - Order Approving Transfer of Assets and Canceling Certificate
P-451, SUB 3; P-292, Sub 4; P-292, Sub 5 (08/19/1999)

Qwest Communications Corporation - Order Approving Transfer of Control
P-433, SUB 6; P-386, Sub 21; P-360, Sub 9; P-239, Sub 11; P-603, Sub 1; P-572, Sub 3 (10/14/1999)

RCN Long Distance Company - Order Approving Merger and Certificate Transfer
P-486, SUB 4; P-906, Sub 0 (11/18/1999) Errata Order (12/20/1999)

Shared Communications Services, Inc. - Order Approving Transfer of Control
P-591, SUB 1 (08/11/1999)

StormTel, Inc. - Order Approving Transfer of Control
P-684, SUB 1 (10/14/1999)

Teligent, Inc. - Order Approving Transfer of Certificate
P-703, SUB 6; P-870, Sub 0 (08/12/1999)

TransWire Communications, L.L.C. - Order Regarding Docket Number
P-746, SUB 1; P-781, Sub 1 (03/15/1999)

Zenex Long Distance, Inc. - Order Approving Transfer of Control
P-560, SUB 2 (07/28/1999)

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SPECIAL CERTIFICATE/PSP

SPECIAL CERTIFICATE/PSP - Cancellation of Certificate

A+ Public Pay Phone Corporation - Order Affirming Previous Commission Order Canceling PSP Certificate
SC-1337, SUB 1 (04/30/1999) Order Vacating Orders of February 25, 1999, and April 30, 1999, and Reinstating Certificate and Operating Authority (06/04/1999)

Abeget Telecom; Getachew W. Giorgis, dba - Order Canceling PSP Certificate
SC-1529, SUB 1 (04/27/1999)

Abhau; Jason - Order Canceling PSP Certificate
SC-1523, SUB 1 (10/07/1999)

Alexander II; Charles L. - Order Canceling PSP Certificate
SC-1481, SUB 1 (09/10/1999)

Alpha Tel-Com, Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-1115, SUB 1 (08/24/1999)

Art's Deli Mart - Order Canceling PSP Certificate
SC-434, SUB 1 (10/15/1999)

B. Executive Enterprise; Kevin L. Baldwin, dba - Order Affirming Previous Commission Order Canceling Certificate
SC-1386, SUB 1 (04/30/1999)

Babeck; Robert J. - Order Canceling PSP Certificate
SC-366, SUB 2 (11/18/1999)

Band; David - Order Canceling PSP Certificate
SC-877, SUB 1 (05/24/1999)

Bartell; Randy S. - Order Canceling PSP Certificate
SC-1382, SUB 1 (03/08/1999)

Bass Lake Resort, LLC - Order Canceling PSP Certificate
SC-1464, SUB 1 (11/09/1999)

Blue Max Trucking, Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-1445, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (05/10/1999)

Brancato; Joseph - Order Affirming Previous Commission Order Canceling Certificate
SC-1179, SUB 1 (05/10/1999)

ORDERS AND DECISIONS LISTED

Breslin, Jr.; Thomas J. - Order Canceling PSP Certificate
SC-1533, SUB 1 (05/12/1999)

Brown; Antwand Demond - Order Canceling PSP Certificate
SC-1470, SUB 1 (12/08/1999)

Cafe Parizade; Calamari Enterprises, Inc., dba - Order Affirming Previous Commission Order Canceling Certificate
SC-995, SUB 1 (04/16/1999)

Calls for Less, Inc. - Order Canceling PSP Certificate
SC-1442, SUB 1 (09/14/1999)

Caribbean Cuisine Restaurant; George C. Thompson, dba - Order Affirming Previous Commission Order Canceling Certificate
SC-1419, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate and Operating Authority (06/04/1999)

Carolina TeleComs; Purnima Sanghrajka, dba - Order Canceling PSP Certificate
SC-1515, SUB 1 (10/07/1999)

Carolina Tele-Comps; Vinod Sanghrajka, dba - Order Canceling PSP Certificate
SC-1516, SUB 1 (05/04/1999)

Champ Enterprises, Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-1083, SUB 1 (04/16/1999)

Chasteen; Athena - Order Canceling PSP Certificate
SC-1458, SUB 1 (01/22/1999)

Christopher; W. - Order Canceling PSP Certificate
SC-1243, SUB 2 (09/21/1999)

Coin-Tel; Anita M. Blanchard, d/b/a - Order Affirming Previous Commission Order Canceling PSP Certificate
SC-880, SUB 1 (08/24/1999)

ComPlus, L.L.C. of Texas; ComPlus, L.L.C. d/b/a - Order Canceling PSP Certificate
SC-1537, SUB 1 (09/10/1999)

Cooper; Candace Y. - Order Canceling PSP Certificate
SC-1231, SUB 1 (09/03/1999)

Crouch; Kenneth L. - Order Affirming Previous Commission Order Canceling Certificate
SC-1463, SUB 1 (04/16/1999)

ORDERS AND DECISIONS LISTED

D. C. May Co., Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-1402, SUB 1 (04/30/1999)

Dixon; William, Jr. - Order Affirming Previous Commission Order Canceling PSP Certificate
SC-1106, SUB 1 (01/29/1999)

Dowding; William - Order Affirming Previous Commission Order Canceling Certificate
SC-1093, SUB 1 (04/30/1999)

Duke's Tire, Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-1412, SUB 1 (04/16/1999)

Environmental & Educational Enterprises; Beth M. Wrege, dba - Order Affirming Previous Commission Order Canceling Certificate
SC-1192, SUB 3 (04/30/1999)

Freeport Communications, Inc. - Order Canceling PSP Certificate
SC-1504, SUB 1 (03/08/1999)

Fuzion Cafe I, L.L.C. - Order Affirming Previous Commission Order Canceling Certificate
SC-1450, SUB 1 (04/16/1999)

FAFCOM, Inc. - Order Affirming Previous Commission Order Canceling PSP Certificate
SC-1406, SUB 2 (04/13/1999)

"G" Communications, Inc.; Gerlach Enterprises, Inc., dba - Order Canceling PSP Certificate
SC-1320, SUB 1 (09/23/1999)

Gladwin, Inc. - Order Affirming Previous Commission Order Canceling PSP Certificate
SC-513, Sub 1 (12/21/1999)

GoodCount Communications - Order Canceling PSP Certificate
SC-1299, SUB 1 (06/04/1999)

Griffin; Gerald R. - Order Affirming Previous Commission Order Canceling PSP Certificate
SC-1188, SUB 1 (05/24/1999)

Hampstead Pharmacy - Order Canceling PSP Certificate
SC-477, SUB 1 (01/19/1999)

Harrell; Don G. - Order Canceling PSP Certificate
SC-1410, SUB 1 (03/08/1999)

Inter-Net Telephone Company; Samuel Ifeanyi Offor, d/b/a - Order Canceling PSP Certificate
SC-963, SUB 1 (06/10/1999)

ORDERS AND DECISIONS LISTED

Ivie; Michael - Order Canceling PSP Certificate
SC-1429, SUB 1 (07/14/1999)

IBA Telecom, Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-622, SUB 3 (05/10/1999)

J-PHONES, INC. - Order Canceling PSP Certificate
SC-1441, SUB 1 (01/29/1999)

James; Leila M. - Order Canceling PSP Certificate
SC-1405, SUB 1 (04/15/1999)

Koretizing of Wilson, Incorporated - Order Canceling PSP Certificate
SC-1331, SUB 1 (07/14/1999)

Lamm, Jr.; Quentin - Order Affirming Previous Commission Order Canceling Certificate
SC-1321, SUB 1 (05/10/1999)

Le; Hiep Q. - Order Canceling PSP Certificate
SC-1281, SUB 1 (07/14/1999)

Leather & Lace South; BLL Enterprises, Inc., d/b/a - Order Affirming Previous Commission Order Canceling Certificate
SC-1206, SUB 1 (04/30/1999)

M & L Communications; James A. Leviner, dba - Order Affirming Previous Commission Order Canceling Certificate
SC-951, SUB 1 (04/16/1999)

Mandeville; Charles A. - Order Canceling PSP Certificate
SC-1252, SUB 1 (06/21/1999)

Marion, Jr.; Norman Clark - Order Canceling PSP Certificate
SC-1449, SUB 1 (09/24/1999)

METROFONES; J.R. Efird, d/b/a - Order Canceling PSP Certificate
SC-1540, SUB 1 (06/14/1999)

Meyer; Mark A. - Order Canceling PSP Certificate
SC-1230, SUB 1 (08/16/1999)

MRW Enterprises; Marshall Ray Wilder, dba - Order Canceling PSP Certificate
SC-1293, SUB 1 (02/12/1999)

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Norhez Tele-Vend; Ronnie Earl Williams, dba - Order Affirming Previous Commission Order Canceling Certificate
SC-1001, SUB 1 (04/30/1999)

NOSC Corp. - Order Canceling PSP Certificate
SC-1496, SUB 1 (06/18/1999)

P & M Communications; Charles P. Bunting, dba - Order Affirming Previous Commission Order Canceling Certificate
SC-1308, SUB 1 (06/17/1999)

Pay Com, Incorporated - Order Affirming Previous Commission Order Canceling Certificate
SC-626, SUB 2 (04/16/1999)

Payphone Systems; Richard Wilson, dba - Order Canceling PSP Certificate
SC-1423, SUB 3 (08/16/1999)

Pendleton, Jr.; John R. - Order Affirming Previous Commission Order Canceling Certificate
SC-1475, SUB 1 (04/16/1999)

Perry; Robert - Order Affirming Previous Commission Order Canceling Certificate
SC-1471, SUB 1 (04/30/1999)

Procomm, Inc. - Order Canceling PSP Certificate
SC-763, SUB 1 (03/08/1999)

Rastcom - Order Canceling PSP Certificate
SC-1302, SUB 1 (03/31/1999)

Riley; Michael L. - Order Affirming Previous Commission Order Canceling Certificate
SC-1435, SUB 1 (04/16/1999)

Royal Payphones, Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-1247, Sub 3 (12-21-1999)

Sandhills Communications; Marty Hamel, dba - Order Canceling PSP Certificate
SC-1414, SUB 2 (03/04/1999)

Simpson; James H. - Order Affirming Previous Commission Order Canceling Certificate
SC-1381, SUB 1 (04/30/1999)

Southport Cinemas, Inc. - Order Canceling PSP Certificate
SC-938, SUB 1 (04/30/1999)

Talleywhacker, Inc.; Paul B. Talley, dba - Order Canceling PSP Certificate
SC-960, SUB 1 (04/23/1999)

ORDERS AND DECISIONS LISTED

Taylor-Made Phone Services - Order Affirming Previous Commission Order Canceling PSP Certificate
SC-1110, SUB 1 (04/13/1999)

Tele South, Inc. - Order Canceling PSP Certificate
SC-1488, SUB 1 (02/10/1999)

The Flaming Star, Inc. - Order Canceling PSP Certificate
SC-984, SUB 1 (10/28/1999)

The Moreland Corporation, Inc. - Order Affirming Previous Commission Order Canceling Certificate
SC-1291, SUB 1 (06/17/1999)

Thomas; William Randolph - Order Canceling PSP Certificate
SC-1024, SUB 2 (01/15/1999)

Travelers Telecom Corporation - Order Canceling PSP Certificate
SC-1418, SUB 1 (02/18/1999)

Trinet, Inc. - Order Canceling PSP Certificate
SC-1447, SUB 2 (06/14/1999)

Utopia Video & Film, Inc. - Order Canceling PSP Certificate
SC-1536, SUB 1 (07/28/1999)

VISIONCOMM, INC. - Order Canceling PSP Certificate No. 1319
SC-1347, SUB 1 (10/20/1999)

Wal-Tel Communications; Neil Walters, dba - Order Canceling PSP Certificate
SC-1484, SUB 1 (09/15/1999)

Walker; Johnnie - Order Affirming Previous Commission Order Canceling Certificate
SC-1476, SUB 1 (04/16/1999)

Wang; Jiang Qing - Order Canceling PSP Certificate
SC-1408, SUB 1 (12/01/1999)

Wilson; Keith A. - Order Affirming Previous Commission Order Canceling Certificate
SC-1297, SUB 1 (04/30/1999)

Workman; Richard A. - Order Canceling PSP Certificate
SC-1268, SUB 2 (05/05/1999)

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SPECIAL CERTIFICATE/PSP - Certificates Issued

Company	Docket No.	Date
Abeget Telecom; Getachew W. Giorgis, dba	SC-1529, SUB 0	(02/04/1999)
Abhau; Jason	SC-1523, SUB 0	(01/14/1999)
Alpha Tel-Com, Inc.	SC-1115, SUB 2	(12/13/1999)
American Public Payphone Corporation	SC-1553, SUB 0	(06/22/1999)
Botsch; Paul William	SC-1559, SUB 0	(08/20/1999)
Breslin & Associates, Inc.	SC-1546, SUB 0	(04/16/1999)
Breslin, Jr.; Thomas J.	SC-1533, SUB 0	(02/25/1999)
Buchanan; Tony	SC-1554, SUB 0	(06/29/1999)
Bullis; Christopher L.	SC-1532, SUB 0	(02/22/1999)
BCL Communications; Bradley C. Lindsley dba	SC-1564, SUB 0	(11/01/1999)
Call Central, Incorporated	SC-1541, SUB 0	(04/07/1999)
Cape Woods, Inc.	SC-1538, SUB 0	(03/30/1999)
Carraway; Gerald	SC-1562, SUB 0	(09/13/1999)
CfL Payphones, L.L.C.; CfL, L.L.C. dba	SC-1561, SUB 0	(09/13/1999)
ComPlus, L.L.C. of Texas; ComPlus, L.L.C. dba	SC-1537, SUB 0	(03/22/1999)
Conigliaro; Giovanni	SC-1545, SUB 0	(04/13/1999)
Cotton; Warren Peter	SC-1565, SUB 0	(11/18/1999)
Daniels; Xavier Donte	SC-1563, SUB 0	(10/11/1999)
DavCom Enterprises; David E. Lindley, dba	SC-1526, SUB 0	(01/22/1999)
DuBois; Charles	SC-1521, SUB 0	(01/06/1999)
DTEL Telecommunications, Inc.	SC-1567, SUB 0	(11/18/1999)
Fuller; Matthew D.	SC-1558, SUB 0	(08/06/1999)
FSG Properties, Inc.	SC-1549, SUB 0	(05/12/1999)
G&G; Carin G. Goodall-Gosnell, dba	SC-1535, SUB 0	(03/02/1999)
Grand Strand Communications, Inc.	SC-1542, SUB 0	(04/07/1999)
Hedgepeth; James Corey	SC-1551, SUB 0	(06/04/1999)
Henderson; Eric	SC-1560, SUB 0	(09/02/1999)
Jackson; S. Brad	SC-1525, SUB 0	(01/22/1999)
Judy; William	SC-1534, SUB 0	(02/25/1999)
Major Communications Consulting, Inc.	SC-1556, SUB 0	(08/04/1999)
McFadden; Brian	SC-1539, SUB 0	(03/30/1999)
Micron Communications; Darrell W. Beidleman, dba	SC-1543, SUB 0	(04/07/1999)
Millennium Telecom, Inc.	SC-1531, SUB 0	(02/19/1999)
Moen, Incorporated	SC-1547, SUB 0	(04/16/1999)
METROFONES; J.R. Efird, d/b/a	SC-1540, SUB 0	(03/30/1999)
MOT-MOS Communications, Inc..	SC-1550, SUB 0	(05/25/1999)
Phillips; George David	SC-1557, SUB 0	(08/04/1999)
PADTEL Communications; PADCO, Inc., dba	SC-1544, SUB 0	(04/07/1999)
R & E Pay Phones; Randy Len Bullins, dba	SC-1530, SUB 0	(02/16/1999)
Simms Enterprises; John E. Sims, dba	SC-1568, SUB 0	(11/29/1999)
Sowers; Michael O.	SC-1555, SUB 0	(07/28/1999)
Statewide Communication; Glen G. Simpson, dba	SC-1548, SUB 0	(05/12/1999)
Utopia Video & Film, Inc.	SC-1536, SUB 0	(03/09/1999)

Washburn; Stephen G.	SC-1566, SUB 0	(11/18/1999)
White; Charles	SC-1528, SUB 0	(01/29/1999)
WhitCor Farms, Inc.	SC-1524, SUB 0	(01/14/1999)
Wolfnose Services, Inc.	SC-1522, SUB 0	(01/12/1999)
WNC Coin Telephone; Land of the Sky Communications Wiring, Inc., dba	SC-1527, SUB 0	(01/29/1999)
Zimmerman Pay Tell Management Systems, Inc.; Christopher Zimmerman dba	SC-1552, SUB 0	(06/16/1999)

SPECIAL CERTIFICATE/PSP - Merger

Talton Invision, Inc. - Order Approving Merger
SC-1427, SUB 3; SC-864, Sub 9 (01/07/1999)

SPECIAL CERTIFICATE/PSP - Miscellaneous

AmeriCall, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1425, SUB 1 (07/21/1999)

Cinemark USA, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1112, SUB 1 (02/11/1999)

Communications Central, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-7, SUB 4 (07/12/1999)

Cutting Edge Communications Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1467, SUB 1 (05/12/1999)

Diamond Communications Services, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-945, SUB 2 (11/01/1999)

Environmental & Educational Enterprises; Beth M. Wrege, dba - Order Reissuing Special Certificate Due to Address Change
SC-1192, SUB 2 (03/02/1999)

G&G; Carin G. Goodall-Gosnell, dba - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1535, SUB 1 (09/13/1999)

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Interstate Telecommunications, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-981, SUB 1 (09/02/1999)

Jones; Gerald Tod - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1125, SUB 1 (02/16/1999)

JGS Communications; John Graham Singleton, Jr., dba - Order Reissuing Special Certificate Due to Address Change
SC-1433, SUB 1 (01/26/1999)

National Telecom, Inc. - Order Reissuing Special Certificate Due to Address Change
SC-313, SUB 4 (12/08/1999)

North State Telephone Company - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1373, SUB 1 (03/22/1999)

Pacific Coin - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1482, SUB 1 (05/25/1999)

Parker; John F. - Order Reissuing Special Certificate Due to Address Change
SC-1432, SUB 2 (02/11/1999)

Payphone Systems; Richard Wilson, dba - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1423, SUB 2 (01/14/1999)

People's Telephone Company, Inc - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-286, SUB 7 (07/12/1999)

SmartStop, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1459, SUB 1 (02/19/1999)

Sprint Payphone Services, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1474, SUB 1 (12/13/1999)

Technicall; Baxter B. Sapp III, dba - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-823, SUB 1 (07/12/1999)

ORDERS AND DECISIONS LISTED

Telaleasing Enterprises, Inc. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-473, SUB 6 (07/12/1999)

Telephone Operating Systems Inc. - Order Reissuing Special Certificate Due to Address Change
SC-1353, SUB 1 (05/12/1999)

The Ocracoke Telephone Company; Sean Trainor, dba - Order Reissuing Special Certificate Due to Address Change
SC-1284, SUB 2 (01/22/1999)

TSC Payphone Corp. - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1437, SUB 2 (05/12/1999)

SPECIAL CERTIFICATE/PSP - Name Change

Apex Telcom Intl.; Robert Allen Flaherty, dba - Order Reissuing Special Certificate Due to Name Change
SC-1216, SUB 1 (03/22/1999)

Evercom Systems, Inc. - Order Reissuing Special Certificate Due to Name Change
SC-1427, SUB 4 (02/18/1999)

Sprint; Carolina Telephone & Telegraph Company, dba - Order Reissuing Special Certificate Due to Address & Telephone Number Changes & Establishing DBA
SC-1249, SUB 2 (11/01/1999)

Sprint; Central Telephone Company, dba - Order Reissuing Special Certificate Due to Address & Telephone Number Changes & Establishing DBA
SC-1356, SUB 1 (11/01/1999)

SPECIAL CERTIFICATE/PSP - Reinstating Certificate

Gibson; Vaughn D. - Order Affirming Previous Commission order
SC-1487, SUB 1 (04/16/1999) Errata Order (04/27/1999)

Huff; Steve - Order Affirming Previous Commission Order Canceling Certificate
SC-1499, SUB 2 (04/16/1999) Errata Order ((04/27/1999)

Palmer and Son; James E. Palmer, dba - Order Affirming Previous Commission Order Canceling Certificate
SC-1443, SUB 1 (04/16/1999) Order Vacating Orders of February 25, 1999, and April 16, 1999, and Reinstating Certificate (10/25/1999)

S. C. Ameritel Communications, LLC; Ameritel Communications, LLC; dba - Order Affirming Previous Commission Order
SC-1456, SUB 1 (04/16/1999) Order Vacating Orders and Reinstating Certificate and Operating Authority (04/28/1999)

SPECIAL CERTIFICATE/PSP - Show Cause

Christian Pay Phone & Communications; Clay H. Koontz, d/b/a - Recommended Order to Cease and Desist and Require Fines and Penalties
SC-950, Sub 4 (08/26/1999)

Evercom Systems, Inc. - Order Approving Joint Stipulation
SC-1427, SUB 5 (10/12/1999) Order Dismissing Public Staff Petition (12/06/1999)

SPECIAL CERTIFICATE/PSP - Sale/Transfer

Ameritech Payphone Services, Inc. - Order Approving Transfer of Control
SC-1465, SUB 1 (04/15/1999)

Gateway Technologies, Inc. - Order Approving Transfer of Control
SC-756, SUB 2 (08/12/1999)

SMALL POWER PRODUCER

SMALL POWER PRODUCER - Cancellation of Certificate

Southern Power Corporation - Order Canceling Certificate
SP-117, SUB 0 (11/08/1999)

Sunshine Valley Power Co. - Order Canceling Certificate
SP-62, SUB 1 (03/05/1999)

SMALL POWER PRODUCER - Electric Generation Certificate

Rockingham Power, LLC - Order Granting Certificate of Public Convenience and Necessity
SP-132, SUB 0 (06/30/1999)

Stonecutter Mills Corporation - Order Closing Docket
SP-121, SUB 0 (12/10/1999)

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SMALL POWER PRODUCER - Sale/Transfer

Hydrodyne Industries, LLC - Order Granting Transfer
SP-123, SUB 1 (12/15/1999)

Northbrook Carolina Hydro, L.L.C. - Order Ruling on Proper Accounting Treatment to Record the Transfer of Certain Utility Assets
SP-122, SUB 0 (05/20/1999)

TRANSPORTATION

TRANSPORTATION - Common Carrier Certificate

All About Moving, Inc. - Recommended Order Granting Application, In Part
T-4134, SUB 0 (09/27/1999)

American Delivery Services, Inc. - Order Granting Temporary Authority
T-4141, SUB 0 (09/01/1999)

American Moving Service; Kyrian C. Ndikom, d/b/a - Recommended Order Denying Application
T-4124, SUB 0 (02/12/1999)

American Moving Service; Kyrian C. Ndikom, d/b/a - Final Order Ruling on Exceptions and Granting Application
T-4124, SUB 0 (05/12/1999) Errata Order (05/13/1999)

Ark Moving & Storage, Inc. - Order Granting Common Carrier Authority
T-4138, SUB 0 (11/08/1999)

AAA Moving; Phillip Paul Latham, dba - Order Granting Common Carrier Authority
T-4126, SUB 0 (06/11/1999)

Cape Fear Moving Systems; David L. Irving, dba - Order Granting Common Carrier Authority
T-4127, SUB 0 (05/12/1999)

China Grove & Landis Moving; Ecil Campbell, dba - Recommended Order Granting Application, In Part
T-4136, SUB 0 (11/29/1999)

John's Moving Service; Outstanding Service Corp., dba - Order Granting Common Carrier Authority
T-4135, SUB 0 (09/01/1999)

Matthews Moving Systems, Inc. - Order Granting Common Carrier Authority
T-2985, SUB 2 (09/24/1999)

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New Hanover Moving & Storage; Patricia Ann Jackson, dba - Order Granting Common Carrier Authority
T-4133, SUB 0 (07/08/1999)

Rainbow Moving & Storage, Inc. - Order Granting Common Carrier Authority
T-4128, SUB 0 (05/19/1999)

Sam's Pickup and Delivery, Inc. - Order Granting Temporary Authority
T-3780, SUB 1 (02/10/1999)

Select Moving; Nicolas William Lefeber, dba - Recommended Order Denying Application
T-4125, SUB 0 (04/28/1999)

Select Moving; Nicolas William Lefeber, dba - Final Order Ruling on Exceptions and Granting Application
T-4125, SUB 0 (06/30/1999)

Shore To Shore Moving & Storage; Samuel David Shore d/b/a - Order Allowing Withdrawal of Application
T-4137, SUB 0 (11/05/1999)

TRANSPORTATION - Cancellation of Certificate

Blevins Motor Express, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-1242, SUB 9 (09/23/1999)

Crofutt & Smith Storage Warehouse of North Carolina - Order Affirming Previous Commission Order Canceling Operating Authority
T-3803, SUB 2 (09/23/1999) Order Vacating Orders of August 6, 1999, and September 23, 1999, and Reinstating Operating Authority (09/30/1999)

Haigler Trucking Co. - Order Affirming Previous Commission Order Canceling Certificate
T-1133, SUB 8 (01/21/1999)

K.M. Pulley Trucking Company, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-3301, SUB 1 (09/23/1999)

North American Van Lines, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-2108, SUB 4 (09/23/1999) Order Vacating Orders of August 6, 1999, and September 23, 1999, and Reinstating Operating Authority (09/30/1999)

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Small Time Movers - Order Affirming Previous Commission Order Canceling Operating Authority
T-2777, SUB 3 (09/23/1999)

Triple A Moving & Storage ,Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-3438, SUB 1 (10/11/1999) Order Vacating Orders of August 6, 1999, and October 11, 1999, and Reinstating Operating Authority (11/19/1999)

Truck-N-Time, Ltd. - Order Affirming Previous Commission Order Canceling Certificate
T-4113, SUB 1 (01/21/1999) Order Vacating Orders of December 2, 1998, and January 21, 1999, and Reinstating Operating Authority (03/08/1999)

Young Moving & Storage, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-2345, SUB 1 (09/23/1999)

TRANSPORTATION - Name Change

American Moving Systems, Incorporated - Order Approving Name Change
T-4124, SUB 1 (06/04/1999)

Armstrong Transfer & Storage Co., Inc./Armstrong Relocation Company - Errata Order
T-3206, SUB 1 (01/25/1999)

Smoky Mountain Moving Co.; Gregory & Leroy Dills, dba - Order Approving Name Change
T-4111, SUB 1 (09/29/1999)

TRANSPORTATION - Reinstating Certificate

Jiffy Moving & Storage Company; W.M. Poole Enterprises, Inc., dba - Order Vacating Orders of August 27, 1997, and October 15, 1997, and Reinstating Operating Authority
T-1975, SUB 5 (01/05/1999)

TRANSPORTATION - SHOW CAUSE

Barber's Moving & Storage Company; Walter Barber, dba - Recommended Order Canceling Operating Authority
T-4117, SUB 2 (12/01/1999) Order Rescinding Order Canceling Authority (12/14/1999)

First Movers; Forsyth Initiative For Resident Self Treatment, Inc., dba - Recommended Order Canceling Operating Authority
T-4102, SUB 2 (01/20/1999) Order Rescinding Order Canceling Authority (02/02/1999)

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Russell Transfer Company; Central Moving Systems of Charlotte, LLC, d/b/a - Recommended Order Canceling Operating Authority
T-4103, SUB 1 (03/22/1999)

Truck-N-Time, Ltd. - Recommended Order Canceling Operating Authority
T-4113, SUB 2 (12/20/1999)

TRANSPORTATION - Suspension

Charwill, Inc. - Order Granting Authorized Suspension
T-3543, SUB 1 (09/29/1999)

Four Seasons Moving Company; Eugene V. Nix, dba - Order Granting Authorized Suspension
T-1919, SUB 3 (11/05/1999)

Jiffy Moving & Storage Company; W.M. Poole Enterprises, Inc., dba - Order Granting Authorized Suspension
T-1975, SUB 6 (01/19/1999) Order Granting Authorized Suspension (12/22/1999)

TRANSPORTATION - Sale/Transfer

Beltmann Group Incorporated - Order Approving Merger
T-4130, SUB 0 (04/21/1999)

Brown's Transfer & Storage; Johnny Wayne Brown, dba - Order Dismissing Application
T-4129, SUB 0 (06/14/1999)

Cardinal Moving & Storage, Inc. - Order Granting Temporary Authority
T-1630, SUB 1 (03/30/1999)

Cardinal Moving & Storage, Inc. - Order Approving Transfer
T-1630, SUB 1 (04/21/1999)

Lee Moving & Storage, Inc. - Order Allowing Withdrawal of Application
T-4139, SUB 0 (09/15/1999)

Sandhills Bonded Warehouse, Inc. - Order Approving Transfer
T-1852, SUB 4 (04/21/1999)

Two Men And A Truck of Wilmington; T & K Moving, Inc., dba - Recommended Order Approving Application
T-4132, SUB 0 (07/12/1999)

Weathers Bros. Transfer Company, Inc. - Order Approving Transfer
T-937, SUB 2 (04/21/1999)

Weathers Bros. Transfer Company, Inc. - Errata Order
T-4114, SUB 1; T-937, Sub 2 (05/03/1999)

WATER/SEWER

WATER/SEWER - Abandonment

North State Utilities, Inc, - Order Discharging Emergency Operator at Woods of Ashbury Subdivision
W-848, SUB 16 (02/10/1999)

WATER/SEWER - Bonding

Corolla North Utilities, Inc. - Recommended Order Requiring Bond
W-953, SUB 2 (05/12/1999)

Corolla North Utilities, Inc. - Order
W-953, SUB 2 (06/02/1999)

Corolla North Utilities, Inc. - Order Allowing Additional Connections, Restricting Water Usage, and Requiring Customer Notice
W-953, SUB 2 (08/02/1999)

Heater Utilities, Inc. - Order Approving Corporate Surety Bond and Releasing Bond
W-274, SUB 226 (03/16/1999)

Heater Utilities, Inc. - Order Approving Corporate Surety Bond and Releasing Bond
W-274, SUB 239 (05/21/1999)

WATER/SEWER - Cancellation of Certificate

Proctor Water Works - Order Canceling Water Utility Franchise and Requiring Customer Notice
W-663, SUB 2 (05/07/1999)

Windham Mobile Home Park - Order Canceling Temporary Operating Authority and Requiring Customer Notice
W-804, SUB 1 (08/31/1999)

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WATER/SEWER - Certificate

Carolina Water Service, Inc. of North Carolina - Order Closing Docket
W-354, SUB 162 (01/19/1999)

Carolina Water Service, Inc. of North Carolina - Order Closing Docket
W-354, SUB 190 (04/23/1999)

Carolina Water Service, Inc. of North Carolina - Order Closing Docket
W-354, SUB 191 (02/08/1999)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchise and Approving Rates
W-354, SUB 192 (09/08/1999)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchise and Approval of Rates
W-354, SUB 206 (11/16/1999)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchise and Approving Rates
W-354, SUB 208 (11/04/1999)

Chatham Water Reclamation Company, LLC - Order Granting Temporary Operating Authority, Approving Interim Rates, and Requiring Customer Notice
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Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
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Hydraulics, Ltd. - Order Granting Franchise and Approving Rates
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Water Quality Services, Inc. - Recommended Order Granting Franchise, Approving Rates, and Requiring Customer Notice
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Mid South Water Systems, Inc. - Order Closing Docket
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Harrco Utility Corporation - Order Discharging Emergency Operator at Stonebridge Subdivision
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Harrco Utility Corporation - Order on Refund Plan
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Harrco Utility Corporation - Order Approving Refund Plan
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LaGrange Waterworks Corporation - Order Approving Refund Plan
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Elk River Utilities, Inc. - Recommended Order Granting Partial Increase in Rates and Charges
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Nags Head Village Service Co., Inc. - Order Denying Motion for Reconsideration
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North Topsail Water & Sewer, Inc. - Order Allowing Company to Use Funds From Escrow Account
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North Topsail Water & Sewer, Inc. - Order Allowing Company to use Funds from Escrow Account
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North Topsail Water & Sewer, Inc. - Order Allowing Company to Use Funds From Escrow Account
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North Topsail Water & Sewer, Inc. - Order Allowing Company to Use Funds from Escrow Account
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Piedmont Construction and Water Company, Inc. - Order Allowing Withdrawal of Application and Closing Docket
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Tobacco Branch Village, Inc. - Order Granting Interim Rate Relief, Scheduling Hearing, and Requiring Customer Notice
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Tobacco Branch Village, Inc. - Order Granting Motion, Canceling Hearing, Granting Tariff Revision, and Requiring Customer Notice
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Hoopers Valley Water Company - Order Approving Tariff Revision
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Baywood Water, Inc. - Order Closing Docket
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Brookwood Water Corporation - Order Approving Transfer, Canceling Franchise, Approving Rates, Requiring Bond, and Requiring Notice
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Brookwood Water Corporation - Order Approving Transfer, Canceling Franchise, Approving Rates, Requiring Bond and Customer Notice
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Cape Fear Utilities, Inc. - Order Approving Transfer, Canceling Franchises, Releasing Bond, Requiring Refunds, and Requiring Contiguous Extension Notifications
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Earth Environmental Services; Michael Joel Ladd, dba - Order Allowing Withdrawal of Application, Canceling Hearing, and Requiring Notice
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Fairways Utilities, Inc. - Order Approving Transfer and Requiring Customer Notice
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Glynnwood Water Systems, Inc. - Recommended Order Approving Transfer and Rates
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Heater Utilities, Inc. - Order Approving Bond, Granting Transfer, Canceling Franchise, and Requiring Customer Notice
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Heater Utilities, Inc. - Order Approving Transfer of Assets & Franchises, Acquisition Adjustment, Bond, & Requiring Notice
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Heater Utilities, Inc. - Order Approving Transfer, Canceling Franchise, Requiring Bond, Releasing Bond, and Requiring Customer Notice
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Heater Utilities, Inc. - Recommended Order Approving Transfer and Partial Rate Increase, Requiring Improvements, Bond, & Customer Notice
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Heater Utilities, Inc. - Order Approving Transfer, Canceling Franchise, and Requiring Customer Notice
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Heater Utilities, Inc. - Order Approving Transfer, Canceling Franchise, and Requiring Customer Notice
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Heater Utilities, Inc. - Order Closing Docket
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Heater Utilities, Inc. - Order Approving Transfer, Canceling Franchises, Requiring Bond, Approving Rates, and Requiring Customer Notice
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Heater Utilities, Inc. - Order Approving Transfer, Canceling Franchise, Approving Rates, and Requiring Customer Notice
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Heater Utilities, Inc. - Order Granting Temporary Operating Authority and Interim Rates, Establishing General Rate Case, Scheduling Hearing, and Requiring Customer Notice
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Hydraulics, Ltd. - Recommended Order Approving Transfer and Partial Increase in Rates
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Hydraulics, Ltd. - Order Approving Transfer, Granting Interim Rates and Scheduling Oral Arguments for Hearing
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Mid South Water Systems, Inc. - Order Approving Bond and Releasing Bond
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Mid South Water Systems, Inc. - Order Closing Docket
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Outer Banks/Kinnakeet Associates, LLC - Order Approving Corporate Surety Bond and Releasing Bond
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Peppertree Atlantic Beach Associates - Order Approving Transfer, Canceling Franchise, Releasing Bond, and Requiring Customer Notice
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Rayco Utilities, Inc. - Order Granting Rate Decrease and Requiring Customer Notice
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Rayco Utilities, Inc. - Order Approving Bond and Surety and Releasing Bond and Surety
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Trent Utilities, Inc. - Order Releasing Bond, Requiring Refunds, and Requiring Report
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Willowbrook Utility Company, Inc. - Order Closing Docket
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WATER/SEWER - Tariff Revision for Pass-Through

Harrco Utility Corporation - Order Closing Docket
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Homestead Community Water - Order Approving Tariff Revision and Requiring Customer Notice
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Mid South Water Systems, Inc. - Order Requiring the Filing of Refund Plans
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Mid South Water Systems, Inc. - Order Approving Refund Plans
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Mountain View Mobile Home Park LLC - Order Approving Tariff Revision
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Red Tower, Inc. - Order Approving Tariff Revision
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Twin Creeks Utilities - Order Approving Tariff Revision
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Twin Creeks Utilities - Order Approving Tariff Revision and Requiring Customer Notice
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Viewmont Acres Water System - Order Approving Tariff Revision
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WATER/SEWER - Contiguous Water Extension

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-279, SUB 109 (04/27/1999)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Closing Docket
W-354, SUB 166 (01/19/1999)

Carolina Water Service, Inc. of North Carolina - Order Closing Docket
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Carolina Water Service, Inc. of North Carolina - Order Closing Docket
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Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Recognizing Contiguous Extension, and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Clarifying Tap Fee Issues
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Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Granting Franchise and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
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Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
W-354, SUB 212 (05/11/1999)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
W-354, SUB 213 (07/02/1999)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
W-354, SUB 214 (08/19/1999)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
W-354, SUB 215 (08/19/1999)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
W-354, SUB 219 (09/17/1999)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
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Corolla North Utilities, Inc. - Order Allowing Additional Connections, Restricting Water Usage, and Requiring Customer Notice
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CWS Systems, Inc. - Order Closing Docket
W-778, SUB 36 (06/29/1999)

CWS Systems, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-778, SUB 44 (11/05/1999)

CWS Systems, Inc. - Order Closing Docket
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Fairways Utilities, Inc. - Order Canceling Franchise and Releasing Bond for Becker Woods Subdivision and Approving Bond and Recognizing Contiguous Extension for Saponos Point Subdivision
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Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 202 (01/06/1999)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 210 (01/20/1999)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 216 (03/03/1999)

Heater Utilities, Inc. - Amended Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 216 (03/05/1999)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
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